

- CHECK AGAINST DELIVERY -

“Setting the Scene: The United Nations Human Rights System and the Right to Water”

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Roundtable jointly convened by UNECE, WHO and OHCHR:

The Human Right to Water and the Protocol on Water and Health:
making access to water a reality

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1. Introduction

Ladies and gentlemen,

I am very pleased to participate in this meeting (bringing together public health, environmental, development and human rights experts) to discuss one of today's most critical challenges: how to make access to safe drinking water and to sanitation a reality for everyone, everywhere.

The gravity of the problem has been exposed in numerous reports and studies: More than 1 billion people today lack access to clean water, while some 2.6 billion people – almost half of the world population – lack access to adequate sanitation. Water-related diseases remain the biggest cause of illness and death in many parts of the world, and lack of access to safe water is estimated to cause 1.7 million deaths every year.

In response to this crisis, States have made repeated pledges to ensure access to safe water for all. While the issue of water supply has traditionally been seen as primarily an issue of sustainable development, the last decade has witnessed a growing recognition of its human rights dimensions. As the former Secretary-General Kofi Annan pointed out, “access to water is a fundamental human need and, therefore, a basic human right.”

I will focus my remarks on the human right to water, outlining how this right has been defined and addressed within the UN human rights system and making some general observations on synergies between the UN treaties and the UNECE Protocol as well as on the human rights perspective on water as a human right.

2. The human right to water

The fundamental importance of access to water to the enjoyment of the rights to life and to health, and its close connection with a range of other human rights is implicitly addressed under all core human rights treaties. However, explicit references to access to water is only included in the Convention on the Right of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, and the recently adopted Convention on the Rights of Persons with Disabilities.

The importance of considering access to water as a self-standing human right has been underlined in the work of some of the human rights treaty bodies and special procedures of

the Human Rights Council, such as the Special Rapporteurs on the right to housing, to food, and to health, as well as in a set of draft guidelines for the realization of the right to drinking water supply and sanitation adopted by the Sub-Commission on Human Rights and submitted to the Human Rights Council last year.

Among the UN human rights treaty bodies, it is the Committee on Economic, Social and Cultural Rights which has given the most elaborate definition of the right to water. The Committee derives this right from articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights, dealing respectively with the right to an adequate standard of living and the right to the highest attainable standard of physical and mental health.

In its General Comment No. 15 of 2002, the Committee defines the right to water as the right of everyone “to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.” The General Comment further notes that “an adequate amount of safe water is necessary to prevent death from dehydration, reduce the risk of water-related disease and provide for consumption, cooking, personal and domestic hygienic requirements.” The approach of the Committee on Economic, Social and Cultural Rights is consistent with that adopted by other UN human rights bodies and mechanisms.

By defining the right to water primarily in terms of individual access to safe drinking water and water for personal and domestic use, the human rights perspective has a more specific focus than that of the UNECE Convention and Protocol. Notably, the human rights perspective only indirectly addresses issues such as water management and protection of water ecosystems from pollution. Also, the human right to water addresses only indirectly other issues such as access to water for agriculture and food production.

The particular strength of the human rights perspective is that it calls for a strong form of protection. Access to safe drinking water for all is not merely a policy objective, but a right with corresponding legal obligations. Moreover, as is underlined by the human rights perspective, the responsibility to guarantee such access ultimately rests with States.

Thus, States have specific obligations to ensure universal access to at least a minimum essential amount of safe drinking water and minimum access to sanitation services, as well as to ensure that the provision of drinking water and sanitation is adequately regulated and monitored. In particular, States should ensure that no population group is excluded and that

services are delivered in an equitable and non-discriminatory manner consistent with human rights standards.

The human rights perspective, with its emphasis on adequate levels of access for everyone and its focus on combating inequality and discrimination, also brings into relief the particular challenge faced, not only in drought-prone areas, but also in many countries where the poorest and most vulnerable either lack access or have to pay exorbitant prices for water, as they are not connected to the public water system. International human rights standards underline the need to give priority to the most vulnerable groups and to ensure that safe water is affordable to everyone. Thus, States facing serious resource constraints should invest in cost-efficient services, rather than in more expensive ones that may benefit only a small section of the population.

