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The Role of National and International Tribunals in Protecting the Right to Fresh Water Access -Safe and Affordable

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Abstract

The purpose of this paper is to depict the link between human right principles and access to fresh water, which are intertwined and more importantly fresh water access is an integral part of universal human rights. It aims to convey that the provision of fresh water to people needs to be covered by relevant judiciary system, so that it can protect people of any denial/ hindrance to fresh water access and in the case of violation, how they can find legal solution. Consequently, point out how legal venues can be used to address any violations or shortcomings in regard to provision of fresh water to people. The notion that the people are rights holders and governments are deemed as primary duty bearers to provide fresh water safely and affordable requires recognizing the legality of it by local, national or state. In the nutshell, provision of fresh water is not an advantage given to the people, but is the people's right, albeit observing affordability and safety factors. Every local and national governing bodies has to consider

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managing the supply of fresh water as well as incorporate the enforcement clauses in their legal system. In case local/national legal system does not have the framework to address the issues regarding potential denial/dispute about supply of fresh water, the Regional Human Right Courts and other remedial mechanisms are another legal venue to ensure that laws are interpreted consistently according to international human rights within the framework of holistic consideration of people's dignity and equality.

Keywords

Right to Fresh Water, International Tribunals, and Human Right Jurisprudence

Introduction

In recent years the emerging crisis of water shortage and denying access to fresh water is becoming increasingly the means to force the targeted people to submission also there are many cases of discriminatory approach in provision of fresh water used against minorities by their own national governing bodies. All these issues had compelled the United Nation Human Rights Council in 2010 to tackle the crisis and issue a declaration of full recognition of human right to safe drinking water. It has been emphasized that the right of access to fresh water is an integral part of universal human rights and it is protected through stipulation of the body of the International Covenant on Economic, Social and Cultural Rights (ICESCR), in its General Comment No. 15, (Article 11). This paper elaborates how the jurisprudence (i.e. regional or international) adds another crucial layer to ensure the right to access to fresh water is fulfilled in practice and in case of violation, how impacted people can remedy their situation. The UN clauses have fundamentally changed the relationship between the governing bodies and deprived individuals by citing to the concept of people as rights holders and local/national governing bodies duty bound to supply access to fresh water safely and affordably.

The provision of fresh water needs to be included into judiciary system and is linked to other human right principles. In this paper each human right principle is introduced firstly (with the relevant criteria outlining how to comply with principle) as stipulated by international bodies. This is followed by the related national and international relevant cases concerning to the same principle with the view to depict the application of each principle appropriately. It is important to show in length and profound approach that which of these principles are enforced (observed) in the national and which in regional level. The human rights principles, which are listed below, constitute general human rights and aimed to illustrate the importance of these principles and its linkage to safeguarding the realization of the right to access to fresh water directly.

1- Non-discrimination

International human rights law envisages the equal and non-discriminate enjoyment of all rights by all people. The principle of non-discrimination and equality is therefore a cornerstone of human rights practices. It encompasses both the prohibition of discrimination and the obligation for states to work towards equality in water supply to people. The principle of non-discrimination and equality requires paying attention to a number of issues:

a. It governs the prohibition of discrimination of individuals or groups on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹ The Appeal court of the United States in deferent cases (*Dowdell and Others v. City of Apopka*, 1983) found that the City of Apopka (Florida, U.S.) engaged in intentional

¹. See for example Art. 2, of International Covenant on Economic, Social and Cultural Rights, and Art. 2 (1) International Covenant on Civil and Political Rights: International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

discrimination.¹ The Court looked at the “totality of the relevant facts” and found that they supported a finding that the City of Apopka engaged in a systematic pattern of cognitive acts and omissions, selecting and reaffirming a particular course of municipal service expenditures that inescapable evidenced discriminatory intent [para. 9].

b. States must furthermore be mindful of de facto discrimination and – where this is revealed – take immediate measures to effectively end it. Certain practices or legislation may have a (unintended) discriminatory effect on certain people.

c. In order to reach substantive equality of water supply for all, states must work towards eliminating existing inequalities. This requires knowledge of disparities, which typically not only include income groups but also rural – urban populations, disparities based on gender and the de facto exclusion of marginalized groups. Targeted affirmative measures must be taken to ensure that gaps between those served and those un-served are narrowed and eventually closed.

Some places, persons and groups will often require particular attention in the realization of the rights to fresh water, as they often are marginalized and excluded or are potentially vulnerable to: Informal settlements, rural and urban deprived areas and water scarce regions: States have the responsibility to provide water facilities and services for all, irrespective of land and property rights. Some cases in this publication refer to the obligations of states with regard to the supply of water in informal settlements, where lack of secure tenure is often used as a justification for a lack of services. In order to close the gap between those served and un-served, states need to give particular attention to people in rural and urban deprived areas and water scarce regions who often disproportionately suffer from

¹. Under the U.S. Constitution, only intentional discrimination is prohibited, unlike international law with also prohibits policies and practices that have a discriminatory effect.

a lack of water and sanitation (Commune de Saint-Jean d'Aulps, 2009).

