



# International Conference on **the Right to Water and Sanitation** in Theory and Practice

26-27 November 2008, Oslo, Norway

## Conference Report

The human right to water and sanitation is being increasingly promoted as a way of viewing and addressing the world water crisis. This conference provided an opportunity for participants to reflect on the theory and growing practice surrounding this human right from a multi-disciplinary perspective.

Some of the key questions included the implications of the right for legal and economic regimes, the allocation of scarce water resources, international development as well as the rights of women, indigenous peoples and minorities.

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**Conference Website:**

<http://ocwr.ouce.ox.ac.uk/international-righttowater-conference/>



## Background

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The social, environmental, economic and ideological dimensions of the world water crisis are capturing global concern. The crises are manifest in the massive degradation of freshwater resources, the large-scale inequities in access to water resources and supply, and debates over whether the emphasis on privatisation of water services is part of the solution or the problem. As the deep-seated structural causes of the crises become more apparent, human rights are being increasingly promoted as a means of improving access to water and water governance.

The right to water was explicitly recognised in a 1977 United Nations (UN) declaration, but a key legal catalyst for its promotion was the 2002 General Comment No. 15 on the Right to Water by the UN Committee on Economic, Social and Cultural Rights. Later in 2006, the UNDP's Human Development Report recommended that all governments 'make water a human right– and mean it'. Some governments and national courts have begun to recognise and apply the right to water. In 2007, the UN High Commissioner for Human Rights stated that it is time to consider access to water and sanitation as a human right and the UN Millennium Project Taskforce called on countries to use the standard in reaching Millennium Development Goal (MDG) 7C.

This conference represented an opportune time to reflect on the right to water in theory and in practice and was held in the International Year of Sanitation. Presenters came from a wide range of disciplines, including anthropology, law, environmental studies, development, economics, health and other social sciences. Participants were challenged to consider a number of key questions: (1) whether and how the right to water *and* sanitation has been firmly entrenched in international law; (2) how conflicts over water uses should be dealt with in a human rights context; (3) what role has and should human rights play in enriching and transforming thinking and action on service delivery; (4) what

is the relationship between the right and the economic challenges of fiscal resources and preference for market approaches; and (5) what are the implications for equality rights, particularly the rights of women, indigenous peoples and minorities.

The abstracts of the papers are available at the conference website<sup>1</sup> and on Waterwiki<sup>2</sup> and a book with the papers will be published shortly. The conference was followed by a workshop with practitioners on how to integrate human rights approaches to water and sanitation in their work and the report of that workshop can be found the waterwiki site established after the conference.<sup>3</sup>

**Malcolm Langford, University of Oslo**

**Anna Russell, University of Oxford**

**Susanne Schmidt, UNDP**



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<sup>1</sup><http://ocwr.ouce.ox.ac.uk/international-righttowater-conference/>

<sup>2</sup>[http://waterwiki.net/index.php/International\\_Conference\\_on\\_the\\_Right\\_to\\_Water\\_and\\_Sanitation\\_in\\_Theory\\_and\\_Practice](http://waterwiki.net/index.php/International_Conference_on_the_Right_to_Water_and_Sanitation_in_Theory_and_Practice)

<sup>3</sup> See <http://right2watsan.ning.com/>

## 1. Opening

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Norway's Minister for the Environment and International Development, **Erik Solheim**, officially opened the conference and welcomed delegates to Oslo. He noted that the three major challenges of the right to water were ensuring the quality of water, improving access to water and addressing climate change. He said that there was no doubt that water was a human right and Norway was supportive of current efforts in the UN Human Rights Council to this effect. Norway had also removed conditionalities for privatisation of water in the provision of development assistance but the right to water did not necessarily mean that the private sector could not be involved in the delivery of services.



