

Shaping a new Water Governance

**INTER-GOVERNMENTAL AGENCIES CONTRIBUTION
TO THE REALIZATION OF THE HUMAN RIGHT TO WATER**



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Introduction

This report, conceived as a preliminary study, explores how a human rights-based approach to water governance at the UN level would look like by focusing on good practices of some UN agencies and programs. Such a framework suggests that ‘practices’ currently developed by inter-governmental organizations (OHCHR, 2011b) are actually complementary and mutually strengthening.

Over the past decade, efforts were made to ‘mainstream human rights’ in the overall UN system. In 2003 UN agencies, funds and programs adopted the ‘UN Common Understanding on the Human Rights-Based Approach to Development Cooperation’ which states that development programs should further human rights, be guided by human rights and contribute to the development of the capacities of ‘duty-bearers’ to meet their obligations and of ‘rights-holders’ to claim their rights. Human rights mainstreaming was further reinforced in 2009 through the creation of the UN Development Group’s Human Rights Mainstreaming Mechanism (UNDG-HRM) chaired by the Office of the High Commissioner for Human Rights (OHCHR).

At the same time, various UN entities have programs relating to water. In 2003, in order to coordinate water-related activities at the UN, the UN High-level Committee on Programs established UN-Water as an inter-agency mechanism. It is composed of funds and programs such as UNDP, UNEP, UNICEF and UN-Habitat, specialized agencies such as FAO, UNESCO, WHO or the World Bank, regional commissions (UNECE), convention secretariats such as the secretariat of the framework convention on Climate Change and other entities within the UN system (e.g. United Nations University).

UN-Water’s objective is to promote coherence in, and co-ordination of, the United Nations system’s actions to implement the water and sanitation agenda defined by the Millennium Declaration and the World Summit on Sustainable Development. Coordination plays a key role in UN-Water reporting activities that currently consist in 3 major reports: the *World Water Development Report*, the *GLAAS - Global Analysis and Assessment of Sanitation and Drinking-Water*¹ and the *WHO/UNICEF Joint Monitoring Program Report*². In addition, in the UN-Water report labeled ‘*Integrated approaches to Water Resources Management*’, prepared by UNEP and the Global Water Partnership (GWP) and launched at the Rio +20 Summit, authors recommend the establishment of a regular international monitoring and reporting framework to promote sustainable development and management of water resources (UN-Water 2012a).

While an intergovernmental working group is just starting to work on defining a new set of goals for the development agenda beyond 2015, it is time to evaluate the Millennium Development Goals (MDGs) related processes and take the opportunity to look back at the general coherence of these targets with human rights obligations, as well as the way the United Nations (UN) System has been coordinating and monitoring these targets. Beyond the discussion about post-2015 Sustainable Development Goals for water, what is clearly an opportunity here is the mere possibility to improve global water governance.

In this regard, the preparation for the Rio +20 UN Conference on Sustainable Development raised many expectations and its meager results created some disappointments. Water is one of them.

Although the human right to safe drinking water and sanitation was reaffirmed by the entire international community in the final Rio Declaration, limited progress was made regarding a coordinated global water governance framework. Six years after it was issued, the UNDP statement is still relevant: ‘Beyond water and sanitation, it is difficult to think of any other area of comparable importance for human development that suffers from such limited global leadership’ (UNDP, 2006, 69). However, this situation can change.

The recognition of the human right to safe drinking water serves as a reminder that States shall prioritize the realization of human basic needs in their development strategy and that water is one of them. At the interface between human development and environment, water is central to the achievement of many human rights, such as the right to health and the right to food. At the same time the realization of the human right to safe drinking water and sanitation cannot be pursued in disconnection with other water uses that are key to improving economic and social development, as well as to ensure individual well-being and human dignity. The interdependence between human rights and development (1993 Vienna Human Rights Declaration and Program of Action) calls for a more holistic approach and inter-sectoral thinking.

Building upon previous studies (COHRE, et al., 2008), international recommendations (CESCR, 2002) and the work done by the UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, this report intends to present a visionary scope and content of the human right to safe drinking water and sanitation while identifying the main challenges regarding its implications.

The second part of the report focuses on the activities of UN agencies, as state actors, to support the realization of the human right to safe drinking water and sanitation, as well as their contribution to the development of a human right-based water governance through data collection, standard-setting, capacity-building, awareness raising, financing and monitoring.

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PART I – A New International Legal Obligation

Legal Foundations

In July 2010, by a vote of 122 in favor, 0 against, and 41 abstentions, the United Nations General Assembly adopted a resolution *‘recogniz[ing] the human 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 further called on *‘States and international organizations to provide financial resources, build capacity and transfer technology, particularly to developing countries, in scaling up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all’* (UN GA 64/292).

Two months later the Human Rights Council³, a subsidiary organ of the UN General Assembly responsible for the promotion and protection of human rights, unanimously adopted a resolution entitled *‘Human rights and access to safe drinking water and sanitation’* (HRC 15/9). In this resolution, the 47 member States of the HRC appointed by the UN General Assembly *‘affirm that the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity’* (HRC 15/9).

Although these two resolutions are not legally binding, they are authoritative confirmation of an international consensus on the existence of a human right to safe drinking water and sanitation in international human rights law.

The official and explicit ‘recognition’ by the international community of the human right to safe drinking water and sanitation may appear extremely late given the importance of the topic. At the same time one could be perplexed by the level and intensity of the resulting debate. This is due to the fact that States did not always agree on the exact content of that right⁴. The objective here is to present the international legal foundations of the human right to safe drinking water, its scope and implications, while distinguishing between what is clearly settled and what is not.

The two 2010 resolutions recognize one single right for both issues: access to safe drinking water and sanitation. The two issues have been linked for obvious reasons. In many parts of the world, the lack of sanitation is the main source of contamination of drinking water and the origin of the millions of deaths due to water borne-diseases. In international human rights law however, the content of the right to safe drinking water is much more consensual than the content of the right to sanitation⁵.

One should first make clear that although there is no international convention specifically designed for the human right to water, access to safe drinking water is explicitly mentioned in various international human rights conventions. The Convention on the Elimination of All Forms of Discrimination Against Women (into force since 1981, Art 14 (2)(h)), the Convention on the Rights of the Child (into force since 1990, Art 24(2)(c)), and the Convention on the Rights of Persons with Disabilities (into force since 2008 (Art 28(2)(a)) explicitly refer to the right.

The human right to water has also been considered as implicit in the two main international human rights treaties adopted by the international community: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). As of 2012, 167 States are party to the first Covenant and 160 to the second.

Under the two Covenants, States parties are required to regularly submit reports on 'measures' which they have adopted and the 'progress' made in achieving the observance of the rights recognized. Concerning Economic, Social and Cultural Rights, States parties are guided by 'general comments' prepared by the Committee on Economic, Social and Cultural Rights, a subsidiary organ of the ECOSOC composed of 18 elected members. These 'general comments' intend to clarify rights and provisions contained in the Covenant and to provide States Parties with some guidelines for their reporting obligations. In 2002, the Committee on Economic, Social and Cultural Rights adopted General Comment 15 on the 'Right to Water'.

General Comment 15 is a key document giving an authoritative interpretation of Article 11 (Right to an adequate standard of living) and Article 12 (Right to the highest attainable standard of health) of the Covenant. The Committee stresses that the human right to water is '*a prerequisite for the realization of other human rights*' (GC15, §1). It further explains: '*The right to water is inextricably related to the right to the highest attainable standard of health (Art 12§1) and the rights to adequate housing and adequate food (Art 11§1). The right should also be seen in conjunction with other rights enshrined in the International Bill of Human Rights, foremost amongst them the rights to life and human dignity*' (GC15, §3). Various judicial or quasi-judicial mechanisms, especially at the regional and national levels, derived the human right to water from the right to life.

Beyond international human rights law, other areas of international law, such as humanitarian and environmental laws, have recognized the importance of access to safe drinking water. On the humanitarian front, the right was recognized by the Geneva Convention relative to the Treatment of Prisoners of War (Art.20, 29 and 46), the Geneva Convention relative to the Treatment of Civilian Persons in Time of war (Art. 85, 89 and 127) and their Additional Protocols I and II (respectively Art. 44 and 55 and Art. 5 and 14). Turning to international water law, although not a universal treaty, the United Nations Economic Commission for Europe (UNECE) Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (UNECE Protocol), requires States parties to take appropriate measures to provide access to drinking water and sanitation and to protect water resources used as sources of drinking water from pollution.

While retracing the history and the legal foundations of the human right to safe drinking water and sanitation, one would like here to underline the crucial work of UN agencies in advancing the recognition of this right. Lack of safe drinking water has indeed been and still is often a key obstacle for many UN agencies to implement their respective mandates. Water issues are central to many UN agencies' activities. As one will see, this led various UN agencies to explicitly mention 'the human right to water' or more specifically 'the human right to safe drinking water and sanitation' in their official action plans, policies and guidelines. Many international declarations adopted in UN international conferences also mention the right.

Despite the huge importance of access to water, only one UN conference was organized that specifically addresses water issues: the 1977 UN Conference in Mar del Plata. Although being the

single Conference on Water in UN history, its results contributed greatly to lay down the basis for the recognition of the 'right to water' (and other key principles of water resources management). In its Resolution II of the Action Plan on 'Community Water Supply', it is explicitly mentioned:

'All peoples [...] have the right to have access to drinking water in quantities and of a quality equal to their basic needs.' (Mar del Plata Action Plan, 1977)

A major output of the Conference was also to recommend that the period 1980 to 1990 be proclaimed as the International Water Supply and Sanitation Decade. One should specify here that the often referenced 1992 Dublin Conference on Water and Sustainable Development was not an official UN intergovernmental Conference but rather an expert-led process to prepare the UN Conference on Environment and Development in Rio- whose final results are limited in terms of water management. Chapter 18 of Agenda 21 adopted during the 1992 UN Conference on Environment and Development did not go beyond the work done at Mar Del Plata. The scope of the Chapter on water (18) is even more limited than the Action Plan of Mar Del Plata. Agenda 21 essentially reaffirmed the Mar Del Plata's formulation:

'All peoples, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs' (Agenda 21, Chapter 18, §47).

There is no one international organization specifically in charge of water. The priority for the UN has been to harmonize UN agencies dealing with water issues. This process ultimately led in 2003 to the creation of UN-Water, an information-sharing platform for the now 28 UN agencies the mission of which partially covers water governance. The number of organization involved shows the multiplicity of sectors and areas of work concerned about access to safe drinking water. Some have explicitly recognized the human right to water in policy and strategy.

Two years after the Dublin Conference, the 1994 Program of Action of the International Conference on Population and Development, States reaffirmed that 'all people have the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and sanitation' (principle 2). This program of action is the steering document for the United Nations Population Fund (UNFPA).

