

Right to Water in the MENA region

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Abstract

Water is essential to life - no one should be able to control it or expropriate it for profit. In the current global water crisis, billions of people still lack access to basic water and sanitation services. Everyday, thousands of people die from preventable diseases contracted because they do not have access to clean water.

In November 2002 the United Nations Committee on Economic, Social and Cultural Rights issued the General Comment No.15 of 2002 which declares water as a human right as follows: "Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights."

Whereas another UN resolution on the 'right to development' set a precedent by acknowledging the Right to food and to clean water 10 years ago, this marks the first time a resolution entirely dedicated to the right to water and sanitation is adopted and by such an important number of countries, including industrialized. It also goes further than the previous resolution by proclaiming sanitation a human right and by clarifying the Right to water.

Finally, the 3rd Commission of the 64th General Assembly of the United Nations made history last 28th July 2010 by overwhelmingly adopting the draft resolution proclaiming the Human Right to Safe drinking Water and Sanitation. Presented by Bolivia and 34 other States, the resolution received 122 voted in favour with no votes against and 41 abstentions. This adopted resolution "declares the Right to Safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights."

It also "calls upon States and international organisations to provide Financial resources, capacity building and technology transfer, through international assistance and co-operation, in particular to developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all."

While the resolution only needed support from a majority of the States present, the fact that no State opposed the resolution also sets an encouraging precedent in the advancement of the realization of these Rights.

A resolution has no binding mechanisms attached to it like a Convention or a protocol would. However, it carries tremendous political weight, enough to provoke harsh negotiations between States, to help advance key issues on the international agenda and to trigger national endorsements.

1 Introduction

Throughout history, water has always been considered to be an essential requirement for human survival. Not surprisingly, the early civilizations developed near major perennial rivers such as the Nile, and the Tigris-Euphrates.

People need water to live. Without water – or with dirty, polluted water – people die. When the 1948 Universal Declaration on Human Rights was written, no one expected to see a day when the need to ensure access to water would be so important. But in 2010, it is not an exaggeration to say that the lack of access to clean water is the greatest human rights violation

in the world. Right now nearly 2 billion people live in water-stressed areas of the world and 3 billion have no running water within a kilometre of their homes. Every eight seconds, a child dies of water-borne disease – deaths that would be easily preventable with access to clean, safe water.

The United Nations estimates that nearly 900 million people live without clean water and 2.6 billion without proper sanitation. At least 4,000 children die every day from water-related diseases. These numbers demonstrate the importance of the step taken today towards the realization of right to water.

Water Right in water law refers to the right of a user to use water from a water source, e.g., a river, stream, pond or source of groundwater. In areas with plentiful water and few users, such systems are generally not complicated or contentious. In other areas, especially arid areas where irrigation is practiced, such systems are often the source of conflict, both legal and physical. Some systems treat surface water and ground water in the same manner, while others use different principles for each.

The right of access to water, a resource indispensable for life, is related only to one of the water usage cycles which means its implementation needs to be integrated with other cycles.

That said, everyday the human right to water is violated. Every 8 seconds a child dies from drinking dirty water. The right to water means that states have three key obligations to protect this right for their people:

- 1- To respect that right, the state must refrain from any action or policy that interferes with the enjoyment of the human right.
- 2- Prevent third parties from interfering with the enjoyment of the human right.
- 3- To fulfil that basic right requires the state to take measures to ensure the realization and the protection of this right.

Internationally, basic needs water uses are now formally recognised as a human right, and the right of access to clean and affordable water and sanitation was acknowledged in the Dublin Principles (Budds and McGranahan, 2003). Previously these rights were enshrined within the 1989 Convention on the Rights of the Child, and were implicit within many other agreements (Gleick, 1998)¹. Water as a human right has been most actively pursued under the terminology of economic, social, and cultural rights, but trends towards ‘participation’ have more firmly bracketed water rights within the discourse of civil and political rights. In any case, the UN has always considered these two branches of ‘rights’ as indivisible and inalienable.

Gleick (1998) maintains that although human rights more generally have been inadequately upheld, the concept of a human right to water would provide ‘the’ water community with a useful tool in tackling one of the most elemental failures of development. Conversely, Robinson, (2002) implicates the notion of water as a human right in the exclusion of poor and rural communities from water service provision (heavily subsidised or negative cost recovery management for already connected households does not generate investment revenue). While privatisation of water management is not a major issue in large rural MENA region, donor priorities and the presence of non-governmental organisations (NGOs) impacts upon the governments ability to ensure and fulfil a legislative human right to water.

