



International Conference on **the Right to Water and Sanitation** in Theory and Practice

26-27 November 2008, Oslo, Norway

Conference Report

The human right to water and sanitation is being increasingly promoted as a way of viewing and addressing the world water crisis. This conference provided an opportunity for participants to reflect on the theory and growing practice surrounding this human right from a multi-disciplinary perspective.

Some of the key questions included the implications of the right for legal and economic regimes, the allocation of scarce water resources, international development as well as the rights of women, indigenous peoples and minorities.

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Conference Website:

<http://ocwr.ouce.ox.ac.uk/international-righttowater-conference/>

Background

The social, environmental, economic and ideological dimensions of the world water crisis are capturing global concern. The crises are manifest in the massive degradation of freshwater resources, the large-scale inequities in access to water resources and supply, and debates over whether the emphasis on privatisation of water services is part of the solution or the problem. As the deep-seated structural causes of the crises become more apparent, human rights are being increasingly promoted as a means of improving access to water and water governance.

The right to water was explicitly recognised in a 1977 United Nations (UN) declaration, but a key legal catalyst for its promotion was the 2002 General Comment No. 15 on the Right to Water by the UN Committee on Economic, Social and Cultural Rights. Later in 2006, the UNDP's Human Development Report recommended that all governments 'make water a human right– and mean it'. Some governments and national courts have begun to recognise and apply the right to water. In 2007, the UN High Commissioner for Human Rights stated that it is time to consider access to water and sanitation as a human right and the UN Millennium Project Taskforce called on countries to use the standard in reaching Millennium Development Goal (MDG) 7C.

This conference represented an opportune time to reflect on the right to water in theory and in practice and was held in the International Year of Sanitation. Presenters came from a wide range of disciplines, including anthropology, law, environmental studies, development, economics, health and other social sciences. Participants were challenged to consider a number of key questions: (1) whether and how the right to water *and* sanitation has been firmly entrenched in international law; (2) how conflicts over water uses should be dealt with in a human rights context; (3) what role has and should human rights play in enriching and transforming thinking and action on service delivery; (4) what

is the relationship between the right and the economic challenges of fiscal resources and preference for market approaches; and (5) what are the implications for equality rights, particularly the rights of women, indigenous peoples and minorities.

The abstracts of the papers are available at the conference website¹ and on Waterwiki² and a book with the papers will be published shortly. The conference was followed by a workshop with practitioners on how to integrate human rights approaches to water and sanitation in their work and the report of that workshop can be found the waterwiki site established after the conference.³

Malcolm Langford, University of Oslo

Anna Russell, University of Oxford

Susanne Schmidt, UNDP



¹<http://ocwr.ouce.ox.ac.uk/international-righttowater-conference/>

²http://waterwiki.net/index.php/International_Conference_on_the_Right_to_Water_and_Sanitation_in_Theory_and_Practice

³ See <http://right2watsan.ning.com/>

1. Opening



Norway's Minister for the Environment and International Development, **Erik Solheim**, officially opened the conference and welcomed delegates to Oslo. He noted that the three major challenges of the right to water were ensuring the quality of water, improving access to water and addressing climate change. He said that there was no doubt that water was a human right and Norway was supportive of current efforts in the UN Human Rights Council to this effect. Norway had also removed conditionalities for privatisation of water in the provision of development assistance but the right to water did not necessarily mean that the private sector could not be involved in the delivery of services.



The newly appointed Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, **Catarina Alberquerque**, shared her mandate, activities and work ahead. She focused on the reasons that led her to chose sanitation as the focus of her first year of work: firstly, there is a political/ diplomatic motive, since it is a politically less contentious issue than the right to water, and therefore a good

way to start, in order to dissipate fears and rally support and trust around the new mandate; secondly, a statistical basis, since the number of people without access to sanitation is more than twice those without access to water – which amounts to 2.6 billion humans without sanitation; thirdly, a calendar motivation, given the fact that 2008 is the International Year of Sanitation; fourthly, to address (im)balance, since in the binomial “water and sanitation” the latter is the poor parent of the family; and fifthly, because of its impact on other human rights - the method of disposing excreta is one of the strongest determinants of child survival