In 1996 UN-Habitat recognized water and sanitation as a human right in its global action plan (§11). The United Nations Children's Fund (UNICEF) and the World Health Organization (WHO) in their respective mandates concerning the human rights of the child and the human right to health further underlined the right to water and sanitation in various strategy documents in 2000 and 2003 (UNICEF, 2000, OMS, 2003). In 2004, the Food and Agriculture Organization (FAO) Council adopted 'Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security' (See below Part II) which mentions under Guideline 8.11:

'Bearing in mind that access to water in sufficient quantity and quality for all is fundamental for life and health, States should strive to improve access to, and promote sustainable use of, water resources and their allocation among users giving due regard to efficiency and the satisfaction of basic human needs in an equitable manner and that balances the requirement of preserving or restoring the functioning of ecosystems with domestic, industrial and agricultural needs, including safeguarding drinking-water quality'(FAO, 2004).

Finally one could refer to the 2006 United Nations Development Program (UNDP) Human Development Report, which highlighted:

‘Upholding the human right to water is an end in itself and a means for giving substance to the wider rights in the Universal Declaration of Human Rights and other legally binding instruments—including the right to life, to education, to health and to adequate housing. Ensuring that every person has access to at least 20 liters of clean water each day to meet basic needs is a minimum requirement for respecting the right to water—and a minimum target for governments.’ (UNDP, 2006, 4)

In parallel to these international organizations’ initiatives, the UN human rights bodies continued to clarify the content of the human right to water. In 2004, the Sub-Commission on the Promotion and Protection of Human Rights, the main subsidiary body of the then Commission on Human Rights (whose mandate is now assumed by the Human Rights Council), requested Mr. El Hadji Guissé, Special Rapporteur, to prepare a set of draft guidelines for the realization of the right to drinking water supply and sanitation. These guidelines were intended to clarify the main and most urgent components of the right to water and sanitation in order *‘to assist government policymakers, international agencies and members of civil society working in the water and sanitation sector to implement the right to drinking water and sanitation’* (Commission on Human Rights, 2005). The Sub-Commission adopted this set of guidelines in 2006 and its work was soon taken over by the newly created Human Rights Council. In its first year of functioning, the Human Rights Council asked the United Nations High Commissioner for Human Rights to provide *‘a detailed study on the scope and content of the human rights obligations related to the equitable access to safe drinking water and sanitation under human rights’ instruments’* (HRC, 2006). In that report, the High Commissioner expressed:

‘that it is now time to consider access to safe drinking water and sanitation as a human right, defined as the right to equal and non-discriminatory access to a sufficient amount of safe drinking water for personal and domestic uses - drinking, personal sanitation, washing of clothes, food preparation and personal and household hygiene - to sustain life and health’ (HRC, 2007).

The High Commissioner also mentioned issues regarding the human right to water that required further study and underlined the lack of existing mechanisms to monitor the respecting of obligations regarding the right to water and to sanitation. This led to the important decision of the Human Rights Council in 2008 to create a special procedure with the appointment of an *‘independent expert on the issue of human rights obligations relating to access to safe drinking water and sanitation’*. Again, a central task under its mandate was the clarification of *‘the content of human rights obligations, including non-discrimination obligations, in relation to access to safe drinking water and sanitation’* (HRC, 2008). In 2011, taking into account the two milestone resolutions of 2010 by the UN General Assembly and the Human Rights Council, the Human Rights Council decided to extend the mandate and change the title of the independent expert to that of *‘Special Rapporteur on the human right to safe drinking water and sanitation’* (HRC, 2011d).

Over the last decade, the acceleration of the international recognition of the human right to safe drinking water since the adoption of General Comment n°15 in 2002 has been taking place in parallel with ‘human rights mainstreaming’ in the activities of the UN. A milestone in the conceptualization of this new approach is the 2003 *‘Statement of Common Understanding on the Human Rights-based Approach to Development Cooperation’*.

Scope and Implications of the Human Right to Safe Drinking Water and Sanitation

As demonstrated above, the international recognition of the human right to safe drinking water and sanitation was a long and difficult process. The scope and implications of the rights were a source of disagreements. Indeed, the human right to safe drinking water potentially has large implications on overall water resources management. The recognition of the human right to safe drinking water and sanitation made progress every time sensitive issues were settled, such as the compatibility with private sector participation in water services or the exclusion of transboundary water issues⁶.

The objective here is to present the core normative and procedural content of the agreed international human right to safe drinking water while showing the potential implications and challenges it raises. The human right to safe drinking water basically ‘*entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.*’ (GC 15, §2). The ‘human rights standards’ of quantity, quality, accessibility, availability and acceptability must be read together with ‘human rights principles’ of non-discrimination, access to information, participation, accountability and coordination that have been conceptualized by the UN Special Rapporteur on the human right to safe drinking water and sanitation for the implementation of the right.

Human Rights Principles

The recognition of safe drinking water as a human right means that States have to respect a number of principles inherent in all human rights, specifically: non-discrimination⁷, access to information, participation⁸, accountability and sustainability⁹. Participation is at the core of the philosophy of human rights that places emphasis on power relations and the need to balance general and private interests to achieve equity.

Human Rights Standards

Sufficient Quantity for Personal and Domestic Uses (available)

Under ‘personal and domestic uses’, it is generally understood to include water for drinking, washing clothes, food preparation and for personal and household hygiene. This represents a very limited quantity of water compared to other water uses such as agriculture or industry. The human right to safe drinking water does not include water for livelihoods. The General Comment 15 refers States to the WHO Guidelines. These guidelines provide that the minimum amount of drinking water for personal and domestic uses is around 50 liters per person per day but depends on specific context and health status.

Sufficient Quality (safe and acceptable)

Here again the human right to safe drinking water requires a minimum quality of drinking water to prevent against disease. For that matter, General Comment 15 refers States parties to the WHO guidelines on drinking-water quality.

Physical and Economic Accessibility (accessible and affordable)

This water in sufficient quantity and quality must be ‘within safe physical reach for all sections of the population’ and within or ‘at a reasonable distance from the household’¹⁰.

Finally, the human right to safe drinking water means that this basic amount of drinking water should be economically accessible, that is at an affordable price. The human right to safe drinking water does not mean that water should be provided for free. When a person has no revenue or is unable to pay, States regulations should provide means for this person to access its basic amount of drinking water¹¹.

Nature of the Obligations

The human right to safe drinking water and sanitation as with other economic, social and cultural rights is subject to ‘progressive realization’. The International Covenant on Economic, Social and Cultural Rights clearly explains States’ obligations relating to these rights in the following terms:

‘1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.’¹² (ICESCR art 2.1.)

As with other economic, social and cultural rights, the human right to safe drinking water and sanitation entails three types (or levels) of obligations, i.e ‘respect’, ‘protect’ and ‘fulfill’: The **obligation to respect** basically requires States not to take any measures that would result in preventing individuals from enjoying their right to safe drinking water; the **obligation to protect** requires measures by the State to ensure that third parties do not interfere with the enjoyment of the right to safe drinking water; the **obligation to fulfill** essentially requires States to adopt the necessary measures directed towards the full realization of the human right to safe drinking water (CESCR, GC15).

Duty-bearers

Under international human rights law, States are the main duty-bearers to progressively realize this human right. However, non-state actors, and especially water non-state service providers (for treatment, distribution and wastewater collection), are specifically called upon and bear specific responsibilities clearly reaffirmed by the Human Rights Council in its Resolution 15/9. The latter should:

- ‘(a) Fulfill their human rights responsibilities throughout their work processes, including by engaging proactively with the State and stakeholders to detect potential human rights abuses and find solutions to address them;
- (b) Contribute to the provision of a regular supply of safe, acceptable, accessible and affordable drinking water and sanitation services of good quality and sufficient quantity;
- (c) Integrate human rights into impact assessments as appropriate, in order to identify and help address human rights challenges;

(d) Develop effective organizational-level grievance mechanisms for users, and refrain from obstructing access to State-based accountability mechanisms' (HRC 15/9)

And to ensure that non-state service providers comply with these obligations, States have '*to adopt and implement effective regulatory frameworks for all service providers in line with the human rights obligations of States, and to allow public regulatory institutions of sufficient capacity to monitor and enforce those regulations*' (HRC 15/9, § 8 (e), emphasis added)

The description of the scope of the human right to safe drinking water, human rights standards and principles as well as the nature of state and non-state actors' obligations relating to the right are important to evaluate UN agencies' contribution to the realization of the human right to drinking water.

Opportunities and Challenges Ahead

Although the content of the human right to safe drinking water in international human rights law has a rather limited scope (i.e. basic amount of drinking water for personal and domestic uses, of sufficient quality and economically and physically accessible), it triggers important procedural obligations (non-discrimination, participation, accountability and remedy). It has huge consequences on drinking water services planning, management and regulation. As one will see, the realization of the human right to safe drinking water and sanitation faces various obstacles. Some of the most immediate difficulties such as targeted financing or conflict with international investment law are presented below in order to identify later how UN agencies concretely address them. An important part of the section is also devoted to the relationship between drinking water services provision and overall water resources management. This relationship represents both challenges and opportunities for UN agencies.

Reconciling International Human Rights and Investment Laws

Realizing a universal access to safe drinking water and sanitation requires important financial resources. When the financial resources are not available in the country itself, States must turn to bilateral or multilateral development assistance, international solidarity and foreign investments. An important part of the UN best practices we collected precisely highlight strategies aimed at improving aid efficiency, financing coordination and target-setting. The focus on good practices in international financial cooperation should not take us away from key challenges facing the human right to drinking water with regards to foreign investment norms. International Financial Institutions have often conditioned their financial assistance to a series of institutional reforms, including the privatization of public suppliers. However, these policies have generally not been accompanied by the strengthening of States' capacities to control and regulate the water sector. The articulation between States' international human rights obligations with international investment law proved to be difficult.

Box I - The human right to safe drinking water and foreign investments norms

Foreign investments are protected by bilateral and multilateral investment treaties through general guarantees such as fair and equitable treatment and protection from expropriation or compensations. Moreover the 'legitimate expectation' is a principle often invoked by foreign investors to defend their interests in arbitral tribunals. Another strength of the legal regime governing foreign investment is the provision of a binding dispute settlement mechanism: an arbitration procedure to be carried out under the auspices of the World Bank's International Centre for the Settlement of Investment Disputes (ICSID).

In the last decade an increasing number of cases concerning water services and sewer concessions have been brought by private companies before the international investment tribunals. The host State was usually found to have violated its international obligations regarding foreign investment. These cases raise the complex issue of the hierarchy between these two bodies of norms. International human rights' obligations and international investment obligations are not irreconcilable but it is necessary that both bodies of norms be taken into account in dispute settlement mechanisms. In this regard, it is interesting to note that since the *Aguas Argentinas* case and the consequent modification of its arbitral rules, the ICSID has regularly accepted amicus curiae's submissions. This evolution represents a first step toward the integration of human rights' procedural dimension into investment disputes settlement mechanisms (i.e. participation and transparency).