Water rights clearly existed independently of their correlation; or otherwise with the various human rights agreements. Hodgeson (2004) defines a legal water right as a right to:

- Abstract or divert and use a specified amount of water from a natural source;
- To impound or store a specified quantity of water in a natural source behind a dam or other hydraulic structure; or
- To use water in a natural source

The human rights dimension of plural legal water rights is an issue of equity. The Oxford English Dictionary (1994) defines equity as “fairness and impartiality”. In terms of actual water laws and policies, ‘equity’ is often defined ambiguously to maintain political acceptance. Water allocation disputes and decision processes tend to focus upon ‘needs’ rather than ‘rights’ because the principle of equitable use is imprecisely defined (Giordano and Wolf, 2001). Issues of equity apply spatially, in terms of both physical and political boundaries, and temporally in terms of the historical and future dimensions and implications of water development, including seasonality. Equity is often conceived as an economic issue in terms of efficiency, and a political issue in terms of control. However, a multidimensional concept of ‘equity’ remains an appropriate lens to view a multifunctional resource like water. Tisdell (2003) analyses the dimensions of equity in prevailing water doctrines, concluding that non-priority permit systems (state controlled water allocation) allow for the greatest degree of equity, whereas Shiva (2002) concludes that close knit decentralised systems are more equitable. Syme et. al., (1999) correlate equity in water allocation with procedural and distributive justice, noting that equity can be successfully negotiated at both universal and situational levels within specific catchments. Clearly, a multi-scalar approach is necessary if equity is to be a considered factor in water rights allocations.

2 MENA region and right to water

If nothing changes, most of the MENA countries will encounter, in less than a generation, serious problems in managing inland freshwater, the availability of which, in sufficient quantity and quality, may become, as it is already the case in several of them, a main challenge for economic and social development. Wastage and pollution will then be such that « water stress » will affect, in a way or another, most of the populations of MENA countries and the poorest first of all. The effects of global warming will increase current trends.

All MENA countries have limited water resources with population growth and rising living standards, increasing the pressure on the already stressed aquifers. Water scarcity and access to local water services is a well recognized problem for local governments and international financing bodies, and there is a long list of projects aiming to improve the performance of the sector, and many of them related with the fulfilment of the Millennium Development Goals (MDGs) related to the access to water and sanitation.

In the past, the water profession and the vast majority of the governments in the MENA region have for the most part not paid much attention to the UN declaration that water is a human right, especially in terms of what it means, and what are the implementation requirements to extend universal water and sanitation coverage. In fact, based on interviews carried out in several MENA countries, policy makers in the majority of the water-related institutions appear to be either unaware, or somewhat superficially aware, of this declaration and how it may affect their work. In practical terms, because the world community accepted universal access to water as a goal some three decades ago, the 2002 declaration of the United

Nations that water is a human right was somewhat unlikely to change the existing and foreseeable activities in any significant fashion, at least over the near and medium terms. This, plus the fact that many major countries are reluctant to expand further the domain of human rights, including that on water, may mean that the declaration based on the General Comment No. 15 may at best have only limited impact in improving access to clean water.

In the MENA countries, with perhaps the exception of Morocco, the governments do not appear to have modified their water supply and sanitation policies, plans or programmes because of the UN General Comment. Morocco was the earliest country in the MENA region that has incorporated the concept of right to water in its national water supply policy. However, it can be argued that even for the case of Morocco, the government would have most probably followed the same policy in terms of promoting universal access to clean water, but perhaps without noting that water is a human right.

Finally, almost MENA countries voted last 28th July 2010 in favour the resolution of proclaiming the Human Right to Safe drinking Water and Sanitation: Algeria, Bahrain, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates, Yemen, Comoros & Somalia.

Studies of the domestic law of many MENA countries (e.g. Morocco) have shown that some elements of this right are already implemented (see Table 1) from a legal standpoint and that this has facilitated better access to water and sanitation in a number of countries. Some countries have taken a regulatory approach (by defining public service obligations and public health requirements); other countries have chosen a socio-economic approach (by taking measures to enhance social and territorial cohesion in relation to access to drinking water for poorer persons, by enforcing tariffs adapted to the contributory capacity of users).