The newly appointed Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, **Catarina Alberquerque**, shared her mandate, activities and work ahead. She focused on the reasons that led her to chose sanitation as the focus of her first year of work: firstly, there is a political/ diplomatic motive, since it is a politically less contentious issue than the right to water, and therefore a good

way to start, in order to dissipate fears and rally support and trust around the new mandate; secondly, a statistical basis, since the number of people without access to sanitation is more than twice those without access to water – which amounts to 2.6 billion humans without sanitation; thirdly, a calendar motivation, given the fact that 2008 is the International Year of Sanitation; fourthly, to address (im)balance, since in the binomial “water and sanitation” the latter is the poor parent of the family; and fifthly, because of its impact on other human rights - the method of disposing excreta is one of the strongest determinants of child survival



**Joakim Harlin** from UNDP and UN-Water prefaced his presentation by noting that UN-Water was an inter-agency mechanism established in 2003 by the UN High Level Committee on Programmes. It was created to add value to UN initiatives such as the MDGs concerning water and help facilitate synergies and joint efforts in the water sector. The scope of UN-Water encompasses all aspects of management of freshwater and sanitation and it operates mainly through ‘Task Forces’. On the added significant values of coordination, he pointed out that UN-Habitat and COHRE are working on a manual on the right to water and sanitation, WHO is working on a normative instrument on the right to water, UNEP is providing policy guidance on rights based approaches for water and sanitation and UNDP is working on mainstreaming human rights in programming. He pointed out that such initiatives are of significance as they manifest an operationalisation of General Comment No.15.



## 2. Law, Politics and Power: Challenges in Context

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**Malcolm Langford**, University of Oslo, focused on law and political economy. The legal status of the right to water had been strengthened since its first international recognition by States in 1977, while the right to sanitation was now enjoying growing support (see also Section 6 below). The growing affirmation for the right to water strengthened the basis for General Comment No. 15 which interpreted the right to be part of the right to adequate standard of living in the International Covenant on Economic, Social and Cultural Rights (ICESCR). He pointed to the dynamism in the legal field with growing jurisprudence on the right. He acknowledged though that claiming the right to water as part of international customary law was difficult. He examined the consequences of the right to water for the environment, policy, economics and politics, and what those fields had to say on the content of the right to water. He referenced environmental debates on the viability of the right to water, noting that most conflicts over water for basic use tend to be local suggesting the core issue was distribution not availability. He argued that the right to water and sanitation had clear implications for social policy, particularly in the areas of disconnections, tariff-setting and progressive expansion. Regard must be had, however, to the resource challenges, but the limitations should not be overstated. Recognition of the right to water and sanitation was understood differently by the various political players, but was becoming stronger in political discourse. He concluded by pointing to the positive developments in Kenya after the right to water and sanitation was recognised.

**Professor Bill Derman**, University of Michigan, and **Dr. Emmanuel Manzungu**, University of Zimbabwe, diagnosed the right to water from a political ecology perspective using Zimbabwe's water reforms as a case study. Water reforms in the country in the last

two decades sought to impose a new water management system through the creation of a national water authority with the support of international donors. In new legislation, water as a primary good was prioritised over water as a commercial good for priority in allocation; but the water reform in practice largely focused on development of catchment management and users fees to the neglect of small scale users. Since 2000, the water reform process in Zimbabwe has been overtaken by other factors. Almost all 3 million people in Greater Harare have gone from having access to safe water and adequate sanitation to seeing both quantity and quality plummet. The blame was principally placed on an overly centralised water and sewerage system; economic factors such as eight years of recession; and governance issues such as the appointment of a government commission to run the city's affairs from 2000 to 2008 after the ruling ZANU-PF had lost legislative elections in all major urban centres. The Constitution of Zimbabwe does not enshrine a right to water and the continued political logjam does not help the situation.