In case that communities and groups that are potentially vulnerable and/or marginalized.

Their respective governments are obliged to take positive measures to fulfill the rights to access to fresh water to the most marginalized and vulnerable individuals and groups. An example of which that the constitutional court of Kenya (The Constitution of Kenya, 2010), applied the ICESCR and the ICCPR's ruling in its decision. The Court explained, "*The purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities*" (para. 8). The Court held that the State has the duty to address the needs of vulnerable groups within society. The Court held that the "*Petitioners were entitled to the fundamental rights to accessible and adequate housing and to reasonable standards of sanitation, health care, clean and safe water in adequate quantities and education*" as guaranteed by Article 43 of the Constitution and international treaties (para. 12).

2- Access to information

Access to information refers to the public entitlement to seek and receive information about current and planned water law, policies and programs. This encompasses the duty of the state to make information available. The Supreme Court of Peru in first instance granted the network's application (*acción de cumplimiento*), and ordered the Provincial Municipality of Huancayo to inform the population, through the mass media, in the districts supplied by the water service of SEDAM Huancayo, of the current danger to their life and health resulting from the consumption of the water provided without previously boiling it (Red de Vigilancia y Exigibilidad de los Derechos Económicos, Sociales y Culturales Región Junín c/ Municipalidad Provincial de Huancayo, 2005).

Consequently, states must make resource allocations and relevant financial

information on public and private water service providers publicly available (UNHRC, 2011). States should disseminate information through channels that are easily accessible by all and ensure the widest possible circulation (UNHRC, 2009). This includes the dissemination through for example local radio, billboards, newspapers or information centers (UNHRC, Planning Report, 2011: n3, 71). In some countries the digitalization of information and the use of Internet may be a good way to reach out to people (France, Conseil Constitutionnel, 2012). States must always ensure equality in access to information, special measures may have to be undertaken in order to make information available to people who are often not reached. States must furthermore ensure that everyone can equally access awareness raising programs and education (UN CESCR “General Comment 15”, 2002: n1, 26).

3- Participation

The human rights to water can only be realized in an effective manner when people become part of all processes that relate to the realization of these rights. Participation ensures better implementation and enhances the effectiveness and sustainability of interventions, as it ensures that local conditions and needs can be taken into account (Decreto presidencial de zona de monumentos históricos, 1972).

In relation to public participation and water management the cultural differences makes it imperative to take into consideration that culture perceived as a more dynamic, integrated, adaptive socio-cultural system in which groups of actors interact and participate within context of their respective norms and frames.

The Inter-American court of Human Right recalled “the recognition of the human right to water in adequate quantity and quality as a fundamental right, the full enjoyment of which must be protected by States”. In the Frente Amplio

Opositor a Minera San Xavier *c/ Minera San Xavier SA de CV y Otros* case (Frente Amplio Opositor a Minera San Xavier *c/ Minera San Xavier SA de CV y Otros*, 2007), The Tribunal observed that the complexity of the existing environmental legal framework between the three levels of the Mexican Government prevented an effective coordination of responsibilities, which led to the circumvention of institutional obligations [Cons.4]. It noted that “the company recognized the pollution of surface and groundwater in its impact zone” [Cons.8], and emphasized that the “strong social mobilization from the local community did not receive appropriate institutional response” [Cons.9]

The organization of a truly participatory process is challenging. Different mechanisms and approaches are to be adopted, including consultations with various stakeholders, public meetings and hearings as well as the opportunity to submit written comments and feedback (UNHRC, Planning Report, 2011: n3, 68). “Systematic participation is crucial in every phase of the planning cycle: from diagnosis to target setting, and from implementation to monitoring and evaluation” (TLA/ARGENTINA, 2012).¹

4- Accountability

For the rights to fresh water to be realized, service providers and public officials must be accountable to users. There are two different requirements that need to be taken into account to ensure accountability:

a) Right to a remedy: Individuals or groups who feel that their rights have been violated must have access to independent review mechanisms and courts to have their complaints heard and resolved. Remedies provided for should include restitution, compensation, legally binding assurances of non-repetition and corrective action (C. de Albuquerque, V. Roaf, 2012: 177). States must raise