For the time being, Argentina is the only respondent State so far to have articulated its defense around its human rights' obligations. The case involved French and Spanish shareholders in a water and sewer concession in the province of Buenos Aires and essentially concerned a tariff freeze imposed by the government of Argentina after the devaluation of the peso. Despite Argentina's and amicus curiae's argumentation demonstrating that human rights - and in this particular case, the human right to water - should serve the interpretation of Bilateral Investments Treaties, the ICSID panel took little considerations of the human right to water in its final award. Regarding this particular issue, the Tribunal carefully concluded 'Argentina is subject to both international obligations, i.e. human rights and treaty obligation, and must respect both of them *equally*. Under the circumstances of these cases, Argentina's human rights obligations and its investment treaty obligations are not inconsistent, contradictory, or mutually exclusive' (§262). The Tribunal found that Argentina violated its obligations under the applicable BITs to accord the fair and equitable treatment to the Claimants' investments.

Decentralization as a Prerequisite to the Human Right to Safe Drinking Water

Another complexity in the realization of the human right to safe drinking water is the fact that in practice it is often local authorities that are in charge of providing safe drinking water to their communities. The UN Special Rapporteur on the human right to safe drinking water highlighted the need for adequate financial and technical support to local authorities, along with the necessity to increase capacity building at the local level. The work of UN agencies to foster decentralization through decentralized cooperation is appealing to respond to this challenge (See below Part II.).

Human Right to Safe Drinking Water and Water Resources Management

When States, cooperation agencies, international organizations and NGOs start to concretely implement the human right to safe drinking water and sanitation, they encounter a multiplicity of complex situations where it is actually difficult to separate drinking water supply from overall water resources management. The issue of drinking water quality automatically raises question about raw

water quality and the necessity to protect water resources as sources of drinking water. Who should bear the cost of water ‘de-pollution’?

The protection of drinking water sources from pollution triggers a full set of necessary measures for States to adopt, including a river basin management plan with minimal flow requirement, protection of ecosystem (and their benefits), water allocation strategies, water scarcity plans, flood plans, etc.

The link between the human right to safe drinking water and water resources management has explicitly been made by the African Commission on Human and Peoples’ Rights. In the 2011 Guidelines on Economic, Social and Cultural Rights of the African Commission, African States are, *inter alia*, required to adopt:

‘comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations. Such strategies may include:

1. reducing depletion of water resources by halting unsustainable extraction, diversion and damming;
2. reducing and eliminating contamination of watersheds and water-related eco-systems;
3. monitoring water reserves;
4. ensuring that proposed developments do not interfere with access to adequate water;
5. assessing the impacts of actions that may impinge upon water availability and natural ecosystem watersheds;
6. reducing water wastage in its distribution;
7. response mechanisms for emergency situations; and
8. establishing competent institutions and appropriate institutional arrangements to carry out the strategies and programmes.’ (ACHPR, 2011, § 92g)

Human Rights Procedural Obligations and Environmental Law

The realization of the human right to safe drinking water receives support in the field of international environmental law. At the 1992 Rio Conference, key principles were adopted to guide States’ approaches to environmental matters. Of particular interest to the realization of the human right to safe drinking water, are the following principles:

- human beings are at the center of concerns for sustainable development (principle 1)
- present and future generations equity (principle 3)
- obligation to cooperate to protect the environment (principle 7)
- shared but differentiated responsibilities (principle 7)
- precautionary approach (principle 15)
- polluter-payer rule (principle 17)

A direct link can be established between the procedural obligations of the human right to safe drinking water and the Rio Principle 10 relating to participation, access to information and remedy in environmental matters¹³. Whereas the UN Special Rapporteur on the human right to safe drinking water (at that time Independent Expert¹⁴) essentially underlined these obligations when related to drinking water and sanitation services provision, the Committee on Economic, Social and Cultural Rights in General Comment 15 on the ‘human right to water’ extended these obligations to overall water management:

‘The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, programme or strategy concerning water. Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties.’ (GC 15 §48)

Interestingly a recent pending case before the Compliance Committee of the UNECE Aarhus Convention raises the question of the nature of private water services providers’ obligations relating to disclosure of environmental information. The delimitation between what is strictly related to drinking water services and what concerns water resources management may indeed become tricky in some situations. In this regard, access to information, participation and access to justice as recognized in international environmental law may directly contribute to the realization of the human right to safe drinking water.

Box II - Aarhus Convention and access to information on water services

The 1998 UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) sets forth a comparatively detailed set of requirements for the public authorities to provide environmental information upon request and to proactively disseminate such information through various channels, including through electronic tools. The Convention assigns a broad definition to “environmental information”, which in relation to water comprises any information in written, visual, oral, electronic or any other material form on the state of elements of the environment, including water and the interaction of this element with other elements (such as land, soil, etc); factors (such as substances, energy, noise and radiation) and activities or measures (including administrative measures, environmental agreements, policies, legislation, plans and programmes) affecting or likely to affect water, and cost-benefit and other economic analyses and assumptions used in environmental decision-making; the state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of water or, through water, by the factors, activities or measures mentioned above.

Furthermore the Convention establishes a system of individual complaint (“communication”) from members of the public in case of violation of the procedural rights enshrined in the Convention: the right to access to environmental information; the right of public participation in governmental decision-making processes on matters concerning activities that may affect the environment at the local, national and transboundary levels; and the right of access to justice in case that members of the public feel that their rights on access to information and public participation have been violated, and also in case of acts or omissions by public authorities or private sector that are in contravention with national environmental law.

The Convention focuses on interactions between the public and public authorities. On the one hand it provides for procedural rights to members of the public to enable them to protect their substantive rights, such as the right to live in a healthy environment and the right to water; and on the other hand it creates obligations for public authorities, which may include private sector entities, when such entities have public responsibilities or functions or provide public services. The text of the Convention has been further developed in that direction by the Aarhus Convention Compliance Committee, the body of experts mandated to review compliance with the Convention.

In a currently pending communication before the Compliance Committee (ACCC/C/2010/55 submitted by the NGO Fish Legal), the question is raised on the nature of private water and sewage companies and water only companies in England and Wales and on how environmental information – including information relating to

water - held by such companies may be treated. Specifically, in 2009, Fish Legal sought to determine the conditions on what was previously known as 'deemed consents' for thousands of combined sewages overflows in England and Wales. Fish Legal argued that the deemed consents were little more than *carte blanche* to pollute at will because no proper conditions had been applied to the consents since the privatization of the water industry in 1989. Consequently the outflows of untreated sewage caused significant environmental harm. Access to the requested information had been denied on the motivation that according to jurisprudence in England and Wales (Upper Tribunal case no. GI/2458/2010 *Smart Source v the Information Commissioner*) these companies were not public authorities for the purposes of the Environmental Information Regulations 2004 and therefore the Aarhus Convention.

In the light of the text of the Aarhus Convention, it is rather unlikely that these companies are excluded from scrutiny and access to information, since they provide public services. The Compliance Committee has currently suspended consideration of the case, because of pending domestic remedies (at the UK and EU level).

The Implication of Human Rights Commitments on Transboundary Water Resources

The Human Rights Council resolution appointing the United Nations Special Rapporteur on the human right to safe drinking water and sanitation explicitly excludes transboundary water issues. However one cannot avoid addressing this question. It is estimated that 40% of the world population lives in an international river basin. The necessity to protect water resources as sources of drinking water inevitably applies to international watercourses, lakes and aquifers. Although being a regional instrument, the WHO-UNECE Protocol on Water and Health related to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes is very important for two reasons.

Firstly the Protocol is the first international agreement specifically adopted to attain an adequate supply of safe drinking water and adequate sanitation for everyone through effective protection of water used as a source of drinking water. Second, for that particular purpose, the protocol requires States to cooperate over international watercourses, lakes and aquifers¹⁵. The objective of the Protocol is well summarized in article 1:

'The objective of this Protocol is to promote at all appropriate levels, nationally as well as in *transboundary and international contexts*, the protection of human health and well-being, both individual and collective, within a framework of sustainable development, through improving water management, including the protection of water ecosystems, and through preventing, controlling and reducing water-related disease'(emphasis added).

Moreover, the WHO-UNECE Protocol on Water and Health enshrines key principles stipulated by Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention). The Protocol obliges Parties to '*make appropriate practical and/or other provisions for public participation, within a transparent and fair framework, and shall ensure that due account is taking of the outcome of public participation*' (Art. 6, § 2) in the setting of targets to be set to achieve a high level of protection against water-related disease. The Protocol also contains provisions to enhance the awareness of the public regarding the importance of, and relationship between water management and public health (Art. 9, § 1a). The Protocol on

Water and Health also stipulates that Governments need to enhance the awareness of the public regarding *'the rights and entitlements to water and corresponding obligations under private and public law of natural and legal persons and institutions, whether in the public sector or the private sector'* (Art. 9, §1b).

Finally, even if no explicit reference may be found in the Protocol to the human right to safe drinking water and sanitation, the Protocol reflects most, if not all, of the elements of this right. The Protocol includes an explicit focus on water availability, accessibility, quality and acceptability. While affordability is not explicitly mentioned, non-discrimination/equity is, thus implicitly also referring to affordability issues faced by vulnerable groups: the Protocol stipulates that *'equitable access to water, adequate in terms both of quantity and of quality, should be provided for all members of the population, especially those who suffer a disadvantage or social exclusion'* (Art. 5 l). At the same time, *'special consideration should be given to the protection of people who are particularly vulnerable to water-related disease'* (Art. 5 k). For all these reasons, and despite the fact that the UNECE Protocol on Water and Health does not explicitly recognize the human right to safe drinking water, it is a perfect example of the implication of the human right to safe drinking water on international watercourses management including normative and procedural dimensions of that right.

Box III - Implementation of the UNECE/WHO-Europe Protocol on Water and Health in the pan-European region

The Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes promotes a holistic framework for addressing the whole chain of cause-and-effect from environmental degradation to water-related health effects. Parties to the Protocol are required to establish, within two years, national and local targets in a number of areas, including access to water and sanitation, quality of drinking water and discharges, as well as performance of water supply and waste-water treatment, together with related target dates. Concrete measures to achieve these targets should be developed. Progress towards such targets is to be regularly assessed and targets reviewed. The Protocol stipulates the need to set up coordination mechanisms between environment and health authorities, as well as others authorities responsible for the different uses of water (such as ministries of infrastructure, finance, tourism, etc.).

The majority of Parties to the Protocol have begun the process of establishing mechanisms of coordination and setting targets in some of the areas stipulated with respective target dates. Presently only limited conclusions can be drawn regarding its implementation, in particular as only a few Parties have begun to implement the targets set under the Protocol and entered a cycle after reviewing, assessing and evaluating these.