In this regard, it should be clarified that “the right to water”, as interpreted within the UN human rights system, is not the same as the “right to free water”. Rather, the right implies a requirement that nobody should be deprived of access to adequate and safe water simply because of an inability to pay.

Equally, the human rights framework does not dictate a particular form of service delivery or pricing policy. The UN human rights bodies have thus not entered into the debate for or against privatisation of water services, but rather focused on the actual impact of any given water management scheme on the enjoyment of human rights.

3. Synergies between UN human rights treaties and UNECE Protocol

Let me here briefly comment on the Protocol on Water and Health from a human rights perspective.

There are obvious synergies between the Protocol and the UN human rights treaties, particularly the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights currently being negotiated in an intergovernmental Working Group of the Human Rights Council.

The Protocol on Water and Health is one of few international treaties that explicitly refers to water and sanitation. Underlining the close linkage between human rights, health and sustainable development, the Protocol combines, in a single instrument, elements of human

rights, environmental, and public health treaties. It thus covers many of the key dimensions of the human right to water.

Notably, the Water Protocol stipulates that States, in pursuing the aim of access to drinking water and sanitation, should be guided by principles, which are also fundamental from a human rights perspective, such as: access to information, public participation, special consideration to vulnerable groups, and equitable and adequate access to water for everyone.

The compliance mechanisms envisaged in the draft decision for adoption by the First Meeting of Parties are also interesting from a human rights point of view. Establishing a treaty body of independent experts to monitor implementation and receive complaints from individual members of the public, would provide an important avenue of international redress and complement similar human rights mechanisms.

4. General observations

I would like to conclude by making three general observations on the human right to water.

First, while the human rights framework calls for the formal recognition of the right to water in laws and regulations, as well as access to effective judicial and administrative remedies, such formal recognition will obviously not in and of itself solve the problem of adequate access to water. To become a reality, the right to water must be accompanied by real political commitment and coherent strategies to ensure universal access to water and sanitation.

Second, the 2006 Human Development Report and other studies clearly demonstrate that the lack of access to safe drinking water and sanitation has more to do with poverty, inequality and ineffective water management than with an absolute shortage of water supply. Lack of access to safe drinking water and sanitation is thus more a human rights challenge than an environmental one. Moreover, ensuring access is, given that analysis, a goal within our reach, as it does not depend on climate or environmental factors as much as it does on the adoption of appropriate policies and approaches. While human rights law is silent on technical aspects of water management, it speaks powerfully to States' obligation to take action on behalf of those whose rights are denied. Human rights principles of equality, non-discrimination, transparency and accountability provide guidance for such government action.

Third, national courts are increasingly playing a role in protecting and promoting greater enjoyment of economic, social and cultural rights, including the right to water. Courts in a

number of countries have for example reverted decisions to cut off water supplies to poor areas. The compliance mechanism envisaged for the Protocol on Water and Health as well as the future Optional Protocol to the International Covenant on Economic, Social and Cultural Rights could play an important role in promoting greater recognition and enjoyment of the right of everyone to have access to adequate and safe drinking water and to sanitation.

5. Conclusion

Let me end by saying that the Office of the High Commission for Human Rights will follow with interest the efforts to implement the provisions of the Protocol on Water and Health, including the planned activities set out in the draft programme of work 2007-2009. As was mentioned earlier, the Human Rights Council, in its decision 2/104 “on human rights and access to water” of 27 November 2006, requested the Office to “conduct a detailed study on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments”. The study will seek to build upon the work of the human rights mechanisms in order to provide additional clarification about the “right to water”, its shape and contours and its practical implications. It will be prepared for the sixth session of the Council, in September 2007. Given the clear relevance of the Protocol to discussions concerning the human right to water, the expertise and experience of the Parties to the Protocol and of the Protocol’s Joint Secretariat will provide a valuable source of information for that study.

Thank you.