¹. See: TLA/EL SALVADOR (2008). *Comunidades Indígenas del Vantón de Sisimitepet y Pushtán del Municipio de Nahuizalco c/ Presidencia de la República de El Salvador y Otros*

awareness and make information on remedies available to all (C. de Albuquerque, V. Roaf, 2012: 177). In the case *ACHR v Sudan* (2007), (*ACHR v. SUDAN*, 2009), The Commission found that the case was admissible, since local remedies were not available: “the scale and nature of the alleged abuses, [and] the number of persons involved ipso facto make local remedies unavailable, ineffective and insufficient” [para. 100]. Specifically, the Commission considered CDESCR General Comment 14 and the duties on states contained therein (UN CDESCR, General Comment 14. 2000). These include the obligations to ensure that third parties do not infringe on the enjoyment of the right, to refrain from unlawfully polluting water and soil during armed conflicts, to ensure third parties do not limit people’s access to health-related information and services, and to enact or enforce laws to prevent the pollution of water [paras. 209, 210]. The Commission also recalled its decision in *Free Legal Assistance Group and Others v Zaire* (Communications, 2000).

b) Oversight responsibilities: Mechanisms must be enacted that establish oversight and control between both public and private actors in relevant issues of water. Clear institutional mandates must be defined to build accountability into the entire system of water. Actions taken or decisions made under those mandates must be accountable and regulated through a system of oversight responsibilities (C. de Albuquerque, V. Roaf. 2012: 206). Monitoring is essential in order to ensure all actors can be held accountable. This is especially relevant when water supply is decentralized, in order to prevent fragmentation of responsibilities and a lack of coordination and control.

States are free to delegate the operation of water to private operators on the condition that independent monitoring and remedies are in place to ensure accountability of private actors towards users and the states. (Quevedo, Miguel Angel) With regards to monitoring, states must set up effective bodies and enforceable processes to ensure that public or private service providers will

comply with human rights (UN CESCR “General Comment”, 2002: n1, 24). Service providers must furthermore assess the actual and potential impact of their activities in the realization of the human rights to water and sanitation even in the prison (UNHRC, 2010: 63h). The ECHR tribunal recalled it in the case ECHR v. ROMANIA that “... under [article 3 of the Convention] the State must ensure that a person is detained in conditions which are compatible with the respect for his human dignity, that the manner and method of the execution of the measure do not subject him to a distress or hardship of an intensity exceeding the unavoidable level of suffering inherent to detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured ...” (ECHR/ROMANIA, 2008: para. 28).

5- Sustainability

The rights to water must be realized for present and future generations (UN CESCR, General Comment, 2002: n1, 11). Water facilities, services, and water as a resource, must be economically, environmentally and socially sustainable (UNHRC Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation, 2010: Question No. 10). Operation and maintenance is crucial for the sustainability of facilities and services. When infrastructure fails due to a lack of operation and maintenance, a false impression of availability of services is created.¹ The need to establish clear responsibilities for the sustainable operation of service provision is imperative for long-term benefits cost-effectively. There are cases of the Special Mechanism, which can be utilized as and when necessary. The example of which is the Tribunal Latino americano del Agua Tribunal in the TLA/PERU (2012) case (TLA/PERU, 2012) was that one of the consequences of the Conga project

¹. For a brief overview of failures in water and sanitation infrastructure, see: UNHRC “Report of the Special Rapporteur on the human right to safe drinking water and sanitation” (2013) A/HRC/24/44 [4].

would be its impact on the population and their human right to water [para. 24]. It emphasized that according to the EIA, the Conga project will have an impact on the water bodies during the time caught within the limits of the project and that the quality and quantity of the water might be affected. The Tribunal recalled its adherence to the “international jurisprudence regarding the universal recognition of the human right to water in adequate quantity and quality, as a fundamental human right, the enjoyment of which must be protected by States” [Cons.1]. The Tribunal subsequently referred to the UN General Assembly Resolution 64/292 recognizing the human right to water [Cons.3], and to the right “to enjoy a balanced and adequate environment for the development of life”, protected by article 2(22) of the Constitution of Peru [Cons.4].

The sustainability of water supply and services needs to consider various factors as described below:

- a) Prioritization of uses for personal and domestic needs must be guaranteed in order to ensure sufficient amounts of water are available, including for future generations. The world population continues to grow; water needs are increasing and freshwater will become scarcer due to climate change. Having a process in which measure, evaluate and monitor the level of freshwater storage will make the prioritization a scientific approach rather than instruction that lacks scientific evidences.
- b) Non-retrogression: Article 2 (1) ICESCR demands that water supply must be progressively realized for all. This includes the obligation of non-retrogression and of water to be available over the long term, including for future generations (UN CESCR “General Comment 3”, 2008: 10);(UNHRC Report of the Special Rapporteur on the human right to safe drinking water and sanitation, 2013: 12). States must ensure that all can enjoy a minimum level of services; also when resources are constrained due to for example financial crisis, measures must include the use of targeted programs aimed

at those most in need (UN CESCR, General Comment 15, 2002: no.1, 13).