Nevertheless, identifiable are some trends by sub-region:

- In countries of Western Europe with a high level of access to water and sanitation, there is a focus on improving access and quality of water and sanitation in rural areas, amongst others through the regulation of small scale supplies. In the new EU countries, there is a focus on improving access to sanitation and in particular waste water treatment.
- In the countries of Eastern Europe, the Caucasus and Central Asia where access is lower, there is a

- predominant focus on increasing access to water supply and sanitation services.
- Throughout the entire region, there is a growing concern regarding affordability issues, in particular as the principle of cost recovery is being implemented on a wide scale. Though the theme is debated, no country has yet set specific targets in this area under the Protocol.
 - Some countries have set specific targets addressing vulnerable groups, thus applying the Protocol's provisions with regard to equitable access to water and sanitation for all members of the population.

The UN 1997 framework convention on non-navigational uses of international watercourses does not mention the necessity to protect water resources as sources of drinking water but nevertheless mentions two interesting points that contribute to secure water resources for realization of the human right to safe drinking water and sanitation. International water law rests on the key principle of 'equitable and reasonable utilization' which will be determined in each particular situation according to a list of criteria presented in article 6. In determining whether a specific use is '*equitable and reasonable*' States should take into account- among other factors: '*the social and economic needs of the watercourse States concerned*' (b) and the '*population dependent on the watercourse in each watercourse State*' (c). Article 10 (2) specifically provides:

'In the event of a conflict between uses of an international watercourse, it shall be resolved with reference to articles 5 to 7, with special regard being given to the requirements of vital human needs'¹⁶.

Being a 'framework' convention, the convention basically aims at providing general guidelines for the development of further regional instruments. Beyond the already mentioned 1992 European Convention on Transboundary Watercourses and its Protocol on Water and Health, other regional instruments are worth mentioning for the study of the linkages between the human right to safe drinking water and international watercourses management. The Senegal and Niger River Basin agreements are the first two international agreements over international watercourses to recognize the 'human right to water'.

The 2002 Charter of the Water of the Senegal River is the first international river basin convention explicitly recognizing the human right to water¹⁷. The overall objective of the Charter is to provide a new set of principles to refocus the river basin development along the lines of sustainable development and human rights. The Charter reinforces the mandate of the OMVS (*Organisation pour la Mise en Valeur du Sénégal*¹⁸) and the concept of Integrated Water Resources Management (IWRM) was recentered on basin populations and poverty reduction. The issue whether and to what extent a human rights-based approach helps operationalizing the concept of integrated water resources management in international river basins will have to be further tested.

The riparian States of the Niger also recently adopted an agreement recognizing the 'right to water'. The 2008 Water Charter of the Niger Basin (*Charte de l'Eau du Bassin du Niger*) explicitly lists the 'right to water of basin populations' along with other criteria to define a reasonable and equitable utilization¹⁹. The Charter makes further provisions developing the procedural content of the 'right to water of basin populations'. Chapter VII of the Charter titled 'Public Participation' specifically addresses access to information and participation in decision-making²⁰.

Beyond the Human Right to Safe Drinking Water: A Human Rights-based Approach to Water Resources Management

It has been mentioned in many places that the human right to safe drinking water was a prerequisite for the realization of a number of human rights such as the right to life, adequate standard of living, health, housing and education (HCR 15/9). The relationship with the right to food or to right to livelihood is not directly linked to the realization of the human right to safe drinking water but rather to a larger 'right to water' encompassing a sustainable and equitable access to water resources. Interpreting the 'right to water' in the context of the International Covenant on Economic, Social and Cultural Rights, the Committee rightly mentions States' obligation relating to access to water resources derived from the international covenant on economic, social and cultural rights. In particular:

'The committee notes the importance of ensuring sustainable access to water resources for agriculture to realize the right to adequate food (see 1999 General Comment n°12). Attention should be given to ensuring that disadvantaged and marginalized farmers, including women farmers, have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology' (GC 15§7).

The Committee further explains:

'Taking note of the duty in article 1, paragraph 2, of the Covenant, which provides that a people may not 'be deprived of its means of subsistence', States parties should ensure that there is adequate access to water for subsistence farming and for securing the livelihood of indigenous peoples.'(GC 15 §7)

The 2007 UN GA Declaration on the Rights of Indigenous Peoples includes various rights encompassing direct implications regarding access to water resources. Of particular interest is Article 26:

- '1. Indigenous peoples have the right to the lands, territories and *resources* which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and *resources* that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and *resources*. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned' (emphasis added, article 26, UN GA Res. 61/295).

Moreover, Article 29 of this Declaration refers to the right of indigenous peoples to '*the conservation and protection of the environment*'.

In the preparation of the Rio +20 Conference on Sustainable Development, two Human Rights bodies adopted key resolutions further advancing the link between the environment and human rights filling an important gap in the 1992 Rio Principles. In April 2012, the Human Rights Council adopted a resolution providing for the appointment of an independent expert '*on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*'

(A/HRC/RES/19/10). This paves the way for the recognition of a human right to a safe and healthy environment.

The same month, in April 2012, the African Commission on Human and People's Rights adopted a landmark resolution on 'a human-rights based approach to natural resources governance' further advancing the correlation between human rights and the environment. This resolution puts great emphasis on effective participation of local population in environmental decision-making procedures and makes explicit the complementarity between environmental impact assessment and human rights impact assessment (ACHPR, 2012).

The emerging recognition of a human right to a safe and healthy environment²¹ will greatly contribute to the realization of the human right to safe drinking water as well as a more general human rights-based approach to water resources governance (WaterLex, 2012). The basis for a human rights-based approach to water governance was established in General Comment 15 interpreting the 'right to water' in the general context of the international covenant on economic, social and cultural rights and the International Bill of Human Rights. Internationally recognized human rights encompass various obligations relating to water resources governance.

The core principles of human rights indivisibility, interdependence and interrelation as formulated in the 1993 Vienna Declaration contribute to the justification of a human rights-based approach to water governance²². The extent to which they can be treated 'on the same footing' will be tested in the specific area of water governance.

As we saw, the human right to safe drinking water cannot be secured without a broader approach to water resources management. In this regard we underlined how international environmental law and the law of international watercourses contribute to the realization of the human right to safe drinking water by protecting water resources as sources of drinking water.

We also showed that human rights principles included in the human right to safe drinking water but not limited to it, bring significant support to environmental and water governance.

Finally, moving beyond the strict human right to safe drinking water, and building upon the interdependence and interrelation of all human rights, we highlighted the centrality of access to water resources for the realization of the right to food, the right to livelihood or the right to sustainable development. This led us to conclude on the necessity to develop and implement a human rights-based approach to water governance. In an attempt to clarify and illustrate what a human rights-based approach to water governance is, the second part of the report identified best practices of UN agencies working in this direction.

PART II – Inter-Governmental Agencies' Good Practices

In 2012, the Human Rights Council while recognizing the human right to water and sanitation (HRC 15/9) stresses *'the important role of the international cooperation and technical assistance provided by States, specialized agencies of the United Nations system, international and development partners as well as by donor agencies, in particular in the timely achievement of the relevant Millennium Development Goals, and urges development partners to adopt a human rights-based approach when designing and implementing development programmes in support of national initiatives and action plans related to the enjoyment of access to safe drinking water and sanitation'*(§10, emphasis added).

Mainstreaming human rights among the United Nations system has been central to a series of UN Secretary-General's reform initiatives introduced by Kofi Annan, then Secretary General of the United Nations, since 1997 (UN SG, 1998). In the words of the UN leader, *'[w]e will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights'* (Annan, 2005). The rationale behind human rights mainstreaming in UN activities is both instrumental and deontological: the objective is to ensure the unity, efficiency and coherence of the UN system in advancing the realization of common objectives driven by universally shared values.

The sections below highlight successively 1/ the core content of a human rights-based approach to development and initiatives undertaken by intergovernmental organizations to concretely integrate human rights criteria and principles while 2/ defining international targets; 3/ strengthening national action plans, and 4/strengthening development financing mechanisms.

Human Rights Mainstreaming: Actors, Origins and Rationale

Five years before the call for human rights mainstreaming in UN agencies, in 1992, the Office of the High Commissioner for Human Rights was created and international human rights law was institutionalized. These two events clearly signaled the shift from the *norm-making* to the *implementation* phase of human rights. The idea was that there were enough norms to build upon; what was needed was a clear impetus from the international community to implement them. Coordination and synergy within the UN was to be a lever to foster the implementation of human rights in national systems.

A human rights-based approach (HRBA) is strictly defined as building on, and aiming at realizing, human rights as recognized in international law. A HRBA tackles power relations through meaningful accountability and participatory approaches so as to strengthen the capacity of duty-bearers and empower right-holders. Finally, a HRBA emphasizes both development outcomes and processes by which rights are realized so as to ensure that the needs and interests of weaker groups in society are not further marginalized by more powerful groups in water decision-making.

A HRBA was rapidly endorsed by some UN agencies, including the United Nations Development Programme (UNDP) (UNDP, 1998, 2000). It has progressively gained momentum under the United

Nations Development Group's Human Rights Mainstreaming Mechanism established in December 2009 as a successor to UN inter-agency Action 2 Global Programme.

From their constitution to their programme of action, one notes a large range of activities of UN agencies aiming directly or indirectly to the realization of human rights. Some have even adopted a human rights strategy, such as UNESCO in 2003. The Office of the High Commissioner plays a key role in supporting United Nations specialized agencies with human rights mainstreaming. For instance the OHCHR ensures consistency in international human rights law that is under constant development through the activities of human rights protection mechanisms and special procedures at international and national levels. Since the creation in 2007 of a new human rights monitoring mechanism - the Universal Periodic Review- the OHCHR produces comprehensive reports based on inputs received from States, national civil society and UN specialized agencies (see below). Finally the OHCHR supports the work of the Special Procedures such as the UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation. The latter has played a key role in advancing the scope and implications of the human right to safe drinking water, while tackling the obligations of private actors, sanitation and climate change issues, the adoption of national action plans and financing mechanisms.

Activities presented below show the diversity of approaches adopted by UN agencies to incorporate human rights principles and standards in their activities. This shows the need for a more systematic approach and complementarity between these initiatives.

WHO/UNICEF - Strengthening Accountability for Common Targets, Goals and Indicators

Among their key activities, UN agencies are charged with monitoring progress made by States in the specific area covered by their mandate. Monitoring allows to inform decision, focus and orient political and policy reforms, and to channel financial resources in the most effective way. Recently the international monitoring system has shown a growing interconnection between the international human rights monitoring system and the WASH monitoring system.

On the human rights side, monitoring mechanisms require States to report on the realization of their human rights commitments at international (Human Rights Council/ treaty bodies) and regional (regional human rights commissions) levels. The Committee on Economic, Social and Cultural Rights (CESCR), in charge with monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights, plays a particular role in the monitoring of the right to safe drinking water and sanitation, implicitly recognized in the Covenant. Another key mechanism in that respect is the African Commission on Human and Peoples' Rights –regional human rights mechanism for the African Region- , which in its 2011 Guidelines on Economic, Social and Cultural Rights lists specific reporting requirements for the implementation of the human right to safe drinking water and sanitation *explicitly*. The work of these mechanisms assists States in implementing human rights and reporting progress on the right to safe drinking water to the international community.