Table 1. Right to water in some of MENA countries water legislations*

Country	Water Legislation (& availability online)	Right to water
Algeria	Single water legislation (2005), (Arabic, English & French): The Water law 05-12 was approved on August 4th, 2005. It revises the water code that was the subject of the law 83-17 of July 1983.	The Water Law mentions: "The supply of drinking water, in sufficient quantities for domestic needs and satisfactory hygiene, is a permanent objective of the State and a citizen's right".
Egypt	2 main laws (1980): Two main laws have been defined in the 80s for regulating the water sector: Irrigation and Drainage Law in 1984 and the protection of the Nile River and Watercourses in 1982.	The right to water is included in Egypt's legislation. Because water is essential to life, the public has access rights to clean fresh water.
Jordan	Several laws (English & Arabic): Jordan's water policy is committed to an integrated approach to water resource management. Jordan has ratified the 1997 UN Convention on the Law of the Non-navigational Uses of International Watercourses on 22 June 1999. Currently the water legislation of Jordan is in process of revision.	The right to water is included in legislation.
Lebanon	Single water legislation (2000), (French & Arabic): The main recent legislation on water is the Law No. 221 dated May 29, 2000; it defines the organization of the water sector. But even before the Lebanese Constitution in 1926, a large number of texts (laws	The right to water and its public nature are mentioned in two texts of the French Mandate (definition, delimitation of the Public Domain - 1925; conservation and water use in

	and decrees) were related to the water sector.	the public domain -1926).
Morocco	Single water legislation (1995), (French & Arabic): The latest version of the Water Law is dated 1995: This law 10-95 contains 26 decrees, 36 orders and 9 circulars.	Moroccan water legislation specifies the right to water use (Article 1, Chapter 1, Act 10-95) and the rights on public water domain (Chapter 2, Law on Water 10-95).
Palestine	Single water legislation (2002), (English): Palestine follows a modern approach to water resource management and applies many principles of IWRM that is also the guiding principle of the EU Water Framework Directive. The legislation is quite recent, with a by-law establishing the Palestinian Water Authority (PWA) in 1996 and a water law defined in 2002 and currently under revision.	Article three of the water law (2002) states that: "Each person has the right to sufficient water quantities in good quality and affordable price according to the available water resources. And each service provider has to take the necessary procedures to secure the above mentioned."
Syria	Single water legislation (2005): Issued in 2005, the new Syrian Water Legislation (Law 31, 2005) regulates water demand management approaches at the national level and use of water resources to avoid groundwater depletion. It supports also participatory approach to water management through the establishment of Water User Associations (MoI 2009).	
Tunisia	Single water legislation (available in French and Arabic): The main law 75-16 is dated 31 March 1975: the water code. It was amended by Law 2001-116 of 26 November 2001.	
Yemen	Environmental Protection Law (1995); Water Resources Policy and Strategy (2000-1999) ; Irrigation Water Policy (2001); Watershed Policy (2000); Agricultural Sector Reform Policy (2000); Urban Water Supply and Sanitation Sector reform Policy (1997); Wastewater Reuse Strategy (under development); Water Law (2002); Water Law (Amendment) (2006); National Water Sector Strategy and Investment Program (NWSSIP) 2005-2009	

* Source: EMWIS (<http://www.emwis.net/thematicdirs/countries-water-profiles/>) ; IDRC (http://www.idrc.ca/en/ev-143653-201-1-DO_TOPIC.html)

3 How to protect the right to water

To protect the right to water, governments must adopt measures to restrain practices that deny equal access to water, pollute source water, or unsustainably extract water resources. There can be no human right to water without clean, available fresh water in the first place and we are dangerously in peril as a planet of losing this life and death resource.

A right to water covenant would make both state obligations and violations more visible to citizens. Within a year of ratification, states would be expected to put in place a plan of action, with targets, policies, indicators, and timeframes to achieve the realization of this right. As well, states would have to amend domestic law to comply with the new rights. In

many cases, this will include constitutional amendments. Some form of monitoring of the new rights would also be established and the needs of marginalized groups, such as women and indigenous peoples, would need to be addressed.