c) Resource protection: General Comment 15 states that: “States parties should adopt comprehensive and integrated strategies and programs to ensure that there is sufficient and safe water for present and future generations”(UN CESCR, General Comment 15, 2002: no.1, 28)¹. Judges worldwide have shown sensitivity to the protection of the interests of future generation and the prevention of irreversible damage. The Supreme Court of Canada in the *Halalt First Nation v. British Columbia (Environment)* case notably referred to the Environmental Assessment Act [paras. 37-47], section 35(1) of the Constitution which explicitly recognizes and asserts “the applicant was entitled to consultation on the “actual scope” of the project, notably the year-round extraction of ground-water from the aquifer, and to “reasonable interim accommodation for the potential infringements of its interests posed by the project” (Canada Supreme Court, 2011: para. 750).

7- Availability

The normative content category of “availability” demands that water must be accessible to everyone in the household or its immediate vicinity, in sufficient quantity and on a continuous basis, for personal and domestic use. For the quantity, The IACHR Court in the *Xákmok Kásek Indigenous Community v Paraguay* case referred to CESCR General Comment no 15 and stated that most

¹. “Such strategies and programs may include: (a) reducing depletion of water resources through unsustainable extraction, diversion and damming; (b) reducing and eliminating contamination of watersheds and water-related eco-systems by substances such as radiation, harmful chemicals and human excreta; (c) monitoring water reserves; (d) ensuring that proposed developments do not interfere with access to adequate water; (e) assessing the impacts of actions that may impinge upon water availability and natural-ecosystems watersheds, such as climate changes, desertification and increased soil salinity, deforestation and loss of biodiversity; (f) increasing the efficient use of water by end-users; (g) reducing water wastage in its distribution; (h) response mechanisms for emergency situations; (i) and establishing competent institutions and appropriate institutional arrangements to carry out the strategies and programs.”

people need a minimum of 7.5 liters per day to meet their basic needs, including food and hygiene (IACHR/PARAGUAY, 2006). The Court also stated that, according to international standards, “the quality of the water must represent a tolerable level of risk” [para. 195].

The supply of water must be sufficient and continuous, for personal and domestic use, which includes drinking, personal sanitation, washing of clothes, food preparation and personal and household hygiene (UN CESCR, General Comment 15, 2008).¹ There must be a sufficient number of water outlets to ensure that collection and waiting times are not unreasonably long (UN CESCR, General Comment 15, 2002: n 1, 37(a)). Water facilities and services must be available at the household level or its immediate vicinity and in all places where people spend significant amounts of time. States bear a special responsibility to provide access to water to people in public institutions (e.g. prisons, schools, hospitals, refugee camps) and public places (e.g. markets).

In the *Environment & Consumer Protection Foundation v Delhi Administration and Others* case (Supreme Court WP (Civil), 2012: no 631), the supreme Court of India therefore reiterated the previous orders and held: “We notice that some of the States have not fully implemented the directions issued by this Court in *Society for Unaided Private Schools of Rajasthan* (supra) as well as the provisions contained in the RTE Act. The Court further clarified that its directions applied equally to all schools, regardless if they were State or privately owned, aided or unaided, minority or non-minority (para. 9). Finally, the Court invited claims for appropriate orders if no implementation measures were taken:

¹ [12(a)], [37(a)] and [37(c)]; UNHRC “Report of the Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation, Catarina de Albuquerque” (2009) UN Doc A/HRC/12/24 (Sanitation Report) [70]; UNHRC “Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation” (2011) UN Doc A/HRC/18/33 (Planning Report) [8(a)]; UNHRC “Report of the Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation, Catarina de Albuquerque” (2010) UN Doc A/HRC/15/31 (Non-State actors Report) [47(a)] and [47(c)].

“We make it clear that if the directions are not fully implemented, it is open to the aggrieved parties to move this Court for appropriate orders” (para. 10).

To ensure a sufficient amount of water for personal and domestic use – especially where water is scarce – the use of water for personal and domestic use must be prioritized over other uses. The South Africa Constitutional Court in appeal held that the State is obliged to take positive action to meet the needs of people living in extreme poverty, in particular homeless people or those living in intolerable living conditions: “The right of access to adequate housing cannot be seen in isolation (SOUTH AFRICA, High Court, 2001). There is a close relationship between housing and the other socio-economic rights. Socio-economic rights must all be read together in the setting of the constitution as a whole. The state is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing.” [para. 24].