On the intergovernmental agencies side, many institutions and organizations invest considerable efforts in monitoring water and water-related MDGs. Some have internal objectives that are

relatively far removed from domestic water supply and sanitation issues. However efforts are needed to streamline existing initiatives, reduce overlaps, enhance coordination along partners and identify gaps in order to ensure a comprehensive monitoring framework for water governance (UN Water, 2006).

In 2007, a new human rights monitoring mechanisms, the Universal Periodic Review (UPR), was initiated. It is based on a peer review system during the session of the Human Rights Council that is composed exclusively of States. The originality of the mechanism lies in the fact that for the first time, the Office of the High Commissioner for Human Rights (OHCHR) is in charge with compiling monitoring information not only from State and national civil society reports, but also from UN specialized agencies. This constitutes the first attempt to monitor States activities from a wide range of data compiled by UN agencies. This monitoring option is commendable, however the system is too sparse a trigger to generate a response from States. Annual progress has to be monitored and acted upon. A comprehensive monitoring system is therefore needed that confirms the international human rights framework as a 'baseline commitment on global efforts to meet all the Millennium Development Goals' (Millennium Declaration, 2000) and international development goals more broadly.

The implementation of the Millennium Development Goals has no doubt increased attention to water and sanitation and fostered political will and financing to address the issue. On the other hand it represents a rather limited step towards the realization of the human right to water and sanitation. Their contributions remain well below the universal coverage objectives of the human right to safe drinking water and sanitation. Furthermore comprehensive outcome indicators are needed to address the normative criteria of the human right to safe drinking water and sanitation, as for example quality and affordability, which are not currently being assessed at the global level. The main cause for this might be that quantity is easier to assess and monitor than quality.

Then, non-discrimination and equity data, which are not addressed by the MDGs, will deserve greater attention. The 2012 UN-Water Global Analysis and Assessment of Sanitation and Drinking-Water (GLAAS) report, a report focusing on financing mechanisms, notes that 'the vast majority [of countries] has established transparent national targets and most have established planning and coordination processes'. However, 'only just one in five countries consistently applies equity criteria in funding allocations for sanitation, whereas one third applies equity criteria to drinking-water investments' (WHO, 2012). Various data sources can help addressing inequities in the country and inform national policies. Furthermore gender-related information, for instance, time spent by women and girls to fetch water in cities and rural areas do not seem to be readily available.

Thirdly, the MDGs focus on outcomes, ignoring the importance of the process (HRC, 2010a; JMP, 2012). As mentioned above, outcomes for poor people depend on how effectively they can participate in the decision-making on water allocation and the extent to which equity concerns shape national policies and water governance. For the time being very little information is available on the role of civil society. Disputes over water resources, a rapidly growing concern, are not reported in a systematic way, except in the case of transboundary waters (UN Water, 2006, 18). Process indicators would shed light on decentralization and participatory mechanisms as key factors to ensure good water governance. Indicators for national decentralization and decentralized cooperation

mechanisms will play a key role. Water integrity and transparency mechanisms must be in place to ensure access to information.

Finally, impact indicators will be key to bring intersectorality into concrete national programmes. Evidencing the impact of water governance and management on health, education, food, or energy is key to assist coordination mechanisms in the country. UN-Water task force on monitoring noted in 2006 that ‘the fact that water does not appear anywhere else in the MDGs than under water supply and sanitation banner is striking, while it has been demonstrated that water plays a key role in practically all the MDGs’ (UN Water, 2006).

Box IV - Global Human Rights-based Water and Sanitation Indicators

The WHO and UNICEF are the two UN organizations charged with monitoring water and sanitation worldwide through the Joint Monitoring Programme. The current JMP method of monitoring assesses progress solely on the basis of the types of facilities used. It does not take into account other important parameters, such as drinking water quality, the availability of adequate quantities of water for domestic use, the number of service hours available, the distance to a water source or sanitation facility, or the time household members spend on access and use of sources and facilities.

In 2011, the WHO and UNICEF started a consultation process to identify candidate targets and associated key indicators regarding all aspects of drinking-water, sanitation and hygiene, with special consideration given to human rights criteria. Four working groups were put in place to tackle respectively water, hygiene, sanitation and equity as a transversal issue. The UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation is a member of the JMP Working Group on Equity and Non-Discrimination. In the final report issued in August 2012, the Working Group developed a checklist for the design of national-level monitoring available to States, civil society and other stakeholders (JMP Working Group on Equity and Non-Discrimination, 2012). The checklist points at the progressive realization towards universal access to water and sanitation, reducing spatial inequalities, group-related inequalities, and individual-related inequalities.

Besides outcome indicators, process and impact indicators would also be needed. Overall the development of a monitoring process for water resources management urges the need for a comprehensive monitoring framework for water governance.

WHO/FAO - Developing Intersectoral Standards Addressing Water and Human Rights as Transversal Issues

Each specialized agency informs national policies in one specific sector through standard-setting activities. Water is transversal to the work of a number of these agencies, as a key factor to health, food, energy, education, etc. An example is given below of the WHO and FAO that have adopted a human rights-based approach, while developing international standards tackling the nexus between respectively water and health, and water and food.

WHO - Establishing Preventive Health Systems for Realizing the Water-Health Nexus

Among United Nations agencies, the World Health Organization is the specialized agency with a major standard-setting role in health and water-related issues. The WHO Guidelines provide scientific evidence on water quantity/quality necessary for basic human survival under climatic conditions and average activity levels (the replacement value in the body), and that required for sanitation (water disposal) and hygiene.

The water-health nexus was addressed in the 1999 UNECE/WHO-Europe -Protocol on Water and Health mentioned above. This nexus has gained further interest with the shift operated over the last ten years from a *curative* and *disease-oriented* to a more holistic approach to health, incorporating *prevention* strategies based on social and economic determinants of health, among which water and sanitation (Commission on Social Determinants, 2008). The 2011 Rio Declaration on Social Determinants in that respect constitutes a milestone instrument.

For the first time in 20 years, the World Health Assembly, WHO's supreme policymaking body, adopted in 2011 a resolution on water and sanitation (WHA, 2011). The Resolution explicitly recognizes 'the human right to water and sanitation' and places the interlinkages between health and water explicitly within the scope of the realization of the human right to water and sanitation. In the resolution, the WHA urges members States to '*ensure that national health strategies contribute to the realization of water and sanitation-related MDGs **while coming in support to the progressive realization of the human right to water and sanitation** that entitles everyone, without discrimination to water and sanitation that is sufficient, safe, acceptable physically acceptable and affordable for personal and domestic uses*' (emphasis added). In other words, health ministries are invited to refocus on prevention strategies. The reference to the human right to water and sanitation must be interpreted in the light of the mainstreaming of human rights currently taking place at the level of the Organization. This constitutes an enabling framework for the redefinition of the water and sanitation indicators with the UN Special Rapporteur on the Right to Safe Drinking Water and Sanitation so as to integrate human rights principles (see above).

From a human rights perspective, the Resolution gives clear instruction to policy-makers that align with human rights principles with a specific focus on water safety. Firstly, national health strategies must be adopted through a multi-stakeholders process. Secondly, States must designate clear responsibilities across relevant ministries and institutions. Thirdly, population empowerment is promoted through new approaches to community education, empowerment, participation, and awareness- raising giving specific attention to hygiene and people's behavior. Sustainability comes into play with water safety plans and monitoring and early warning systems. Equity is partially addressed through disparities between urban, peri-urban and rural areas. Finally, the Resolution is in line with the UNECE/WHO-Europe Protocol on Water and Health which addresses the importance of a framework where State authorities partner with the private sectors and civil society to set and communicate targets and standard that need to be achieved for a high level of protection against water-related disease.

The WHO Network of Drinking-Water Regulators (RegNet), in its mission to elaborate international guidance for regulators, could significantly contribute to the development of regulatory guidance for the implementation of these policies and strategies. RegNet is currently developing a regulatory interpretation of the human right to water and sanitation and internationally recognized guidance on

the regulation of drinking water to improve public health protection (RegNet, 2011, p.25). Involvement of RegNet members is also foreseen in the revision of the WASH indicators (see box above).

The WHO resolution must be read in the light of the activities of other agencies. Improved and sustainable water, sanitation and hygiene facilities and services will require a high level of user and community ownership, participation, education and empowerment, and should take into account gender and equity issues. UNICEF activities in water and sanitation education contributes to ensure that most lasting benefits and health impacts in domestic water and sanitation services are accompanied by knowledge, attitude and behavior changes. It is essential that the ultimate users at household and community levels are involved in understanding the range of health, hygiene and environmental issues.

It is also crucial that the population is involved in health and water policies-making process as well as their implementation, including the selection and implementation of chosen technology. The policy briefs currently developed by the Pan-American Health Organizations constitute a good model of participatory policy-making process (See box below).

FAO - Guidelines on the Right to Water and Right to Food

Securing sustainable access to water resources is essential for the realization of the right to adequate food of people who depend on agriculture for their livelihoods. Water resources are key to food production: irrigation, aquaculture and livestock watering are just few examples of the direct use of water for food production.

The interdependence between the right to food and the access to water is recognized by FAO. For instance, the Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security (Right to Food Guidelines), adopted by the FAO Council in 2004 provide numerous instances of this recognition. Guideline 9 recommends States to take measures to ensure that food is consistent with national food safety standards throughout the entire food chain. Water is used in various stages of food production and food processing, and must therefore fulfill minimum quality standards. Furthermore, Guideline 3 on national strategies for achieving the right to food stresses in paragraph 3.5 the need for national poverty reduction strategies to give priority to providing basic services for the poorest, and investing in human resources by inter alia ensuring access to clean drinking water, adequate sanitation and good hygiene practices. In Guideline 14 on safety nets, paragraph 14.6 highlights complementary activities, including access to clean water and sanitation, health care interventions and nutrition education activities.

The Right to Food Guidelines contain a section on access to natural resources in which it is recognized that the access to natural resources represents a precondition for the realization of the right to adequate food. These recognize that the access to natural resources such as land and water represents a precondition for the full realization of the right to adequate food. Guideline 8.11 stresses that “States should strive to improve access to, and promote sustainable use of, water resources and their allocation among users giving due regard to efficiency and the satisfaction of

basic human needs in an equitable manner and that balances the requirement of preserving or restoring the functioning of ecosystems with domestic, industrial and agricultural needs, including safeguarding drinking-water quality”.

The Voluntary Guidelines on the Responsible Governance of Tenure of Land Fisheries and Forests in the Context of National Food Security (VGGT) which were adopted by the Committee on World Food Security (CFS) on the 11th of May 2012, are also relevant to water. The VGGT build on the Right to Food Guidelines and aim at promoting secure tenure rights and equitable access to natural resources as means of eradicating hunger and poverty. The VGGT acknowledge that the livelihoods of many, in particular the rural poor, are based on the secure and equitable access of natural resources such as water.