Joakim Harlin from UNDP and UN-Water prefaced his presentation by noting that UN-Water was an inter-agency mechanism established in 2003 by the UN High Level Committee on Programmes. It was created to add value to UN initiatives such as the MDGs concerning water and help facilitate synergies and joint efforts in the water sector. The scope of UN-Water encompasses all aspects of management of freshwater and sanitation and it operates mainly through ‘Task Forces’. On the added significant values of coordination, he pointed out that UN-Habitat and COHRE are working on a manual on the right to water and sanitation, WHO is working on a normative instrument on the right to water, UNEP is providing policy guidance on rights based approaches for water and sanitation and UNDP is working on mainstreaming human rights in programming. He pointed out that such initiatives are of significance as they manifest an operationalisation of General Comment No.15.

2. Law, Politics and Power: Challenges in Context

Malcolm Langford, University of Oslo, focused on law and political economy. The legal status of the right to water had been strengthened since its first international recognition by States in 1977, while the right to sanitation was now enjoying growing support (see also Section 6 below). The growing affirmation for the right to water strengthened the basis for General Comment No. 15 which interpreted the right to be part of the right to adequate standard of living in the International Covenant on Economic, Social and Cultural Rights (ICESCR). He pointed to the dynamism in the legal field with growing jurisprudence on the right. He acknowledged though that claiming the right to water as part of international customary law was difficult. He examined the consequences of the right to water for the environment, policy, economics and politics, and what those fields had to say on the content of the right to water. He referenced environmental debates on the viability of the right to water, noting that most conflicts over water for basic use tend to be local suggesting the core issue was distribution not availability. He argued that the right to water and sanitation had clear implications for social policy, particularly in the areas of disconnections, tariff-setting and progressive expansion. Regard must be had, however, to the resource challenges, but the limitations should not be overstated. Recognition of the right to water and sanitation was understood differently by the various political players, but was becoming stronger in political discourse. He concluded by pointing to the positive developments in Kenya after the right to water and sanitation was recognised.

Professor Bill Derman, University of Michigan, and **Dr. Emmanuel Manzungu**, University of Zimbabwe, diagnosed the right to water from a political ecology perspective using Zimbabwe's water reforms as a case study. Water reforms in the country in the last

two decades sought to impose a new water management system through the creation of a national water authority with the support of international donors. In new legislation, water as a primary good was prioritised over water as a commercial good for priority in allocation; but the water reform in practice largely focused on development of catchment management and users fees to the neglect of small scale users. Since 2000, the water reform process in Zimbabwe has been overtaken by other factors. Almost all 3 million people in Greater Harare have gone from having access to safe water and adequate sanitation to seeing both quantity and quality plummet. The blame was principally placed on an overly centralised water and sewerage system; economic factors such as eight years of recession; and governance issues such as the appointment of a government commission to run the city's affairs from 2000 to 2008 after the ruling ZANU-PF had lost legislative elections in all major urban centres. The Constitution of Zimbabwe does not enshrine a right to water and the continued political logjam does not help the situation.

Professor Anne Hellum of the University of Oslo grounded her presentation on a gender perspective. She argued that human rights and gender are cross-cutting in development and that the right of access by women to water and sanitation is not just a matter of health or gender equality, but also one of security and personal integrity. It was highlighted that Article 14 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) guarantees the right to water and sanitation. While the definition of the right to water in General Comment No.15 was gender neutral she lamented that the division of labour with regards to household chores and related water uses on the ground are highly gendered – and this has not been taken into account in the definition of right to water for “domestic uses”. She underscored the need for gender mainstreaming by development agencies with regards to access to water and that Norway's

normative infrastructure lacks a linkage between women and water and sanitation. Hellebrandt bemoaned the lack of UN general comments with regards to the right to water and sanitation in relation to the Convention on the Rights of the Child and CEDAW and explained that cases are needed under the Optional Protocol to CEDAW.