8- Physical accessibility

The normative content category of “physical accessibility” demands that infrastructure must be built and located in a way that facilities are accessible for all at all times, including for people with particular needs, such as children, older persons, persons with disabilities or chronically ill persons. The location of water facilities must furthermore ensure minimal risks to the physical security of users. In order to ensure that all needs are considered, participation is vital.

a. Time and distance: States should set minimum standards with regard to the location of water. To determine national standards, states may use international minimum standards as guidance,¹ while ensuring that these are not

¹. Water outlets should be placed so that a round trip to fetch water will take a maximum of 30 minutes See: WHO, UNICEF Joint Monitoring Program, JMP, Report of the Second Consultation on Post-2015 Monitoring of Drinking-Water, Sanitation and Hygiene, 2012, available at http://www.wssinfo.org/fileadmin/user_upload/resources/WHO_UNICEF_JMP_Hague_Consultation_De

used as absolute values. Moreover, states should always aim for the highest standard and progressive improvement.

Physical security: The location of water supply must ensure physical security of all users. Facilities must be within easy reach and with safe paths to get there and located in a safe area, including at night. The knowledge of the community will be crucial to determine a location that is safe and easily accessible for all and at all times even in the prison. States must take positive measures to ensure physical security when accessing water (UN CESCR, General Comment 15, 2002: no1, 12(c)(i));(UNHRC Sanitation Report, 2009: n 4, 75).

The above mention criteria are not rigid. The High Court of Ireland subsequently declared that the applicant's conditions of detention in isolation and in a padded cell involved "a form of sensory deprivation" but not in the sense as to constitute inhumane and degrading treatment as "condemned by the European Court of Human Rights in *Ireland v. United Kingdom* (1978) 2 EHRR 25" and hence the detention did not rise to a violation of article 3 of the European Convention on Human Rights [para. 8]. However, the Court found that these conditions for a continuous 11-day period amounted to a breach of the State's obligations to protect the person of the applicant under article 40(3)(2) of the Constitution.

b. Design of facilities: Water facilities needs to be designed in such a way that users can physically access them, in an easy manner. Mechanisms to extract water from pipes or wells need be adapted to the needs of older persons, children, persons with disabilities, and chronically ill people, and pregnant women (UNHRC Sanitation Report, 2009: n4, 76). The Court of Cassation in France in the case of *Madame X c/ Commune d'Amiens* held that the landlord's obligation to provide a tenant with adequate housing includes the obligation to connect the

residential property to the water supply service, as foreseen in article 1719-1 of the Civil Code (FRANCE, Cour de Cassation, 2004). The Court also defeated the judgment of the Court of Appeal of d'Amiens and ordered OPAC and the municipality of d' Amiens to pay the costs.

d) Burden of proof is a common problem in most of the Human Right cases because one party is a State and the other one is an individual. There is a nuance in one of the ECHR case in the Burden of proof. In the case ECHR /RUSSIA (2005): Fedotov v Russia, The Court first recalled its jurisprudence regarding burden of proof, noting that while the burden of proof lies generally with the party making the allegation, not all cases lend themselves to a rigorous application of that principle. The Court stated that in certain circumstances the respondent Government, they themselves have access to information capable of validating or refuting factual allegations [para. 60]. Because there were no records of the applicant's detention although he requested them, the Court declared that "[h]e cannot therefore be criticized for not furnishing substantial evidence of the material conditions of his detention." [para. 61].

9- Acceptability

The principle of acceptability requires that take into account the cultural and religious needs and preferences of users (UNHRC Sanitation Report, 2009: n4, 80);(UNHRC, 2011: n3, 8(C) & 71). For example in Muslim community there is some problem to use recycled water as considered unclean. The Muslims should use absolute water, which has special criteria. Therefore, participation is of particular importance to ensure acceptable. Water must be of an acceptable color, odor and taste for each personal or domestic use, as people may otherwise resort to unsafe alternatives (INDIA, Supreme Court, 2012) The quantity of water facilities alone will not determine the actual usage; in order for facilities to be "acceptable", facilities must also provide for the privacy and dignity of users (UN CESCR, General Comment 15, 2002: n1, 12(b)). The High Court of

South Africa referred to previous case law to conclude that “Community participation must preferably further be undertaken within the context of a structured agreement between the municipality and the community to supply proper water for different minorities” [para. 90]. While the municipality claimed to have collected “happy letters” from the majority of the community [para. 93], the Court emphasized that “reference to a vague agreement is simply not good enough” (SOUTH AFRICA, High Court, 2011: para. 94).