FAO's Right to Food and Access to Natural Resources 2009 publication explores the relationship between realizing the right to food and improving access to natural resources. The focus is on food access which is essentially assured through both food production and food procurement. The progressive realization of the right to adequate food therefore requires States to secure access to productive resources and employment. Clearly then, where natural resources are the main source of food availability and accessibility, where there are limited off-farm livelihood opportunities, and where the ability of markets to ensure access to food is constrained, then improving access to natural resources, including water, is the focus of the obligations concerning the realization of the right to food.

UNDP/UNECE/OHCHR/PAHO - Bridging National Human Rights Action Plan and National Development

Major efforts have been made by UN agencies and other intergovernmental organizations to develop a human rights-based approach to capacity-building programming.²³ Under international human rights law, development partners, i.e. donors and NGOs, have the obligation to support States in the realization of human rights commitments (HRC 15/9, §10). In support of the principle of harmonization, the human rights framework is common to both UN agencies and host States. International human rights obligations constitute a mutually agreed, universal normative framework, supported not only by political guarantees, but also by the force of legal obligations to which UN agencies and host States are committed.

In order to foster the implementation of human rights, national human rights action plans were promoted following the 1993 Vienna Conference (Vienna Declaration and Programme of Action, 1993).²⁴ National plans promote dialogue among different sectors of society and broaden the public's participation in the development of human rights policies. They are an important means to identify human rights priorities within the country and set time-bound goals and programmes to meet them. Plans that are concise and practical help identify key actors and recommend priorities and solutions, make implementation easier and are more likely to succeed. The allocation of a budget from within Government funds to carry out the planned activities is also important.

In addition, the State is expected to adopt a national strategy or plan of action to realize the right to water and sanitation specifically (OHCHR, 2011 b).

The national human rights action plan and/or the national plan for the human right to water constitutes a baseline document to guide States and development partners in national priority-setting, as it operationalizes human rights obligations to which the country is committed. In practice few national plans refer to the human right to water and sanitation (OHCHR, 2008).

In that respect, the recent guide adopted by Paraguay is exemplary in that it explicitly aims at strengthening public policies on the right to food and ensuring universal access to safe water and sanitation services. This comes with key objectives placed in human rights education programmes at all levels of the education system, through the prompt adoption and implementation of the National Plan on Human Rights Education.

The Human Rights Action Plan also aims at reducing the housing deficit, meeting demands for urban and rural housing through the design and implementation of a national policy on housing. The Plan addresses issues such as ***equality and non-discrimination***, rule of law, education and promoting a human rights culture and human security. It specifically outlines targeted measures to improve the human rights situation of vulnerable and discriminated groups, such as indigenous peoples, Afro-descendants, persons with disabilities, women, children, older persons, sexual minorities, and migrants. In compliance with the ***principle of participation***, the Plan is the result of broad and inclusive consultations among representatives of national authorities, civil society organizations and academia across the country. Broad participation ensures that the Plan's goals are widely shared and that the process of elaboration of the Plan is transparent.

OHCHR - National Sectoral Planning and Development Guides

Among good practices collected elsewhere, the National Strategy for Sanitation of Namibia integrates the ten human rights standards and principles and was developed in a participatory manner.

There is no proven country experience for developing such a strategy at present. The OHCHR intends to support human rights-based sectoral planning, however no experience has been undertaken in water and sanitation. For instance, in Ecuador a guide has been developed by the Secretariat for National Planning and Development (SENPLADES) with OHCHR support to formulate sector-specific public policies from a human rights perspective. The objective is to ensure coherence within the planning cycle through planning methodologies and tools at different levels (national, sectorial and institutional planning). The Guide, adopted by executive decree, is a groundbreaking document, which adopts a human rights-based approach to planning as a mandatory requirement for all branches and departments of the Executive. It defines a national development problem as the gap between a human right in principle and the situation in practice, thereby underscoring that a development problem is also a human rights problem and promotes a systematic use of the recommendations of international and regional human rights mechanisms in the diagnosis and formulation of public policies.²⁵

Both in Paraguay and Ecuador approaches build on the political commitment of the Government and on the constitutional mandate to protect and guarantee the effective enjoyment of human rights.

Box V – UNECE Equity Scorecard for Water Access

The 2012 UNECE compilation of equity-oriented practices constitutes a first step to understand how equity is perceived and operationalized within countries in the pan-European region. The UNECE/WHO-Europe publication 'No one left behind. Good practices to ensure equitable access to water and sanitation' defines three dimensions of equitable access: 1) geographic disparities i.e. placing particular emphasis on the population living in rural or remote areas 2) social disparities, i.e. ensuring access for vulnerable and marginalized groups comprising persons with special physical needs, users of institutionalized facilities and institutionalized persons, persons without private facilities and persons living in unsanitary housing and 3) economic disparities i.e. addressing affordability concerns through tariff and social protection measures. The publication provides valuable examples of how different countries have attempted to reduce inequities in access to water and sanitation services in each of these three dimensions in the pan-European context. Further work will lead to the development and testing of a tool ("scorecard") that could be used by governments and other stakeholders to establish a baseline, track progress, and prompt discussion on further actions to be taken, with the intention to develop a credible and practical assessment methodology, and to encourage the development of national assessments. The work done under the UNECE/WHO-Europe Protocol on Water and Health may constitute a building block for assessing the implications of the human right to water on international water law.

PAHO - Human Rights- and Evidence-based Health policies in Latin America

In line with the 2011 WHA Resolution on Drinking Water and Sanitation (See above), the Pan American Health Organization / World Health Organization (PAHO/WHO), has launched a programme assisting countries in moving towards a new public health agenda that promotes universal access to water and sanitation and the fulfillment of human rights. The activity consists in organizing a deliberative dialogue with all stakeholders in order to elaborate evidence informed-policy briefs.

Evidence Informed Policy Briefs (EIPB) are research syntheses in a user-friendly format, offering evidence-informed policy options. Such activity has been initiated and undertaken by the WHO programme, called EVIPNet (Evidence to Policy Network) for five years. The innovative dimension of the PAHO project in water and sanitation lies in the human rights framework adopted to develop policy briefs specifically aimed at the realization of the human right to water and sanitation and the principle of equity. The project is being implemented in three countries so far, namely Dominican Republic, Bolivia and Brazil.

Deliberative policy dialogues conform to the **principle of participation** and constitute democratic processes. They recognize that not only policymakers, but also several stakeholders can take actions towards addressing high priority issues. The group explores different solutions on the basis of systematic scientific reviews that are balanced with local evidence such as realities and constraints, citizens' values and beliefs, power dynamics among stakeholders, institutional constraints and donors' funding flows. It is acknowledged that research evidence is just a part of the decision-making process, accepting that there are other factors that can add significant value to such processes.

Furthermore, the PAHO/WHO deliberative dialogue helps build partnerships among stakeholders and brings in new legal and institutional scenarios. It facilitates collaborative work and ensures universal access to water and sanitation. In the workshops, the role of the legal framework was given major attention, as well as privatization and leadership issues. Building partnerships among diverse actors will make it possible to find common interests, overcome obstacles, and leverage strengths to create new legal and institutional structures that facilitate collaborative work and ensure universal access to water and sanitation.

Overall deliberative dialogues aim at establishing a framework for mutual understanding and a common purpose that transcends mere ideas and opinions. They empower the different stakeholders by clarifying the issues related to water distribution policy and possible options. They try to develop a shared understanding of a human rights-based approach to evidence-based health policies.

Finally, in line with the **principle of sustainability**, policy options display barriers and facilitators contributing to the implementation of effective policies, and discuss the likely effects of these strategies. Policy briefs should also outline option costs and consequences in approaching the problem and the most relevant implementation considerations. A recommended course of action involves analyzing potential hindrances for the successful implementation of a new policy and strategies for facilitating the necessary attitudinal changes from the citizenship, healthcare users and healthcare professionals. The quest for strategies that facilitate changes at the organization and health system levels is also recommended.

UNDP - Human Rights-based Approach to Water Resources Management

Human rights-based programming has been championed by UNDP through a diversity of country projects aimed at awareness-raising and capacity-building activities in order to empower rights-holders and duty-bearers (UNDP, 2006).

The Water and Human Rights Initiative, is a collaborative effort between UNDP's Environment and Energy Group Water Governance Programme, the Democratic Governance Group, Oslo Governance Center, HURIST/UNDP global programme on Human Rights, UNDP's Water Governance Facility and others to test the application of a human rights-based approach to water and sanitation, water governance and water sector reform, and Integrated Water Resources Management. The Initiative aims to capture lessons learned and implications of implementing an HRBA to water; feed into guidance material on integrating human rights into water programming; raise awareness among development professionals and policy makers and demonstrate best practices.

A human rights-based approach to water governance was undertaken through a case study in Kenya. Support was given by UNDP Water Governance facility to enable rights holders and duty bearers to participate effectively in water sector reform. The initiative builds on the Ministry of Water and Irrigation Commitment to integrate a human right to water perspective in the sector reform process. The programme's efforts to improve water services include disseminating information and raising awareness of communities and service providers about the national water reforms, establishing

feedback and complaint redress mechanisms between right holders and developing tools to strengthen anti-corruption mechanisms.

UNDP's MDG GoAL WaSH programmes in Tadjikistan and Bosnia Herzegovina apply a human rights-based approach to sector assessments, water rights and responsibility awareness campaigns.

OECD/UNDP - A Human Rights Framework for Development Financing Mechanisms

Building a strong case for intersectoral action, the realization of the human right to water and sanitation requires at the same time strong investments in drinking-water distribution services, wastewater collection and treatment and water management in general. It also requires resources for hygiene education and empowering mechanisms encompassing access to information, and participative and accountability mechanisms. A strong governance framework must realize both coherent intersectoral policies and efficient financing mechanisms. Various institutional choices remain open. The Minister of Health, Environment or Water may lead the decision-making process shared with a broad range of sectors. Specific funding may be dedicated to intersectoral work. Sectors may be mandated to work together through national or state legislation.

Despite the global financial crisis, the total amount of development aid for sanitation and drinking water increased by 3% between 2008 and 2010, to US\$ 7.8 billion. But only half of it is targeted to the regions where 70% of the global unserved actually live - sub-Saharan Africa, Southern Asia and South-eastern Asia (JMP, 2012). The 2012 JMP states that *'[d]espite impressive global gains, most countries are falling short on meeting their own national commitments, with 83% and 70% of countries reportedly falling significantly behind the trends required to meet their defined national access targets for sanitation and drinking-water, respectively'* (UN Water, 2012b). This confirms that the lack of sufficient access to water for household use is more a function of power, poverty and inequality, and a failure of governments to prioritise water allocation for basic needs and human dignity, than it is about scarcity *per se*. (HRC, 2010e)

While the main responsibility to implement the human right to water and sanitation rests on national governments, the CESCR, in General Comment 15, highlights the critical role of the international community (CESCR, 2002, §38)²⁶, especially 'economically developed States' (§34)²⁷ and UN agencies and other international organisations including the WTO and the World Bank, and global civil society (§60). Concerning the international financial institutions, the General Comment 15 specifically mentions that *'the International Monetary Fund and the World Bank, should take into account the right to water in their lending policies, credit agreements, structural adjustment programmes and other development projects, so that the enjoyment of the right to water is promoted.'* (§60)

The Monterrey Consensus²⁸ that emerged from the 2002 United Nations Conference on Financing for Development stresses the importance of national ownership of development strategies and the necessity of a more coordinated approach to development financing and therefore the need of reforming international financial system and institutions.