**Professor Anne Hellum** of the University of Oslo grounded her presentation on a gender perspective. She argued that human rights and gender are cross-cutting in development and that the right of access by women to water and sanitation is not just a matter of health or gender equality, but also one of security and personal integrity. It was highlighted that Article 14 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) guarantees the right to water and sanitation. While the definition of the right to water in General Comment No.15 was gender neutral she lamented that the division of labour with regards to household chores and related water uses on the ground are highly gendered – and this has not been taken into account in the definition of right to water for “domestic uses”. She underscored the need for gender mainstreaming by development agencies with regards to access to water and that Norway's

normative infrastructure lacks a linkage between women and water and sanitation. Hellebrandt bemoaned the lack of UN general comments with regards to the right to water and sanitation in relation to the Convention on the Rights of the Child and CEDAW and explained that cases are needed under the Optional Protocol to CEDAW.

**Discussion:** It was queried whether the right to water can be covered under the rubric of the right to food and whether there was any approach to minimise the systematic breakdown of irrigation schemes in Zimbabwe. Another asserted that the UN General Assembly resolution on the Right to Development 1994 should be referred to as a normative instrument buttressing the international recognition of the right to water. It was noted that sanitation is a challenging issue and this brings into light the availability and effectiveness of accountability systems.

In response, it was highlighted that the breakdown of irrigation schemes in Zimbabwe resulted from the State using decentralisation as a pretext for disengagement. There is an imperative need to reverse this by helping state bureaucrats to understand that notwithstanding decentralisation the State must retain a control function. It was further pointed out that gender mainstreaming is very important with regards to the right to water. It should not exclusively include women, but should include men as well so that women do not get overloaded. It was stressed that when it comes to access to water and sanitation, there is a difference between urban and rural areas, and local strategies need to be sufficiently distinguished from those at the national level. Sometimes development policies focus only on formal rural areas, leaving aside informal settlements despite similar levels of poverty. With regards to food, the issue is not about availability per se, but about its allocation; and the same applies to water – in most countries there is enough for basic uses but it is poorly distributed.

### 3: Conflict or Congruence: Water Allocation

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**Stefano Burchi**, Food and Agriculture Organisation of the UN, stressed the need for effective statutory mechanisms for the allocation of water. He analysed the compatibility of emerging domestic water allocation legislation and mechanisms with General Comment No. 15 and explained that water resources were increasingly falling into the public domain as private ownership rights have steadily eroded. User rights then accrued from government grants and special allowances for small consumers were important in covering their right to water. Thus, while trading of water rights can be a powerful constraint to the realisation of the right to water, this was offset by prevailing regulations aimed at safeguarding equity.

**Dr. Barbara van Koppen**, International Water Management Institute in Pretoria pointed out though that the vesting of 'public' water resources in the State often imposed obligations on all to apply for licenses. She identified a range of obstacles to the realisation of the right to water under the current regimes. These included the expropriation of customary and local water rights regimes; inability to improve small scale users' access to water for domestic and small scale productive uses; failure to learn from land tenure debates; continuity of a colonial legacy; lack of quantification of the inequities in the distribution of water uses. She questioned the prevailing permit systems. For example, in the South African context, regulating only the 10 largest users would actually mean addressing 77-93% of water volumes. She set out five ways to support realisation of the right to water which included promulgating and prioritising general authorisations for small scale users, only using permits for large scale users and supporting own public investments in infrastructure in the form of hydraulic property rights creation. Van Koppen concluded by arguing that the



starting point for delivery of water services should be the recognition of a right to 'homestead-scale multiple use water services' by taking into account people's multiple water uses and needs from multiple sources.

**Dr. Phillippe Cullet** from the School of Oriental and African Studies of the University of London began by discussing the need for reform of water laws in India. Water law is based on old principles and out-dated legislation. The lack of new/appropriate legislation inhibits operationalising the human right to water. There has been disappointment with government in regards to managing water resources and supply-led management has entirely failed to fulfil goals of universal access. With increasing physical water scarcity, there needs to be more focus on managing water resources and providing access to all. Water sector reform in India based on international policy consensus and Indian policy has led to water being accepted as an economic good. The reform focused on demand-led and decentralised water programmes. Participation was limited to 'users' and the private sector - those without access were excluded. A World Bank pilot project helped progressively mainstream the World Bank's policy on urban drinking water needs to the national level in India, but had no reference to human rights. Reforms based on the reform and World Bank policy failed to address the existing inequalities in access to water. The exclusion of non users failed to measure up to democratic standards in place in India. Decentralisation led to the withdrawal of government without effective accountability mechanisms at the local level. Cullet concluded that reforms in India were not based on existing legal human rights principles and are failing to contribute to their realisation. There is a need for another set of reforms anchored in the fundamental right to water. Drinking water priority needs to be anchored in law, not policy.