Discussion: It was queried whether the right to water can be covered under the rubric of the right to food and whether there was any approach to minimise the systematic breakdown of irrigation schemes in Zimbabwe. Another asserted that the UN General Assembly resolution on the Right to Development 1994 should be referred to as a normative instrument buttressing the international recognition of the right to water. It was noted that sanitation is a challenging issue and this brings into light the availability and effectiveness of accountability systems.

In response, it was highlighted that the breakdown of irrigation schemes in Zimbabwe resulted from the State using decentralisation as a pretext for disengagement. There is an imperative need to reverse this by helping state bureaucrats to understand that notwithstanding decentralisation the State must retain a control function. It was further pointed out that gender mainstreaming is very important with regards to the right to water. It should not exclusively include women, but should include men as well so that women do not get overloaded. It was stressed that when it comes to access to water and sanitation, there is a difference between urban and rural areas, and local strategies need to be sufficiently distinguished from those at the national level. Sometimes development policies focus only on formal rural areas, leaving aside informal settlements despite similar levels of poverty. With regards to food, the issue is not about availability per se, but about its allocation; and the same applies to water – in most countries there is enough for basic uses but it is poorly distributed.

3: Conflict or Congruence: Water Allocation

Stefano Burchi, Food and Agriculture Organisation of the UN, stressed the need for effective statutory mechanisms for the allocation of water. He analysed the compatibility of emerging domestic water allocation legislation and mechanisms with General Comment No. 15 and explained that water resources were increasingly falling into the public domain as private ownership rights have steadily eroded. User rights then accrued from government grants and special allowances for small consumers were important in covering their right to water. Thus, while trading of water rights can be a powerful constraint to the realisation of the right to water, this was offset by prevailing regulations aimed at safeguarding equity.

Dr. Barbara van Koppen, International Water Management Institute in Pretoria pointed out though that the vesting of 'public' water resources in the State often imposed obligations on all to apply for licenses. She identified a range of obstacles to the realisation of the right to water under the current regimes. These included the expropriation of customary and local water rights regimes; inability to improve small scale users' access to water for domestic and small scale productive uses; failure to learn from land tenure debates; continuity of a colonial legacy; lack of quantification of the inequities in the distribution of water uses. She questioned the prevailing permit systems. For example, in the South African context, regulating only the 10 largest users would actually mean addressing 77-93% of water volumes. She set out five ways to support realisation of the right to water which included promulgating and prioritising general authorisations for small scale users, only using permits for large scale users and supporting own public investments in infrastructure in the form of hydraulic property rights creation. Van Koppen concluded by arguing that the

starting point for delivery of water services should be the recognition of a right to 'homestead-scale multiple use water services' by taking into account people's multiple water uses and needs from multiple sources.

Dr. Phillippe Cullet from the School of Oriental and African Studies of the University of London began by discussing the need for reform of water laws in India. Water law is based on old principles and out-dated legislation. The lack of new/appropriate legislation inhibits operationalising the human right to water. There has been disappointment with government in regards to managing water resources and supply-led management has entirely failed to fulfil goals of universal access. With increasing physical water scarcity, there needs to be more focus on managing water resources and providing access to all. Water sector reform in India based on international policy consensus and Indian policy has led to water being accepted as an economic good. The reform focused on demand-led and decentralised water programmes. Participation was limited to 'users' and the private sector - those without access were excluded. A World Bank pilot project helped progressively mainstream the World Bank's policy on urban drinking water needs to the national level in India, but had no reference to human rights. Reforms based on the reform and World Bank policy failed to address the existing inequalities in access to water. The exclusion of non users failed to measure up to democratic standards in place in India. Decentralisation led to the withdrawal of government without effective accountability mechanisms at the local level. Cullet concluded that reforms in India were not based on existing legal human rights principles and are failing to contribute to their realisation. There is a need for another set of reforms anchored in the fundamental right to water. Drinking water priority needs to be anchored in law, not policy.