Following the Monterrey Consensus, the 2005 Paris Declaration further developed the ‘new paradigm of development aid’ through the principles of national development strategies’ ownership, improved donors harmonization and coordination, alignment behind recipient’s objectives and mutual accountability. In 2008 the Accra Agenda for Action was designed to strengthen and deepen implementation of the Paris Declaration.

A human rights framework completes and strengthens the aid effectiveness principles and ensures that changes instituted in the delivery and management of aid will support, or at least not undermine, the realization of human rights, especially for those groups whose rights are most often denied.

In 2006, UNDP highlighted the relevance of a human rights-based approach to ensure that financing instruments such as Direct Budget Support (DBS) and the sector-wide approach (SWAp) fulfill their rationale and serve aid effectiveness. DBS and SWAp *‘promote cost-effectiveness, national ownership, sustainability, attention to the MDGs, and other national priorities, especially related to poverty to promote holistic, inter-sectoral, rather than project specific approaches’* (UNDP, 2006). A human rights based approach completes these instruments by requiring transparency and accounting back to the donors’ own governments and stakeholders/tax payers (UNDP, 2006). Receiving governments are also accountable to their citizens.

Despite this rationale, the expectations carried by a human rights-based approach to DBS and SWAp has not come true yet. As reported by the 2012 JMP, alignment of aid with country priorities is quite poor, with less than 5% of WASH disbursements currently made through sector budget support (JMP, 2012).

Another financing solution has been developed by Sanitation and Water for All (SWA). SWA is an international partnership of national governments, donors, civil society organizations and other development partners working together to galvanize political commitments to increase global access to sanitation and water. It has developed a ‘Compact’ as an interesting framework to intersectoral policies building upon aid effectiveness principles and regional instruments (SWA, 2008). It encapsulates a number of human rights principles and targets the unserved before improving services for the already served. It also promotes mutual accountability with donors and to the countries own citizens as necessary to achieve water and sanitation for all. Strategic objectives include to articulate country strategies for measurable results; to foster mutual accountability (aid agencies-Government, Government-Civil Society); and to assist better targeting and mobilization of funding for implementing viable national plans and to engender improved decision-making on result-based evidence and exchange of information.

Beyond efforts made to centralize bilateral and multilateral aid at the national level, UNDP has recently fostered decentralized cooperation mechanisms, while promoting respect for human rights (see box below).

Box VI - Global Water Solidarity- International Platform for the Promotion of Decentralized Solidarity mechanisms (DSMS) for Water and Sanitation

In response to the UN Resolution 64/292, the Hub for Innovative Partnerships of the United Nations Development Programme (UNDP), in collaboration with the United Nations Capital Development Fund

(UNCDF), facilitated the launch of an initiative to promote decentralized mechanisms of solidarity, complementary to ODA, in order to contribute to addressing current technical and financial deficits to achieve universal access to water and sanitation.

The specific objective of the platform is the development, replication and scaling up of existing Water and Sanitation Decentralized Solidarity Mechanisms (systems comparable to the 2005 Oudin-Santini Law in France exist in Switzerland, Spain and Belgium) with the general goal of achieving universal access to water and sanitation. Consequently, the Platform will enable relations among actors in the North and South wishing to apply Decentralized Solidarity Mechanisms while empowering decentralized public institutions as direct responsible actors of water and sanitation supplies.

The International Platform for the promotion of Decentralized Solidarity Mechanisms for access to water and sanitation, elaborated a Charter in order to promote this type of financing. The Decentralized Solidarity Mechanisms for Water and Sanitation Charter underlying the platform is based on human rights and pursues the complementarity between aid effectiveness and human rights principles. Inter alia, the Charter recognizes that "[t]he partnerships stabilized through Decentralized Solidarity Mechanisms are administrated by a benchmarking framework in which the minimum requirements for governance, availability, quality, acceptability, accessibility, affordability, inclusiveness and sustainability of services are ensured'.

The Charter also requires that '[t]he partnerships stabilized through Decentralized Solidarity Mechanisms are operated in broad and inclusive alliances engaging local governments, water services providers, consumer groups and civil society organizations. This local partnership must foster access to water and sanitation for non-served citizens, enable access to information and encourage participation and transparency'.

It appears from the above that coherent and common framework for development financing, through bilateral and multilateral aid, as urged by OECD, builds upon aid effectiveness principles and human rights to ensure that while strengthening financing mechanisms, UN agencies foster the realization of the human rights commitments of the country. Similarly, the decentralized cooperation platform just initiated by UNDP intends to strengthen North-South and South/South cooperation using a framework recognizing human rights standards and principles.

Conclusion

There is no doubt that a decade of efforts to implement a human rights-based approach to development has largely contributed to the current level of integration of the human right to safe drinking water and sanitation in the work of UN agencies. The international recognition of the human right to safe drinking water and sanitation by the UN General Assembly serves as a reminder that States must first prioritize the realization of this basic need for the development of their population.

The OHCHR and UNDP, with a focus on governance issues, have contributed to bridge the gap between national human rights action plan and national development plans. There is a need for country specific solutions and the diversity of approaches illustrated here gives a sample of solutions.

Great attention was given here to the linkage between the human right to drinking water and sanitation and health as the most achieved example of inter-sectoral approach. Equity is being integrated to global water and sanitation indicators by the WHO-UNICEF JMP. At the same time, the Pan-American Health Organization is developing participatory processes to draft health policy briefs aimed at realizing national human rights agenda. The strengthening of the nexus has been made possible thanks to the shift operated within the WHO from curative to preventive health governance system and the recent mainstreaming of human rights. It is supported by UNICEF activities in hygiene education. Then the FAO guidelines presented here constitute an entry point to the water-food security nexus. Finally activities undertaken by UNDP, OECD and Sanitation and Water for All pave the way for a human rights framework for financing mechanisms.

Other major efforts to integrate the human right to drinking water were not presented here. This includes the integration of human rights principles in humanitarian action plans. The recognition of the human right to water and sanitation and the adoption of the Sphere standards have strengthened the bridge between development and humanitarian activities. What is at stake here is a shift from short- to long-term development plans. More recently civil society has started pushing for the integration of human rights in disaster-risk reduction strategies and climate change responses. Mitigation and adaptation strategies adopted in response to the adverse effects of climate change are symptomatic of the prevalence given to technical over governance issues. A human rights-based approach aims at putting a 'human face' to these problems.

And yet, despite the centrality of drinking water provision, sanitation and access to water resources for human development, no international organization is in charge of global water governance. This reports explored to which extent the human rights framework contributes to coordinate the work of UN agencies in the water sector. Indeed, the fact that no international agency coordinates water governance puts even more expectation on cooperation and coordination among UN agencies, programs and other entities that are specialized by nature and work with different *modus operandi* and priorities. Achieving intersectoral governance is not a challenge that is specific to water. However it is particularly ambitious here insofar as water cuts across almost all sectors.

UN-Water was created in 2003 in order to facilitate coordination among the various UN Agencies working on water issues. Among the agencies and programs part of UN-Water, many of them are also a member of the UN Development Group, which adopted in 2003 the '*Common Understanding on Human-Rights Based Approaches to Development Cooperation and Programming*'. Human rights

mainstreaming at the UN offers a general framework to increase coherence and coordination in the work of UN agencies. The objective of a human rights-based approach to water governance is to help designing a common framework that articulates water supply and sanitation with water resources management.

While retracing the history and the legal foundations of the recognition of the human right to safe drinking water, the first part of this report underlined the contribution of UN agencies. Indeed, many UN agencies came to explicitly recognize the human right to water or more specifically the human right to safe drinking water in their policies and action plans. The right to water was mentioned for different purposes and in different contexts according to the specific mandate of the agency or programs.

The OHCHR had a key role in harmonizing these developments and defining the content of the human right to safe drinking water and sanitation, which was recognized by the international community in 2010. The human right to safe drinking water and sanitation as currently defined in international human rights law has a rather limited scope _ basic amount of a certain quality at an accessible price and distance for personal and domestic uses_ but triggers significant procedural obligations (non-discrimination, participation, accountability and remedy).

And although essentially limited to drinking water and sanitation services, the realization of the human right to safe drinking water and sanitation cannot happen without consideration of overall water resources management. Improved water resources management and more specifically the protection of water resources as sources of drinking water constitute a major challenge for the realization of the human right to safe drinking water. In this regard, the second part highlighted the cutting edge work undertaken by the WHO/UNECE around the 1999 Protocol on Water and Health to the 1992 Convention.

Another challenge to the realization of the human right to safe drinking water and sanitation lies in the harmonization of human rights obligations with international investment norms. Further research will need to show how these two bodies of law could be further integrated one to another. This will require also to study more in depth the conceptual framework of International Financing Institutions and to what extent they *'take into account the human right to water in their lending policies, credit agreements, structural adjustment programs and other development projects'* (GC 15§60).

The third challenge remains in the realization of a human rights-based approach to water governance. Over the last decade, through the efforts made by the OHCHR and UNDP to integrate a human rights-based approach to development an enabling environment has emerged for the implementation of the human right to water. The challenge in water lies in the current discrepancy and disconnection between efforts made to integrate human rights in water supply and sanitation, on the one hand, and the rather limited conceptualization and operationalization of a human rights-based approach to water governance, on the other hand. On the water and sanitation side, the definition of international human rights targets for water and sanitation by the WHO and UNICEF constitutes a major step towards the operationalization of the human right to safe drinking water and sanitation. The operationalization of the water-health nexus has been advanced through the adoption of the WHA resolution and country pilote cases for evidence- and human rights-based

health policies undertaken by the Pan-American Health Organization. By opposition, still limited interest has been paid to a human rights-based approach to water resources management. Recent attempts to move towards a human rights-based approach to water resources management must be encouraged through further brainstorming and tools to operationalize the approach. A major step in that respect will consist in integrating human rights in the monitoring framework currently developed by UNEP for water resources management.