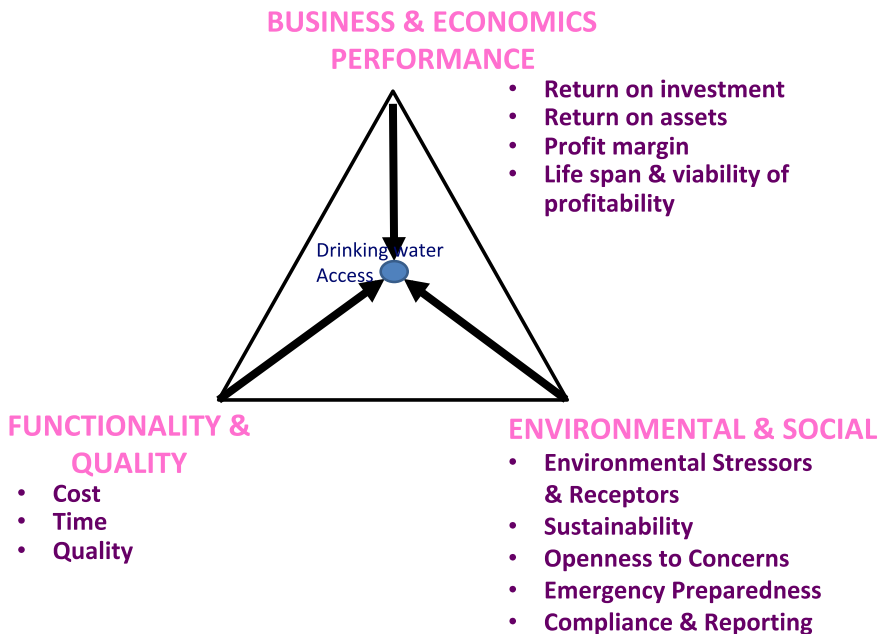
10- Affordability

Access to water facilities and services must be affordable for everyone (UN CESCR, General Comment 15, 2002: n1, 12(c)(ii) & 37(h));(UNHRC Non-State Actors Report, 2021: No.14, 47 & 50);(UNHRC Planning Report, 2011: n3, 57(j)). The payment for services must not limit one’s capacity to acquire other basic goods and services, including food, housing, health and education, guaranteed by other human rights. Affordability of water must ensure people are not forced to resort to other, unsafe alternatives. While human rights do not generally call for services to be provided free of charge, this necessitates free services when people are unable to pay (UN CESCR, General Comment 15, 2002: n1, 12).

Water affordability is central to water access but remains a challenge to accomplish the affordability for majority of the users around the world. The United Nations General Comment No. 15 (GC15) on the human right to water defines water as economically accessible if the direct and indirect costs associated with water and sanitation do not impact a person’s access to other essential rights (e.g., food or shelter) (UN CESCR, General Comment 15, 2002: n1, 12). Following GC15, water affordability became established as a conceptual pillar of human right to water frameworks. However, there is a huge gap between the aspirations for affordable water for majority of deprived nations to tackle this issue, because of lack of available funding for development of required

infrastructures or the rate of return for investment is low for funding agencies.

In order to achieve universal and equitable access to safe and affordable drinking water for all, the countries have to scale the funding required for this task. Yet accomplishing provision of affordable drinking water is a huge challenge for many countries, including where the government contribute financial assistance. For the purpose of improve water affordability, where there are growing challenges, we need to take into consideration several factors that are intertwined and balance each factor with integrated approach. It requires having the holistic view on affordability and measure it by complying with pre-defined criteria of each angles as described below.



Shape 1. Drinking Water Access

Source: (Authors, 2023)

How to measure affordability is an important factor to realization of access to drinking water. The financial needs to tackle the cost of infrastructure has to

take into consideration of a process that promotes a balanced, “bottom-line” performance approach through equitable treatment of factors such as social aspects, social equity, environment and sustainability. More importantly the cost of treating symptoms caused by lack of access to clean water, such as diseases, mass migration and wasting surface water should also play a role in evaluation of cost of infrastructure building. Consequently, the economic situation of end-user’s and their poverty level requires due consideration in planning for affordability.

In the cost comparison of providing drinking water to deprived communities with the cost of doing nothing is much higher, because of preventing probable cases of diseases, mass migration and drought. It will be necessary for people, businesses, and even socioeconomic sectors to design more affordable and eco friendly facilities. They will need to access funding to do this. National strategies, investment programs or risk-informed land-use plans can support them in this. In low-income cities, where infrastructure will largely be designed and built in the next decades, there is a unique opportunity to build resilient systems, possibly savings unnecessary repairs and maintenance and other economic losses. Making drinking water affordable is integrated approach to water and sanitation services to communities faced with water scarcity, unsafe drinking water, inadequate sanitation, and poor hygiene.

Many infections that lead to sickness, diarrhoea, and ultimately, malnutrition stem from poor sanitation reduced access to quality drinking water, and low awareness of hygiene practices or reduced capacity to implement such practices. A community’s health and well being, therefore, requires a lasting supply of clean water and the knowledge of how to use and care for this properly.