Professor Atilla Tanzi of the University of Bologna pointed out that international water law sets out general rules addressing relations between co-riparian states of transboundary watercourses, but the exercise of sovereignty over purely domestic watercourses has long been outside the scope of international law. Tanzi noted that it was first through the entry of the environmental dimension into the water law process that human needs have received some recognition within the body of international water law. One instrument is the UNECE 1999 Protocol on Water and Health, which entered into force in 2005. It represented a concrete tool in Europe for the implementation of the human right to safe drinking water and sanitation. He showed how the Protocol is consistent with General Comment No. 15 and that NGOs can bring complaints to the newly established committee under the Protocol on Water and Health.

Discussion: Some participants argued that the Mexican experience showed the dangers of the permit system due to the large numbers of permits required. It was commented that different institutional trajectories result in different positions that lead to constraints on availability in practice. In China, for example, the State prioritises industrialisation and urbanisation instead of the provision of water for agriculture or peasants with the consequence that there is a clear limitation on the right to water for rural areas. In Kenya, there are places where water is unavailable yet there are nomadic groups whose animals need water too - hence a holistic approach towards the provision of water is needed. A participant queried whether there was a normative ground that will support the increase in the daily water allocation of 50 litres per person per day to 100 litres per person per day.

Burchi acknowledged that there is, in most cases, a gulf between a beautiful piece of legislation and how it plays out in reality. Nevertheless regulation has a role to play as it is not enough to leave traditional customary practice in the hands of the markets as water

resources are a stock of public relevance and regulation blurs and minimises the opportunity for conflict. Burchi pointed out that regulation has to go hand in hand with transparency and accountability and this invariably calls for a functioning judiciary to publicly inform and make accountability ingrained into the system. Van Koppen indicated that her multiple use ladder crosses both water and basic food needs, but certainly had implications for traditional understanding of 'domestic uses'. Tanzi concluded the session by stating that Article 9 of the Protocol on Water and Health makes a provision for member States to enhance public awareness about use of water and protection of the environment.

4. The Broader Development Context

Dr. Anna Russell of the University of Oxford explained that international development and international human rights discourses have been historically disconnected from one another in theory and in practice. Development specialists have traditionally worked in isolation from human rights advocates, and it was not until the 1990s that significant convergence was discernible between the two fields. Today, little empirical research exists that looks at the intersection of the fields in practice and the extent to which the agendas are actually seen to be 'mutually reinforcing'. Therefore using the right to water as a case study, an empirical investigation was conducted into how various groups (international organizations, NGOs, and transnational corporations) understand and use human rights in the context of international development discourse. A qualitative methodology was employed, which consisted of documentation review and interviews of key informants. Russell's findings revealed that the right to water is often seen as a theoretical construct and having little influence on improving universal access to basic services, or at times, it is simply

seen as a development outcome. There was noticeable resistance to the entry of rights language into the development sector. However, attraction to its inherent advocacy and empowerment aspects were commented on by the three groups. The organizations which use the language tend to do so to spark political mobilisation, and as a result, the right to water, as well as human rights more generally, tend to be associated with any number of vague principles of participation, non-discrimination, access to information etc. Overall, there was little association of the right to water with the international human rights framework, and a general detachment from relevant legal obligations and normative standards. Accordingly, it was suggested that there is a strong need to reintroduce reference to the international human rights framework when integrating rights into development cooperation or else risk the ability of human rights to bring about social change in the future.

Dr. Jackie Dugard, University of Witwatersrand, and **Malcolm Langford** gave an overview of the South African policy, law and practice on water services. The right to water is included in the constitution and the provision of water services is located in a rights-friendly legislative and policy framework. The devolution of water services to local government since 2001 has seen the erosion of some progress that had been made in prior years. This has resulted in water disconnections for the poor as municipalities are under pressure to achieve full cost recovery in water services. There is no national regulation of water supply in South Africa since it is left to the local government. This may be partly responsible for some of the backlogs in access and wide variance in water tariffs. Privatisation was introduced in a few municipalities, but with problematic results. The presenters highlighted the significance of the ground-breaking *Mazibuko* case which resulted in the High Court ordering the municipality to supply 50 litres per day per

person as the acceptable minimum standard and halt the use of prepayment meters.⁴