**Professor Atilla Tanzi** of the University of Bologna pointed out that international water law sets out general rules addressing relations between co-riparian states of transboundary watercourses, but the exercise of sovereignty over purely domestic watercourses has long been outside the scope of international law. Tanzi noted that it was first through the entry of the environmental dimension into the water law process that human needs have received some recognition within the body of international water law. One instrument is the UNECE 1999 Protocol on Water and Health, which entered into force in 2005. It represented a concrete tool in Europe for the implementation of the human right to safe drinking water and sanitation. He showed how the Protocol is consistent with General Comment No. 15 and that NGOs can bring complaints to the newly established committee under the Protocol on Water and Health.

**Discussion:** Some participants argued that the Mexican experience showed the dangers of the permit system due to the large numbers of permits required. It was commented that different institutional trajectories result in different positions that lead to constraints on availability in practice. In China, for example, the State prioritises industrialisation and urbanisation instead of the provision of water for agriculture or peasants with the consequence that there is a clear limitation on the right to water for rural areas. In Kenya, there are places where water is unavailable yet there are nomadic groups whose animals need water too - hence a holistic approach towards the provision of water is needed. A participant queried whether there was a normative ground that will support the increase in the daily water allocation of 50 litres per person per day to 100 litres per person per day.

Burchi acknowledged that there is, in most cases, a gulf between a beautiful piece of legislation and how it plays out in reality. Nevertheless regulation has a role to play as it is not enough to leave traditional customary practice in the hands of the markets as water

resources are a stock of public relevance and regulation blurs and minimises the opportunity for conflict. Burchi pointed out that regulation has to go hand in hand with transparency and accountability and this invariably calls for a functioning judiciary to publicly inform and make accountability ingrained into the system. Van Koppen indicated that her multiple use ladder crosses both water and basic food needs, but certainly had implications for traditional understanding of 'domestic uses'. Tanzi concluded the session by stating that Article 9 of the Protocol on Water and Health makes a provision for member States to enhance public awareness about use of water and protection of the environment.

## 4. The Broader Development Context

**Dr. Anna Russell** of the University of Oxford explained that international development and international human rights discourses have been historically disconnected from one another in theory and in practice. Development specialists have traditionally worked in isolation from human rights advocates, and it was not until the 1990s that significant convergence was discernible between the two fields. Today, little empirical research exists that looks at the intersection of the fields in practice and the extent to which the agendas are actually seen to be 'mutually reinforcing'. Therefore using the right to water

seen as a development outcome. There was noticeable resistance to the entry of rights language into the development sector. However, attraction to its inherent advocacy and empowerment aspects were commented on by the three groups. The organizations which use the language tend to do so to spark political mobilisation, and as a result, the right to water, as well as human rights more generally, tend to be associated with any number of vague principles of participation, non-discrimination, access to information etc. Overall, there was little association of the right to water with the international human rights framework, and a general detachment from relevant legal obligations and normative standards. Accordingly, it was suggested that there is a strong need to reintroduce reference to the international human rights framework when integrating rights into development cooperation or else risk the ability of human rights to bring about social change in the future.

**Dr. Jackie Dugard**, University of Witwatersrand, and **Malcolm Langford** gave an overview of the South African policy, law and practice on water services. The right to water is included in the constitution and the provision of water services is located in a rights-friendly legislative and policy framework. The devolution of water services to local government since 2001 has seen the erosion of some progress that had been made in prior years. This has resulted in water disconnections for the poor as municipalities

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