Shape 2. Factors Considered for Provision of Affordable Clean Water

Source: (Authors, 2023)

Affordability needs to be considered with regard to two types of costs:

a) Connection “construction cost, operation and maintenance”. These costs are relatively high and not paid regularly. For these kinds of costs, subsidies, payment waivers and other mechanisms must be established in order to ensure affordability.

b) Affordability of ongoing costs. This includes the payment of regular user fees for an ongoing service delivery. This requires the development and monitoring of tariff systems, set by an independent regulatory body that operates on the basis of human rights and ensures that tariffs are affordable for all. Generally, international standards recommend either 3% (UNDP) or 5% (OECD) as a maximum percentage of household income that should be devoted to water bills.

On Appeal, the High Court of Brazil (BRAZIL, Superior Tribunal de Justiça, First Chamber, 1999) held that water supply is an indispensable public service, subordinated to the principle of continuous and regular provision, which should make its interruption impossible. It referred that according to article 22 of the Consumer Protection Code, public bodies, per se or through their companies or license holders are obliged to provide adequate, efficient and safe services and when it comes to essential services these must also be continuous.^{1, 2, 3} It further referred to article 42, which prohibits the indebted to be threatened or constrained when a debt is to be collected. It compared the matter at issue with related case law on disconnection of the electric power supply where it was considered that the indiscriminate disconnection of services, affecting areas that put at risk the population, such as hospitals, is not legitimate [pages 5-7].

Also the High Court of Malaysia in the *Rajah Ramachandran v Perbadanan Bekalan Air Pulau Pinang Sdn Bhd* declared that the draconian act of cutting off supply was too harsh in the circumstances of this case (Malaya, the High Court, 2004). If the [respondent] is entitled to only cut off water supply for non-payment the Act would not have provided for the lesser alternative cause of action the [respondent] could have resorted to. It must be understood that a public body (awarded) with a statutory discretion in enforcing its rights period also with such discretion that create the least of inconvenience to the public. It ought not to act arbitrary or capriciously or unjustly. Nevertheless, it must not hesitate to act appropriately where drastic action is warranted like when a consumer without any rhyme or reason refuses to settle his bill [para. 13].

¹. See: Lei n° 8.078 de 11 de setembro de 1990 dispõe sobre a proteção do consumidor e dá outras providências.

². See: Lei n° 8.987 de 13 de fevereiro de 1995 dispõe sobre o regime de concessão e permissão da prestação de serviços públicos previsto no art. 175 da Constituição Federal, e dá outras providências

³. See: <http://www.wipo.int/wipolex/en/details.jsp?id=8755>

12- Quality and safety

Water facilities and services should be provided in such a way as to protect the health of users and the general public. Water should be safe for human consumption and for personal and domestic hygiene. It needs to be free from microorganisms, chemical substances and radiological hazards that constitute a threat to a person's health.

Water should be protected from contamination, including through the prohibition of dumping sewage or waste and the containment of leakage of fertilizers, industrial effluents and other pollutants into the groundwater.

States should develop and implement a water quality standard that needs to be monitored and enforced. The World Health Organization (WHO) developed guidelines (Guidelines for drinking-water quality, 2011) on water quality, which states may use as guidance. It is essential that States always consider the national and local situation. States must also bear in mind that minimum standards may fail to meet individual's particular needs, such as for persons that are particularly vulnerable to infections, and must therefore never be used as absolute standards. Also, the obligation to progressively realize the rights requires standards to improve over time. States must take positive measures to ensure hygiene promotion and education to all, and to take positive measures to monitor water quality standards, tackle water pollution and ensure compliance with national wastewater purification regulations, especially for drinking water suppliers.

The Court of Appeal in Bangladesh found that the High Court Division blundered by not considering existing law and policy, including international human rights law (BANGLADESH, 2005). It explained that the responsibilities of the Government for the supply of clean and

Safe water to communities are clearly set out in a number of laws, including the Environmental Conservation Act 1995 (The Bangladesh Environment Conservation Act, 1995) and the Environmental Conservation Rules 1997 (The

Environment Conservation Rules, 1997). The Court referred to the ICESCR, stating that the Covenant includes “the obligation to protect the right to health which includes to ensure access to safe and potable water” [para. 17]. The Court also explained that CESCR General Comment no 14 (UN CESCR, 2000) on the right to health includes the right to drinking water and sets forth the content categories of the right to health in terms of availability, accessibility and quality [para. 18].

In respect of quality and safety of water, also the Supreme Court of Pakistan referred to its own precedents as well as to judgments from the Supreme Court of India, which is treated as persuasive precedents by higher court in Pakistan. In these judgments, the word “life” was interpreted to have a wide meaning and to also guarantee dignity. Related issues to water are included in that concept.¹

The other case of quality and safety of water refers to the First Nation of Neskantaga (indigenous people) resident of 450 kilometer in North Thunder Bay of Ontario, Canada has gone for many years without safe water and has had to boil their water even for household usage. By October 23, 2020, their water was completely turned off because of an oily sheen-like substance was found in the test results. Preliminary testing shows of a hydrocarbons compound that it poses health risks.