Daniela Mihailova, Equal Opportunities Foundation, Bulgaria, commented that discrimination against Roma people in Bulgaria was rampant although many Roma people regard themselves as Bulgarian. Access to water and sanitation facilities is very poor for Roma. Many of them were not part of city regulation plans and were also prone to being evicted. There is no running water for Roma households and, in the rare situation that it exists, it is likely to be cold water. Other basic services are virtually non-existent, such as garbage removal. Mihailova concluded by noting that a special commission was created by a piece of legislation passed in 2004 to curb discriminatory practices against Roma people.

Discussion: It was asked whether privatisation could be a good strategy with regards to improving access to water and sanitation services. It was further inquired as to what the understanding was in South African municipalities on the right to water. It was observed that food as a human right has become a topical issue, but queried whether the recognition of food as a human right helped in reducing instances of poverty.

Dugard argued that privatisation has ignored poor people and this makes regulation even harder. If the government is too weak to provide water and sanitation services, then it would be harder to regulate a private enterprise rendering such services. It was further noted that with regards to the South African scenario, the issue is not about availability of resources, but rather distribution, and this is epitomised by the class struggles between very wealthy people and very poor people. Mihailova noted that privatisation has been a major handicap especially in Western Europe as competition

between service providers of public goods, such as water and sanitation, is non-existent with the result that such goods are being distributed by private monopolies and this has resulted in limited benefits particularly for poor people.

Langford noted that their interviews with 15 municipalities had not focused so much on officials' understanding of the right to water and sanitation, but rather on their policies and self-evaluation. However, some officials in the national department had acknowledged that the recognition of the right to water and leading court judgments on socio-economic rights had been very important for them in justifying progressive policies internally and externally.



5. Water Services and the Market

Water supply has been privatised and re-municipalised in many Argentinean municipalities in the last two decades, noted **Carolina Fairstein** of Centre de Estudios y Legales Sociales (CELS), Argentina. This has resulted in a range of community and civil society based legal strategies being directed towards both public companies and private entities that have attempted to give a concrete meaning to the human right to water. Fairstein argued that the right to water provides a solid and legitimate base on which communities and civil society organisations can shape their demands for improvements in water and

⁴ Note that the case was ultimately unsuccessful before the Constitutional Court although the policies of the Municipality partly changed in the process.

sanitation. She concluded by emphasising the importance of developing an array of systematic and complementary strategies for enforcing the right to water and sanitation. In the case study under review, the Conet community had been able to access water after a seven-year long struggle with both public and private providers.

Nicola Colbran of the Norwegian Centre for Human Rights in her presentation on water supply in Jakarta, Indonesia, pointed out that one main reason behind the lack of universal access to water in the city was the historical tendency to treat water as a political good. This resulted in access to water supply being restricted to certain types of users and certain areas through deliberate urban planning and water supply management which followed the politics of the particular administration in power. However, during the term of the New Order government (1966 – 1998), water began to be viewed as an economic good also. In 1998, the piped water network in Jakarta was privatised, which continued and strengthened this trend of viewing water primarily as an economic good. The privatisation process lacked transparency and accountability, and there has been little marked improvement in service despite the privatisation.

Professor Bill Derman commented on the emerging phenomenon of privatisation from below. His research in Zimbabwe and Malawi revealed that the right to water may exist on paper only as the bulk of the people did not know how to politically leverage their rights. A borehole may be dug only to be commandeered by local elites who charged for the water. One person's crisis translates into another's opportunity to make money, thereby constituting a colossal challenge on operationalising the right to water.