The right to drinking water is an economic and social right protected by the International Covenant on Economic, Social and Cultural Rights (1966). It was recognized in 2000 as a “fundamental right” by the General Assembly of the United Nations (A/RES/54/175) and was the topic of General Comment Nr 15 on the right to water adopted in 2002 by the Committee of Economic, Social and Cultural Rights. The close link between the right to water and the right to sanitation was recognized at the World Summit on Sustainable Development (Johannesburg, 2002) during which targets concerning these two issues were unanimously adopted. The right of access to drinking water and to sanitation was analyzed in many reports of the Sub-commission on the Promotion and Protection of Human Rights. It is also mentioned in many international conventions among which the Protocol on Water and Health (London, 1999); which just came into force. On July 28, 2010, the United Nations General Assembly – in a landmark vote - recognised the Human Right to Water and Sanitation.

The Basic Principles of the right to water may be summarized as follows:

a) Everyone without discrimination has the right of access to drinking water and sanitation. Responsible political authorities ensure that the basic needs are met taking account of geographical and time constraints when they set up conditions under which this imprescriptible right should be exercised. They carry out their responsibilities as close as possible to users, in maximum openness and with the aim to implement solutions which are most appropriate to meeting existing problems.

Protection of the right to access to water requires the use of all available means in order to adapt to wide-ranging circumstances the variety of options to choose from should be very wide because such a right is a fundamental one.

b) Problems of access to water should be solved with the aim to satisfy immediate needs without sacrificing long term goals. Everyone should act in such a way as to protect the resource. The desired level of water quality should be determined in relation to objective indicators defined at national or international level. Management of available quantities should be done so as to best meet everyone’s interests.

Political authorities should specify public service obligations, implement them and, while meeting them, ensure that they are met by other stakeholders which should have, as need be, means of legal redress.

c) Political authorities decide which part of the cost of water should be charged directly to users bearing in mind that part supported by the public at large and possibly, by other economic actors. Operators of water and sanitation services should recover the price set up in this way while introducing, as need be, appropriate tariff adaptations. Competent local authorities should set up within their solidarity policy systems for allocating water cost in relation to certain categories of poor users when there is a risk to adversely affect human dignity or endanger human health.

We can resume the ways how to protect the water resource as follow:

1. Water is the most important element of ecological cycles, an essential resource for life and sustainable development and a common property. Protection and conservation of this natural resource are indispensable in order to protect the various uses of water, in particular human consumption.

2. Each person has the duty to act so as to protect the sustainability of the water resource, to avoid its pollution and to keep it available and of such quality as to be appropriate for human consumption and other legitimate uses.
3. States should adopt and implement legal principles in order to promote integrated water resource management in the short and long term, to preserve water for future generations and to protect the social and cultural characteristics of water. They should ensure that economic development does not lead to reducing access to drinking water for the people directly concerned. International targets on drinking water supply and sanitation. International cooperation and follow up of activities under way.
4. States should adopt appropriate legal measures to reach the Millennium and Johannesburg targets in the area of water supply and sanitation. They should report on measures taken for this purpose and on progress achieved. They should assess the effect of each investment in the water sector in connection with these targets and give priority to the most effective investments.
5. States should support international cooperation on water supply and sanitation, in particular between local authorities and give higher priority to projects in this area in those countries which otherwise would find it difficult to reach the Johannesburg targets by themselves. They should continue to strengthen their bilateral and multilateral aid in the water sector wherever it is necessary.
6. States should support the exchange of knowledge in the water area and the development and transfer of technologies appropriate for developing countries as well as the use of traditional and sustainable practices in water management.

Therefore, the general principles concerning the right of access to drinking water and sanitation are as follow:

The right of access to drinking water and sanitation (hereafter “right to water”) is a fundamental human right. It aims to ensure that every person has access without discrimination to drinking water and sanitation, at an affordable cost, in an accessible location and in full safety. It entails to set up common installations for water supply and sanitation in urbanized areas and to protect sources of drinking water used in rural areas.

- Each person has the right to use drinking water in quantity sufficient to meet his basic needs.
- Each person has the duty to promote hygiene in relation to water and each member of the family group should contribute equitably towards its water supply.
- Each person has the right to make use of sanitary facilities which are acceptable, accessible, safe and affordable and take into account the requirements of hygiene, dignity, public health and environmental protection.
- No one can be deprived of the water necessary for his basic needs. The supply of drinking water to persons considered by public authorities to be in reduced financial circumstances may not be interrupted in case of non-payment if this would adversely affect human dignity or endanger human health.
- Each person has the right to be fully informed of the quality and price of drinking water and of the basic features of the water service operation.