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- Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A. And The Republic of Argentina. ICSID case No. ARB/03/19
- Biwater Gauff Limited v. United Republic of Tanzania. ICSID case n° ARB/05/22

Footnotes

- ¹ GLAAS reports on the capacity of countries to make progress towards the MDG water and sanitation target and on the effectiveness of external support agencies to facilitate this process.
- ² JMP reports global progress towards MDG Target 7.C: Halve, by 2015, the proportion of the population without sustainable access to safe drinking water and basic sanitation.
- ³ The Human Rights Council was created in 2006 by a vote of the UN GA Res. 60/241. It replaces the former Commission on Human Rights and further extends its mandate (see part II on monitoring). The resolution calls upon states to take into account a candidate human rights record while electing HRC members. The Commission on Human Rights was a subsidiary body of the UN Economic and Social Council (ECOSOC) whereas the Human Rights Council is a subsidiary body of the UN GA.
- ⁴ See the debate in July 2010 at the General Assembly for the vote of the resolution recognizing the human right to water and sanitation. The UN press release relating that vote mentioned USA's comment on its abstention: 'the text could undermine that work (undertaken by the HRC) because it described the right to water and sanitation in a way not reflected in existing international law. Moreover, the text had not been drafted in a transparent manner, he said, noting that the legal implications of a declared right to water had not yet been fully considered in the Assembly or in Geneva'. The Egyptian government explained why it voted in favor and 'acknowledged the need to set aside controversial questions of international water sources and transboundary water'. (Department of Public Information, 28 July 2010, GA/10967, <http://www.un.org/News/Press/docs/2010/ga10967.doc.htm>)
- ⁵ On the human rights obligations related to sanitation, see the 2009 report of the Independent Expert <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/144/37/PDF/G0914437.pdf?OpenElement> and statement on the right to sanitation of the Committee on Economic, Social and Cultural Rights, adopted in November 2010 (E/C.12/2010/1). In that Statement, the Committee mentions: 'It is significant, however, that sanitation has distinct features which warrant its separate treatment from water in some respects. Although much of the world relies on waterborne sanitation, increasingly sanitation solutions which do not use water are being promoted and encouraged' (§7). The Committee then clarifies: 'In line with the definition of sanitation as proposed by the Independent Expert on water and sanitation as "a system for the collection, transport, treatment and disposal or re-use of human excreta and associated hygiene", States must ensure that everyone, without discrimination, has physical and affordable access to sanitation, "in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity". The Committee is of the view that the right to sanitation requires full recognition by States parties in compliance with the human rights principles related to non-discrimination, gender equality, participation and accountability' (§8).
- ⁶ The key 2010 Resolution of the Human Rights Council recognizing the human right to water clearly mentions the possibility of private sector participation in water services delivery, which has been an area of concern for some States: The Human Rights Council (...) 'recognizes that States, in accordance with their laws, regulations and public policies, may opt to involve non-State actors in the provision of safe drinking water and sanitation services'... (Res. 15/9 September 2010). The HRC Resolutions creating a special procedure through the appointment of an Independent Expert and then Special Rapporteur on human right to water explicitly excluded international water resources issues: 'Affirming the need to focus on local and national perspectives in considering the issue, leaving aside questions of international watercourse law and all transboundary water issues'... (res 7/22 and res. 16/2).
- ⁷ ICESCR Art 2. 2 : 'The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'(ICESCR art 2) and see General Comment 20 (2009) on 'Non-discrimination in Economics, Social and Cultural Rights' (E/C.12/GC/20).
- ⁸ Principle reaffirmed in HRC resolution 15/9 on 'Human rights and access to safe drinking water and sanitation' in 2010. The Human Rights Council 'calls upon States (...) to ensure full transparency of the planning and implementation process in the provision of safe drinking water and sanitation and the active, free and meaningful participation of the concerned local communities and relevant stakeholders therein (HRC Res. 15/9 §8(b)).
- ⁹ See General Comment 9 (1998) on 'The domestic application of the Covenant'. 'The Covenant norms must be recognized in appropriate ways within the domestic legal order, appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place'. (GC 9§2). The principle was reaffirmed by the Human Rights Council in resolution 15/9 which 'calls upon States (...) to ensure effective remedies for human rights violations by putting in place accessible accountability mechanisms at the appropriate level' (HRC 15/9 § 8(f))
- ¹⁰ The UNICEF and WHO Joint Monitoring Programme on Water Supply and Sanitation highlighted the fact that research in rural areas found that individuals satisfy their basic needs for water if the source can be reached in a round trip of 30 minutes or less.
- ¹¹ For example, States can adopt increased bloc tariff and/or targeted social subsidies. On affordability see: Smets, 2009. And UNECE, 2011
- ¹² This concept was clarified in General Comment 3: 'the concept of progressive realization constitutes recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. [...] Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. [...] The Covenant [...] imposes an obligation to move as expeditiously and effectively as possible towards that goal' (GC 3 §9). Another clarification can be found in the 2007 Report of the High Commissioner: 'Under the ICESCR, the obligations are of both an immediate and progressive nature. While universal access to safe drinking water and sanitation can be achieved over time within the limits of available resources, the obligations of non-discrimination and 'to take steps' have immediate effect. Accordingly, States have to take immediate, deliberate, concrete and targeted steps to

move as expeditiously and effectively as possible towards ensuring access to safe drinking water and sanitation, making the most efficient use of available resources'. (Human Rights Council, A/HRC/6/3, 16 August 2007).

- ¹³ Principle 10: 'Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided'.
- ¹⁴ See 2010 report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation in HRC res. 15/31 (States' obligations in the context of participation of non-state service providers < <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/148/31/PDF/G1014831.pdf?OpenElement>>
- ¹⁵ Art 5 (j): (...) 'Such an integrated approach should apply across the whole of a catchment area, whether transboundary or not, including its associated coastal waters, the whole of a groundwater aquifer or the relevant parts of such a catchment area or groundwater aquifer'
- ¹⁶ The 1997 UN convention on the law of non-navigational uses of international watercourses is not yet into force. <http://untreaty.un.org/ilc/texts/instruments/english/conventions/8_3_1997.pdf>
- ¹⁷ Article 4: 'Les principes directeurs de toute répartition des eaux du Fleuve visent à assurer aux populations des États riverains, la pleine jouissance de la ressource, dans le respect de la sécurité des personnes et des ouvrages, ainsi que du droit fondamental de l'Homme à une eau salubre, dans la perspective d'un développement durable.'
- ¹⁸ The organization for the development of the Senegal River (Organisation pour la mise en valeur du fleuve Sénégal - OMVS) was created in 1972 by Mali, Mauritania and Senegal to promote a coordinated development and integrated management of the Senegal River Basin including hydropower generation, irrigation, and navigation (Guinea did not object to these projects).
- ¹⁹ Article 4 : Participation et utilisation équitables et raisonnables: Les Etats parties fondent leur action sur le principe de la participation et de l'utilisation équitables et raisonnables. A cet effet, les circonstances et facteurs pertinents suivants sont à prendre en compte : (...) le droit à l'eau des populations du Bassin'
- ²⁰ Article 25 : Accès à l'information: Les Etats Parties devront garantir à tout usager le droit d'être informé de l'état de la ressource en eau et de participer à l'élaboration et à la mise en œuvre des décisions relatives à la valorisation du bassin. A cet effet, les informations relatives à l'état des eaux transfrontières, d'allocation de l'eau aux différents secteurs et aux mesures prises ou prévues pour prévenir, maîtriser et réduire l'impact transfrontière doivent être accessibles au public.
- ²¹ See the appointment by the HRC in april 2012 of an independent expert 'on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. A/HRC/RES/19/10 available at < <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G12/131/59/PDF/G1213159.pdf?OpenElement>>
- ²² 'All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms' Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993 (available at <[http://www.unhcr.ch/huridocda/huridoca.nsf/\(symbol\)/a.conf.157.23.en](http://www.unhcr.ch/huridocda/huridoca.nsf/(symbol)/a.conf.157.23.en)>).
- ²³ The [UNDG-HRM](#), made up of 19 UN Agencies, Funds and Programmes, provides a platform for interagency collaboration to strengthen both policy coherence at the global level and operational support to UN country teams. In 2003, the UNDG adopted the UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming (the Common Understanding). The purpose of the Common Understanding is to ensure that UN agencies, funds and programmes apply a consistent human rights-based approach to common programming processes at global and regional levels, and especially at the country level in relation to the CCA and UNDAF.
- ²⁴ The origin of preparing a National Human Rights Action Plans dates back to the Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights in Vienna in 1993, which recommended that "...each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights." The UN Human Rights office has developed guidelines and produced a Handbook on National Human Rights Action Plans. It also provides assistance to States on Plans' development.
- ²⁵ A pilote study of the Guide was to be conducted in water and sanitation. A training on the formulation of the water and sanitation policy was held in November 2009 at the National High Institute of Studies for Civil Servants (IAEN). The training aimed to pilot and validate the GFPSP by developing the knowledge and skills of government officials from SENPLADES and SENAGUA to apply a HRBA to planning in the formulation of the water and sanitation policy. Additionally, the training was attended by a few observers from the UN inter-agency programme on water governance (funded by the MDG achievement fund), two IAEN professors and two officials from the Ministry of Justice and Human Rights. The training was supported by a team of resource persons including the SENPLADES director of public policies, OHCHR staff from Ecuador and Geneva, UNDP experts from the poverty group in New York, and the assistant of the Special Rapporteur on Water and Sanitation.
- ²⁶ General Comment 15, § 38: 'For the avoidance of any doubt, the Committee wishes to emphasize that it is particularly incumbent on States parties, and other actors in a position to assist, to provide international assistance and cooperation, especially economic and technical which enables developing countries to fulfill their core obligations indicated in paragraph 37 above'.
- ²⁷ General Comment 15, § 34: 'Depending on the availability of resources, States should facilitate realization of the human right to water in other countries, for example through provision of water resources, financial and technical assistance, and provide the necessary aid

when required. (...) The economically developed States parties have a special responsibility and interest to assist the poorer developing States in this regard’.

²⁸ The Monterrey consensus recognizes six different sources for development financing: domestic resources, foreign direct investment, international trade, international aid, debt relief and systemic reforms.

Executive Summary

Although drinking water supply, sanitation and access to water resources are central to human development, no UN organization has the leadership in global water governance. This report provides an analysis of current global governance in relation to the objective laid down in international law of progressive realization of the human right to safe drinking water and sanitation.

UN agencies are specifically called upon by human rights bodies to contribute to the realization of the human right to safe drinking water and sanitation (cf. CESCR GC15, UN HRC Res. 15/9). This report explores to which extent the human rights framework helps to coordinate the work of UN agencies in the water sector.

The report first retraces the history and legal foundation of the human right to safe drinking water and sanitation while underlining the contribution of UN agencies to its international recognition. After defining the exact content of the human right to safe drinking water and sanitation as currently recognized in international human rights law, the report develops its potential implications on related fields of law, identifying both opportunities and challenges.

The realization of the human right to safe drinking water and sanitation requires consideration of overall water resources management and more specifically the protection of water resources as sources of drinking water. Moreover, building upon the principles of human rights' interrelation and interdependence, it is argued that the realization of the human right to safe drinking water cannot happen in disconnection to the realization of other human rights such as the right to food or the human right to adequate standard of living.

The report constitutes a preliminary study of a human rights-based approach to water governance through a first compilation of good practices of UN agencies in integrating human rights in their standard-setting, capacity-building and monitoring activities.

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