The chief of the Frist Nations community says they never had access to clean water as long as he can remember. This community has been under boiling water advisory for 25 years; before that there was not any testing to indicate the safety of water (According to CBC Canada network (2020).

13- War Impact

A life-changing shortage of water in Yemen created by Saudi led coalition in

¹ See: The Court referred to: Supreme Court of Pakistan, *Shehla Zia v WAPDA* (PLD 1994 SC 693 at 714; H.R. Case No. 15-K/1992), Supreme Court of India, *M.C. Mehta v. Union of India*, (AIR 1988 SC 115) and *M.C. Mehta v. Union of India* (AIR 1988 SC 1037). In these cases, the Supreme Court of India ordered the closure of tanneries because their industrial effluents were polluting the Ganges.

2015, after massive destruction of infrastructure such as power plant and electricity lines and hampering municipal authorities' ability to pump water to residents. The U.N. report and aid workers indicated in 2016 that for months the air and navel blockade establish by the Saudi-led coalition has severely restricting imports of diesel fuel for backup generators, which could be used to power the pumps. Saudi led coalition has choked off supplies of energy and water.

The lack of water has transformed many Yemenis' lives. The shortages are so intense that extracting untreated ground water becomes common source of residents. These issues are the source of malaria and dengue fever according to the United Nations and aid agencies.

The war in Yemen has displaced more than a million Yemenis, who have sought refuge in rural areas with few wells and springs. The intensifying competition for water created more conflicts.

Eight million people in Yemen will be without running water within days as fuel runs out due to the Saudi-led coalition blockade of the country's northern ports (Oxfam warned in a report posted, 2017).

They will join almost 16 million people in Yemen who already cannot get clean piped water, leaving more than four in five people without a steady supply of clean water.

Conclusion

This paper depicts the legality of the human rights enforcement and its relation to provision of fresh water in different regions, country and states. As such, it will be a very useful tool and framework to tackle legal complains against those who are violating the rights to fresh water. It also provides a clear path to any regions, county or state that is suffering from such violations of how to achieve effective remedies to counter against any violations.

The cases examined purposely selected to provide the real world examples that demonstrate how the human rights to fresh water and sanitation can be legally enforced by judicial and quasi-judicial bodies. They also cover examples of legal enforcement of the range of human rights obligations, including the obligations to respect, to protect and to fulfill the rights to fresh water and to do so without discrimination. The role of the judiciary system is not only to enforce the law by ensuring accountability, but also by providing effective recommendations (remedies) in the events of violation and set important precedents that can impact future practices.

The cited cases aimed to illustrate direct relationship of right to fresh water and sanitation at the national and regional levels to comply with internationally recognized standards. The cases reveals how to use the principle of irrefutable and interrelated relation of human rights and enforcing inherent rights to gain access to fresh water and how to ascertain these rights at the national and regional levels. Particularly aimed to highlight the importance of provision of access to fresh water and its link to human rights to decision makers and judges and point out that they have to be fully aware of adherence to human rights in the event of dispute or violation by any government or state. It is also demonstrate how regional and international mechanisms can be utilized to enforce such rights, when domestic solutions are not available or insufficient to address these issues.

Finally, the issue of affordability is one the most obstacles in provision of drinking water in many parts of world. This is related to high cost of capital and maintenance, which is also hampered by the fact that the end-users are usually located in undeveloped areas, therefore, the forecast for rate of return of investment or paying the running cost are less desirable for private industries. These risks can be mitigated by the utilization of new technologies, as well as partnering with local authorities to participate in the process. Consequently, other incentives such as tax relief or subsidizing has to be introduced; depending

upon the economic structure of the country needs to be applied appropriately. Currently what has been lacking is the political will and not deeming a priority to develop infrastructure to create access to drinking water safe for all people with reasonable and affordable price.

To aim for affordability, demands a different measures and thresholds as well as different policy implications in every local context. It is very appropriate to pay attention to the fact of affordability in regard to demands to economically vulnerable households and other marginalized communities. This paper aims to bring to the attention of the policy makers and strategist that failing to provide fresh water are critical to people's health and consequently leading to poor economy, mass migration, draught and other societal burdens. It needs an immediate attention before it gets too late for many impacted regions and people. National government needs to have a comprehensive framework to manage and continuously strive to improve the supply of water through rigorous monitoring, evaluating and adjusting to the situation, in order to avoid the negative consequences of lack of accessibility to fresh water. There are many innovative ways to address the required capital investment for supply of fresh water, either by scaling down or partnering with local people/agencies. This requires collaborative decisions making and participatory features observed.

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