On the other hand, the participation of users concerning their water service is strongly encouraged:

- Each person must be able to initiate administrative and judicial proceedings to protect his right to water, in particular if health is at risk.

- Each person should contribute to the cost of the water service within the limits of his financial means in order to ensure sustainability of the service. Public authorities should ensure that cost recovery in the water sector meets the objectives of social and territorial cohesion and, in particular, that the price of the water required to meet the basic needs of a household is considered to be compatible with its financial means.

4 Implementation of the right to water

Each State should integrate the right to water into its domestic legislation and seek to guarantee its protection; it should adopt necessary legal, institutional and financial measures to ensure that such a right can effectively be implemented and can be invoked before the courts. Each State should identify the respective responsibilities of all parties involved and support a transparent and participative management of water services. It should specify the sources for financing water services and should ensure that water costs are recovered from users and other sources. It should introduce the necessary reforms to improve water governance.

Each State should implement the right to water at domestic level and adopt a plan of priority actions and investment in the water sector taking into account available resources, the views of the people directly concerned and the requirements arising from implementing previous commitments. Each community without access to drinking water should speedily be provided with at least one source for the supply of drinking water; it should also facilitate access to drinking water for the most vulnerable persons and those living in informal settlements.

Each State should ensure that public service functions in the water sector are fulfilled and that the legitimate interests of users are protected. Competent public authorities should effectively supervise water services management; they should take steps to guarantee drinking water supply in cases of emergency or conflict.

Each State should ensure that water services are organized and managed for the benefit of all at the most appropriate decentralized territorial level. It should ensure that public authorities close to citizens are empowered to exercise their competence in this area and facilitate joint action by users in relation to the management of their own water resources in line with local traditions and usages. It should ensure sustainability of investment and seek to set up sustainable systems which ensure the quality and continuity of the service, especially as regards pricing, exchange of information, training of personnel, maintenance and repair of installations.

The concern of some of the countries that were always not in favour of promulgating the concept that water is a human right stem from the fact that they were unsure of the legal implications if they approve the overall philosophy. Some countries were worried that they will be sued for compensation because they will be unable to meet this universal obligation for some considerable time to come. Others were worried that human rights to water may mean free provision of clean water and proper wastewater management for everyone, which they simply cannot afford. Since this simply cannot be achieved within the foreseeable future, these countries preferred not to approve this concept until their responsibilities and accountabilities are clarified, as well as those of the consumers. We had to wait until the last 28th July to recognize this right to water as a human right, and even in African countries with no tradition in this sense, such as Kenya has included the right to water & sanitation in its legislation (last August).

5 What's next

With the UN human right to water covenant, governments will be duty-bound to provide water to their peoples. It will establish legal groundwork for a fair and just distribution system, meaning that people will get the water they need to live at a reasonable cost. It will ensure that water would not become a commodity and could not be bought and sold under market conditions.

Recognition of the right to water at the UN will make it much more difficult for multinational water corporations to sell water at unfair and inflated prices to people who need it, but can't afford it. It will give people living in water-stressed areas a tool to push their government for access to clean, safe water, and it will help safeguard water sources from pollution and industrial abuses by establishing clear links between water, nature and the sustainability of life on our planet.

6 Conclusions

There is a theoretical argument that water rights are not human rights where people live on the margins of citizen hood. There is empirical evidence that could support this argument, but also evidence demonstrating that communities actively stake claim to aspects of their legal human rights from the state by means of water permits. For a successful human right to water approach in MENA region, there would have to be considerable political advocacy, informing people of their legal rights and entitlements. People would then be more empowered to create strategies whereby they may achieve these rights.

While there is currently no specific enforcement mechanism, declaring a human right is viewed as a tool that will give people leverage in the courts and through public policy, as well as in political and public efforts to push states to fulfil their obligations as outlined in the declaration.

The right to sanitation, which has been added to the resolution of 28th July, is the entitlement of everyone to the safe collection, transport, disposal or reuse of human excreta and wastewater for personal and domestic uses. Inadequate sanitation causes easily preventable diseases such as diarrhea, which kills at least 5,000 children globally each day, and as we know, in MENA countries, the access to sanitation is much lower than in the developed countries, therefore there is a need to enforce this right to sanitation in these countries.

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