



General Assembly

Distr.
GENERAL

A/HRC/10/NGO/44
25 February 2009

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Tenth session
Agenda item 3

PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

**Written statement^{*} submitted by Human Rights Advocates, Inc. (HRA),
a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 February 2009]

^{*} This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

The Right to Water

1. The UN High Commissioner for Human Rights concluded that, “it is now time to consider access to safe drinking water and sanitation as a human right, defined as the right to equal and non discriminatory access to a sufficient amount of safe drinking water for personal and domestic uses-drinking, personal sanitation, washing of clothes, food preparation and personal and household hygiene-to sustain life and health.”¹ The Commissioner’s report was informed by considerable submissions by governments, intergovernmental organizations, national human right institutions and civil society. The evidence is paramount that the recognition of the right to water and sanitation as a human right is essential. Recognition of human rights obligations in relation to the accessibility of safe water and sanitation is not enough. Accessibility is but one of the components which make up the umbrella of normative content of the right to water. This accessibility, both physical and economic, is joined by availability, quality, adequacy and non-discrimination in the application of the right to water to round out the comprehensive right. The right should not be stated in terms of mere accessibility but more broadly as the right to water. This statement will recommend the recognition of the right to water and sanitation as an explicit stand-alone right. Further, the need for a rights based mechanism for water security, the legal basis for affirming this human right, and the attendant issue of effective service implementation of this right will be examined.

The Necessity of a Rights-Based Mechanism

2. Defining water as a human right is essential to the realization of development. The definition of a rights-based mechanism for achieving this realization is

a conceptual framework for the process of human development that is normatively based on international human right standards and operationally directed towards promoting and protecting human rights. A rights based approach integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development. The norms and standards are those contained in the wealth of international treaties and declarations... A rights-based approach to development includes: express linkage to rights, accountability, empowerment, participation, non-discrimination and attention to vulnerable groups.²

3. As applied to a right to water, a rights-based approach places the individual in a place of power and at the center of development instead of relegating them to passive recipients of aid. A rights-based approach identifies actors as duty-bearers, thereby necessitating the adoption of concrete measures to respect, protect and fulfill the right to water and sanitation and ensuring that the beneficiaries of the rights are parties to decision-making which affects

¹ Report of the United Nations High Commissioner for Human Rights 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. A/HRC/6/3 16 August 2007 Para. 66

² OCHCR, “What is a Rights-Based Approach to Development?”, available at <http://www.unhchr.ch/development/approaches-04.html>

them and guaranteed transparency in the decision-making processes.³ The notions of accountability, non-discrimination and empowerment provide for more sustainable solutions focused on what is required, and not what is externally deemed necessary. Ensuring the right to water and sanitation as an explicit human right feeds into this rights based mechanism for development and transforms safe water for personal use into a legal entitlement, rather than just a basic need or a commodity.⁴ The recognition of this comprehensive right informs a high level of accountability both in national and international judicial bodies and through the UN human rights system in its evaluative techniques and monitoring mechanisms if according water obligations, both positive and negative, are not met by the States parties.

Legal Basis for Recognition of a Right to Water and Sanitation

4. In March 2008, the Human Rights Council accepted by consensus a resolution recalling and emphasizing various international human rights treaties, declarations, programmes, General Comments, resolutions, and other legal basis for human rights obligations in relation to access to water and sanitation.⁵ These legal bases form the foundation for explicitly recognizing a human right to water and sanitation.
5. Two of the six major international human rights treaties, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) recognize implicitly the right to water and sanitation.⁶ The International Covenant on Economic, Social and Cultural Rights (ICESCR), which has been ratified by 157 states, recognizes the right of everyone to an adequate standard of living which, as adopted in General Comment 15, includes the right to water.⁷
6. Complementing the major international treaties, several international declarations dating back to 1977's Mar del Plata Declaration of the UN Water Conference recognize the right to water. The Programme Action of the 1994 Cairo Conference on Population and Development, endorsed by 177 states recognized the right to an adequate standard of living to include the right to water and sanitation, and the Habitat Agenda of 1996 echoes the same sentiment.⁸ In December, 2007, 37 countries at the 1st Asia-Pacific water Summit recognized "the people's right to safe drinking water and basic sanitation as a basic human right." In the same year, the 2007 Report of the UN High Commissioner for Human Rights concluded that "it is now time to consider access to safe drinking water and sanitation as a human right."
7. Critics to the recognition of this right offer threadbare and empty opposition. Most recently, critics have parlayed fears that the recognition of a right to water may allow countries whose water resources are low to draw from countries in which water reserves are more plentiful.

³ Id.