Discussion: One response to Fairstein's presentation noted that it emphasised more of the problems, but notwithstanding there has been considerable success from the replacement of informal providers by formal

providers. Another commented that while the privatisation of water services in Jakarta and Buenos Aires had not been translated into an improved service as had been anticipated, private sector participation may be a necessity particularly where the water supply and sanitation infrastructure has been rendered obsolete after years of neglect by public authorities. It was commented that the issue should not be whether or not to privatise water and sanitation services, but rather that all options that deliver results in the field be explored. It was pointed out by another participant that water does not necessarily have to be provided free and international human rights law as such does allow for privatisation. Fairstein was asked to elaborate on the possibility of using General Comment 15 as an advocacy tool.

Fairstein responded by noting that the new water provision framework with public providers in Argentina has been partially successful - a significant number of people still do not have access to water though and are still waiting. She further pointed out that the judicial system in Argentina is quite good and independent, but poor when it comes to dealing with constitutional cases. Still there has been recourse to General Comment No. 15 in Argentinean courts, both by counsel and judges. She noted that the regulatory framework is not adequately drafted and there are still problems of accountability and access to information.

Colbran pointed out that the privatisation process in Jakarta lacked transparency and accountability, and from all accounts was permeated with corruption and nepotism. The private operators have failed to achieve many of the targets set in the concession contracts, with the result that piped water mostly benefits upper and middleclass users. The contracts are favourable to the private providers and have caused the Jakarta government huge losses. She commented on one of the conclusions of the Constitutional Court, namely that if its considerations, which

form the basis of its decision, are not observed by the government in the implementing regulations of the Water Resources Law, the Law could be reviewed again by the Court.



6. Social Choice and Norms

Dr. Rob Hope, University of Oxford, argued that there is a mismatch in the provision of water services and this is captured by an apparent contradiction that more people without access to water are in rural areas yet the bulk of the funding in water services is channelled towards urban areas. He pointed out that efforts to effectively capture people's preferences for water services are not straightforward and may be no more policy relevant than normative rationales if they are not backed up by political support for policy change at scale. He argued that empirical studies often provide a contextual basis to illustrate the scale, process and conditions under which water policy norms could align with societal choices. According to the presenter, the General Comment No. 15 actually aligns well with many empirical studies on social choice.

Dr. Nandita Singh of the Royal Institute of Technology, Sweden asserted that the right to water and sanitation has been most commonly approached from the perspective of machinery and mechanisms for implementation. She said that it is imperative to understand the micro-level processes at the interface where the duty-

bearing agents implementing action come face-to-face with the right-holders in the community who interpret the action within the context of their socio-cultural norms. As a result, implementation of action for facilitating exercise of the right does not necessarily lead to its realisation. In fact the right-holders exhibit a continuum with respect to realisation of the right, from those who are unaware and without realisation to those who have fully realised the right. There is a need to address the underlying socio-cultural factors if everyone can move to full realisation and not merely implementation.

Malcolm Langford and **Virginia Roaf**, COHRE, pointed out that since few countries have made significant progress in providing adequate sanitation there was interest from development and human rights practitioners to recognise sanitation as a human right given its notable exclusion in General Comment No. 15 on the Right to Water. They noted that the right to sanitation had been recognised in more legal documents than commonly understood, but asserted that it was critical that the UN Human Rights Council recognise it as a right given it was less recognised than the right to water. However, they noted that there were a number of key conceptual issues to be addressed, particularly how the collective dimensions of such a right would be situated within an individual rights framework and what level of technology would meet minimum and adequate standards in economic and social rights jurisprudence.

Discussion: One participant inquired as to the normative developments in the past eight years with regards to the right to sanitation. It was asked whether this right could not be appropriately referred to as the right to a toilet or the right to service; whether sanitation encompassed water-borne sanitation and pit latrines; and if a rights-based approach to sanitation is useful. Some participants dismissed fears over including the collective dimensions of the right. One could interpret the right to sanitation through existing rights

as there is a strong argument for including sanitation within the right to health and the right to an adequate standard of living. However, another argued that the human rights obligation to explicitly recognise the right to sanitation should not be questioned, but rather the starting point should be whether the right is an individual or a collective one.

