The Right to Water: the right approach?

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The Question

- Parallel with individual rights and sovereignty
  - In each crisis, subject peoples fir sought to reform imperial institutions, to renegotiate the social contract on which imperial hierarchy rested. Yet each time a tipping point was reached in which right claimants lost faith in the capacity of ‘voice’ to yield meaningful imperial institutional reform and decided to ‘exit’ instead. (Reus-Smit, 2011)

- To what extent can social and economic rights be effective in the current system?
Promoting water and sanitation justice for all
• Why Change?
• Basic constitutional foundation of WHO, right to health in 1946
• “Access to safe water is a fundamental human need and, therefore, a basic human right. Contaminated water jeopardizes both the physical and social health of all people. It is an affront to human dignity” Kofi Annan
Right based approaches and human development

• Shift from growth to human development.
• Reconciling Political and social and economic rights
  • human rights norms and principles can strengthen the work of development agencies by providing a context in which to analyze their work and evaluate progress. Human rights norms bring to development work additional tools for advocacy.
• Reluctance to embrace the idea of social justice (in contrast to liberal understanding?)
Why does defining water as a human make a difference? (WHO, 2003: 9)

- Fresh water is a legal entitlement, rather than a commodity or service provided on a charitable basis;
- Achieving basic and improved levels of access should be accelerated;
- The ‘least served’ are better targeted and therefore inequalities decreased;
- Communities and vulnerable groups will be empowered to take part in the decision making processes;
- The means and mechanisms available in the United Nations human rights system will be used to monitor the progress of State Parties in realizing the right to water and to hold governments accountable.
Value-Added of the Right to Water & Sanitation

The human right to water and sanitation has five primary features which make a significant contribution to current developmental efforts to improve access to water and sanitation:

- **Priority for people without basic access to water and sanitation**
  The right requires that governments must prioritise ensuring access to adequate water and sanitation services to all, using available resources in a pro-poor manner.

- **Access to water and sanitation as a legal entitlement, rather than mere charity or a commodity**
  The right to water and sanitation provides a strong basis for individuals and groups to hold States and other actors to account. It also obliges wealthier States to contribute sufficient international assistance necessary to complement national efforts in developing countries to ensure that everyone has access to safe water and sanitation.

- **Preventing discrimination and neglect of vulnerable and marginalised communities**
  The right to water and sanitation challenges situations in which denial of access to water may be a deliberate choice of governments or local authorities to exclude communities seen as undesirable.

- **Empowering communities living in poverty to fully take part in decision-making processes**
  The human right to water and sanitation requires genuine consultation and participation of communities affected in service delivery and conservation of water resources.

- **Governments, international community and the private sector held accountable to ensure access to water and sanitation**
  One of the most significant obstacles to access to water and sanitation is lack of political will and corruption. National institutions, such as courts and human rights commissions, as well as human rights NGOs can monitor government programmes, so as to increase accountability. At the international level, UN human rights institutions monitor whether States have implemented their human rights commitments and publicly point out when they have failed to do so.

*Source: 'Clean Water for the Poor: Making the Human Right to Water a Reality' OHRE and German Federal Foreign Office, 2005*
Part of the problem starts when rights are seen as the solution

• Nigram & Rasheed (1998), freshwater for all is achievable early in the next millennium if a rights based approach is adopted by governments with the necessary political will and the mobilisation and allocation of adequate financial resources.

• Many people don’t have access to water and sanitation. The acknowledgment of water as a human right may prove the most valuable approach to addressing the challenge of providing people with the most basic element of life (WWC, The Right to Water, 2006: 3)
The logic

- In order for the right to water to be implemented, the leadership and initiative of key actors, including government departments, NGOs and international agencies are required as ‘boosters’ to help revise laws and policies, provide education and assistance to communities, and ensure their effective participation in decision making.

- The fact that the right to water and sanitation is included in international law – and increasingly in national law – is only a preliminary step and will not automatically lead to implementation. However, these rights provide the tools for authorities and key actors to advocate and implement the right to water. (WWC, 2006: 7)
Right to water and the state
State responsibility (1)

- In theory:

  - A government which utilises its water budget solely or primarily for securing access to water and sanitation for urban elites, could be considered in violation of its obligations to ensure universal employment of human rights, including by people in remote or rural areas and urban slums.
State responsibility (2)

- The International Covenant on Economic, Social and Cultural Rights sets the basis of state responsibility.

- It requires the state to take the necessary steps towards the progressive achievement of the right to everyone to an adequate standard of living including access to water and sanitation.

- States have to provide the legal, economic and social environment in which individuals might have the opportunity to meet their own needs and that of their families.
State responsibility (3)

- My argument: Human rights is ‘perhaps not’ a Western ideology imposed on other culture but implies an ideal and anachronistic conception of the state.

- First WaterAid Lecture, Julia Häusermann, President, Rights and Humanity:
  - But the human rights approach is not simply about methodology. It calls for a more profound paradigm shift in the way we seek global equity. It prompts a **re-examination of the role and responsibilities of states acting at the national and international levels.**
Right to water and the state: Transformative?