⁴ Lindsay Knight, "The Right to Water", World Health Organization (WHO), 2003 p.9-10, available at http://www.who.int/water_sanitation_health/rtwrev.pdf

⁵ Resolution, "Human Rights and access to safe drinking water and sanitation", A/HRC/7/ L.16, 20 March 2008. Available at http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_L_16.doc pp.1-3.

⁶ Ashfaq Khalfan and Thorsten Kiefer, "The Human Right to Water and Sanitation: Legal Basis, Practical Rationale and Definition", Centre on Housing Rights and Evictions (COHRE), 26 March 2008, p.1, available at http://www.cohre.org/store/attachments/RWP-LegalbasisforRTWS_30.03.08_FINAL.pdf

⁷ Id. at p.2

⁸ Id. at p.2.

However, other human rights obligations, such as the right to food, or shelter, have never bound States parties to international assistance. Furthermore, critics of the recognition of the right to water must justify the acceptance of other economic, social and cultural rights such as the right to health, food, housing, while opposing a right to water which is just as vital to any person's dignity and survival. Finally, to deny the recognition of the right to water is to deny government accountability for ensuring the access of a basic necessity of human life. The treatment of water and sanitation as a human right empowers disadvantaged and marginalized groups in the struggle towards development, which is a clear mandate in the UN's accepted Millennium Development Goals. "The human right to water and sanitation can be used to promote accountability in decision-making, focus on the needs of the most vulnerable and marginalized groups and help increase participation in decision-making by traditionally excluded communities."⁹

Service Implementation of the Right to Water

8. Under a rights-based approach, the duty-bearers must attend to their obligations to respect, protect and fulfill the right to water and sanitation. The facet of protection requires the States Parties to prevent third parties, such as corporations, from interfering in any way with the enjoyment of the right to water.¹⁰ The threat of privatization without the interjection of government accountability can present vicious and violent problems as exemplified by the example of Cochabamba, Bolivia resulting in its "Water Wars."
9. In early 2000, in Cochabamba, Bolivia, thousands took to the streets in a revolt against the privatization of its water system into the hands of a subsidiary of a U.S. based corporation, Bechtel, named Aguas del Tunari. Aguas del Tunari signed a contract with Bolivian officials giving the corporation control of Cochabamba's water company for forty years. Aguas del Tunari quickly translated its control into obscene rate hikes. These rate hikes and exorbitant connectivity fees essentially eradicated access to water for the people of Cochabamba. The resulting public uprising brought the city to a halt and ultimately led to Bechtel's exit and the reincorporation of the water company into the municipality's control.¹¹
10. However, privatization does not have to be the deathnell of an effective service implementation of water in the advancement of the provision of water and sanitation as a basic human right. Private/public partnerships can be struck between third parties and governments for the creation and realization of water plans and service implementation. An example of the successful coalition of government accountability and privatized service of a water system is the East Bay Municipal Utility District (EBMUD) which serves over 1.2 million customers in the Eastern San Francisco Bay Area region. EBMUD is a publicly owned utility, formed under the Municipal Utility District Act, passed by the California Legislature in 1921.¹² The Act facilitates a working relationship between the federal

⁹ Ashfaq Khalfan and Thorsten Kiefer, "Why Canada must Recognise the Human Right to Water and Sanitation", Centre on Housing Rights and Evictions (COHRE), 26 March 2008, available at <http://www.cohre.org/store/attachments/RWP-WhyCanadamustrecogniserighttowaterandsanitation2026-205.pdf>

¹⁰ Lindsay Knight, "The Right to Water", World Health Organization (WHO), 2003 p.7, available at http://www.who.int/water_sanitation_health/rtwrev.pdf

¹¹ Jim Shultz, Dignity and Defiance: Stories from Bolivia's Challenge to Globalization, 10-42 (2008 Jim Shultz and Melissa Crane Draper).

¹² East Bay Municipal Utility District. *All about EBMUD*. available at http://www.ebmud.com/about_ebmud/publications/all_about_ebmud/current_allaboutebmud.pdf

government, the local state government, and EBMUD in ensuring equal access and the highest water quality to all served within EBMUD's jurisdiction.¹³

11. HRA's Recommendations

- a. Commends the Council on its appointment of an Independent Expert on Water and urges a continuation of the examination of the merits of recognizing a right to water as a fundamental human right.
- b. Urges the Independent Expert on Water to consider the need for a rights-based approach to the recognition of the right to water and sanitation.
- c. Recommends that the Council reinforce an explicit human right to water for personal and domestic usage.
- d. Urges States as duty-bearers in a rights-based approach to coordinate public/private partnerships so as to protect the right to water.

¹³ Id.