WWC, 2006: 11

Duties of Authorities

- To establish priority for personal and domestic uses;
- To protect collection points and water quality;
- To create a positive legal framework for investments and for proper of water and sanitation services operations, to adopt strategies and plans of action, to organise funding, to ensure proper maintenance and renovation of installations;
- To identify those that do not have access to water and sanitation (rural, marginal and vulnerable populations) and to take corrective measures;
- To encourage information for and participation of users;
- To monitor the quality of water and sanitation;
Why a transformative state?
Path dependency & the design of international right based system

- Political rights more important than social and economic rights
  - Universal declaration of human rights
  - The international covenant on civil and political rights
- Newly independent post colonial, states, more liberal, priority of political rights.
  - When the soviet union called for a single international covenant that would prioritize social and economic rights, India and Lebanon argued that ‘civil and political rights were more important than economic and social rights because the former provided the essential conditions for the employment of the latter.
- “New ideas are more likely to be influential if they ‘fit well’ with existing ideas and ideologies in a particular historical setting”
State responsibility and progressive realisation

• Right based approaches as progressive realisations?

• Key historical junctures
  • linked to the emergence of sovereignty until the last wave
  • the Helsinki accords and political change in eastern Europe).
State responsibility and ‘quasi states’

- Individual rights are institutionally-dependent; their protection and satisfaction requires an enabling or executing institutional framework.

- Human rights approach builds on a state of law which assumes a social contract between the community and the state.

- Jackson: negative sovereignty, under which weak states have been granted ‘juridical sovereignty’ without exhibiting any of the trappings of empirical statehood.

- Informal spheres of authorities in rural areas.
Is it just about state transformation?
Problems of Accountability?

• Is the issue about or government obligations and legislation or a financial issue?

• Some of the problems:
  • There is a lack of human capacity and funding (particularly in Africa where the lack of funding may be the dominant factor)
  • Adoption of the right to water in national legislation becomes only meaningful if it is accompanied with a plan of implementation and plan for financing.
Solution (and link to right to water)

- Unless it is possible to transfer a substantial part of the total cost of water, internal solidarity will not be capable of solving the water-related problems that exist in countries in which the majority of the population is poor.

- Only strengthening of international solidarity will bring about an improvement in access to drinking water in countries in which it is most deficient. Innovative mechanism for financing international aid for water should be developed so that the most deprived people have access to drinking water and benefit from a real improvement to their standards of living.
Whose accountable?

- Accountability, “governments are under a legal obligation..”
  - Not much progress has been made on the human rights accountability of governments with respect to the right to water and sanitation.
  - Holding richer countries accountable for the legal obligation to cooperate at the international level to ensure the universal realisation of human rights.
- Local government
  - Right to water attractive to local government rather than national ones;
  - Providing and maintaining water and sanitation services are not prioritised in most Poverty Reduction Strategy Papers.
- Private sector?
- Global actors? NGOs
Limits of indicators / MDGs in relation to right to water

- Indicators for the right to water
  - Focus of current ones on quality, quantity and availability of water and sanitation supplies
  - There is little monitoring of affordability, access by marginalised and vulnerable groups or the quality or existence of broader legal and institutional frameworks or adequate budgetary support.
  - This gap make sit difficult to track progress toward the realisation of the right to water.
What is specific about water?

- An interesting puzzle, why other ‘right to’ are more effective or less effective?
  - Right to food: Many countries do not take an official position on the right to water. Where does the problem come from, when economic and social rights such as the right to food are formally recognised in international law?
  - Right to sanitation: only had to be included in Johannesburg
- Diagnostic at the time was/is? :
  - A lack of access to services frequently shows up a lack of enjoyment of other rights, particularly a lack of land rights in urban areas. (The Orangi sanitation project, Pakistan, Model).
  - Rights as siloed.
Case Studies

Tendency in literature to point out at best practice, best cases. How do we learn from difficulties?
Key examples

• Since the publication of General Comment 15, the number of States recognizing the human right to water has doubled.

• **Explicit references:** DRC, Ecuador, Kenya, Nicaragua, South Africa, Uganda, Uruguay

• In practice, however, the right to water is often not applied for a variety of reasons (‘sins of omission’):
  • lack of resources,
  • absence of political will,
  • or simply people and governments are not aware the right exist or **how to implement it**.
South Africa (1)

- Free Basic Water
- Overall, free basic water, made a significant difference to the everyday lives of people.
- Tension between cost recovery and basic rights?
  - Credible threat of cutting service to non-paying consumers which used more than the basic amount and unable to pay, cut off or supply restricted to basic needs.
  - Free water policy adopted at the national level, implementation rests with local municipalities. They are free to interpret it according to the resources and capacity available.
The distribution of resources and implementing right based approaches are usually at the discretion of professionals and bureaucrats in the public sector, who lack a clear directive on how to ‘implement justice’.

- Challenges in rural areas (i.e. Eastern Cape):
  - Monitoring and rationing the quota for free water: Installing water meters, very high costs.
  - Costs more to get the collected tariffs than the tariffs collected
  - Not announcing the policy to the entire district municipality.

- Other challenges: links of the right to water to poverty reduction and wider social justice concern
  - Subsistence farming. (right to livelihood, food)
Argentina

- The right to water in Argentina
  - The role of CEDHA (Center for Human Rights and Environment)
  - Awareness building on the right to water linked to particular historical experience.
  - Condemnation of human rights abuses perpetuated by the military government.
Radical transitions

- Regional trends: Latin America (Uruguay, Brazil, Argentina), Morocco, South Africa, India (supreme court)
  - Long history of state
  - Radical transitions.
- Overall, questioning of this idea of the responsibility of government to ensure this progressive realisation of the right to water.
Conclusion

- Sins of omission
  - Lack of financial resources
  - Poor institutional capacity
  - Poor awareness of rights
  - Lack of means to seek legal resources.

- Or a deeper historical analysis:
  - Transformative state
  - Accountability
  - Difficulty in distinguishing and separating specific economic and social rights
  - Radical transitions rather than progressive realisations