Langford noted that the right to sanitation is recognised in Kenyan policy and South African law, and one can argue that it has led to a greater focus on the poor and the creation of accountability mechanisms, particularly in South Africa. There is also potential for increased judicial enforcement through clearer recognition, although there have been some cases on sanitation under other human rights, and a right to sanitation could also help in raising consciousness on the issue.

7A. Fiscal Resources and Affordability

Water has become an economic good for which everyone, even the poor must pay, stated **Dr. Simone Klawitter** of GTZ German Technical Cooperation. To build, rehabilitate and manage water and waste water is cost intensive yet the ability to pay for water is limited. Setting the price of water is a balancing act between cost recovery principles and affordability, which should take into account different types of subsidies. The Zambian water sector reform resulted in ten commercial utilities rendering water and sanitation services to urban and peri-urban areas under the able stewardship of a national regulator, the National Water Supply and Sanitation Council. She stressed that transparency is enhanced by the participation of Water Watch Groups, which are made up of volunteers from the community. This enables consumer involvement in water governance, handling of unresolved consumer complaints regarding service quality and sensitisation of consumers of their rights and obligations.

With regards to affordability, service providers provide flexible payment structures and subsidies are provided with excellent pro-poor targeting, she claimed.

Henri Smets from the French Water Academy stressed that water for human consumption is either a legal requirement or an official target under a number of treaties and national laws. It is not the right to buy bottles of mineral water, but the right to consume drinking water even when it is not possible to pay for it. Although there is general consensus that water prices should be reasonable, there is no agreed formula to set up a limit of reasonableness or economic accessibility. It was suggested that economic affordability of drinking water and associated sanitation may be deduced from a statistical viewpoint by an index comparing the water and sanitation bill of a household to its disposable income. This was disaggregated by regions and by income deciles in order to indicate possible indexes per region. When the affordability limit is clearly defined, the issue is how to ensure efficiency in tariffs while guaranteeing access to all. This may require differentiated pricing of drinking water services to provide assistance to poor households. Such policy is in force in over 50 countries and does help the poor access water at a more affordable price

Lack of financial resources is a common defence for failure to progressively realise the right to water and sanitation and other economic and social rights, noted **Ed Anderson** of the University of East Anglia and Malcolm Langford of the Norwegian Centre for Human Rights. It must however be underscored that such a defence may be raised but subject to a State currently committing its 'maximum available resources'. The presenters described their new quantitative techniques and comparative statistical profiling as a valuable tool to test whether this defence can hold in a particular case. Using South Africa as a case study, analyses of 260 municipalities across the country was carried out to find

outliers who have poor performance relative to a range of capacity indicators. An assessment on affordability of water and sanitation was also carried out over 24 municipalities. The comparative profiling revealed wide variances in performance vs. capacity and two municipalities have been selected for further investigation.

Virginia Roaf, COHRE, and **Emilie Filmer-Wilson**, UNDP, began by noting that in 2006, UNDP practitioners voiced a strong demand for more guidance on how to link human rights with the MDGs. One response was to incorporate a human rights based approach into the MDG Needs Assessment tools used to budgeting how much it will cost a State to reach the MDGs by 2015, including the water and sanitation target. The result was that the tool was adjusted to change both the process for costing and the costings, as well. This included introducing accountability into planning process and costing complaint and procedures for discriminatory practices or failure of States to implement policies. Emphasis was given to inequality; ensuring that interventions are reaching those groups most marginalised. A focus on enforcing laws and policies was included together with emphasising the importance of a more participatory process and attention needed to be given to the process by which the Needs Assessment models are 'rolled out' to States. In the process of the human rights based approach consultation, a number of tensions arose, such as the high resource demands of participation; the trade off between focusing on the most marginalised groups that are more costly and harder to reach over reaching a greater number of people that are easier to reach; and how to collect disaggregated data when that data is not available?

7B. Self determination, Equality and Law

Lara El Jazairi, COHRE, stressed that the State is the traditional human rights duty-bearer and primarily responsible for respecting, protecting and fulfilling the human rights of its citizens. The Occupied Palestinian Territory (OPT), despite not having the status of a State, the Palestinian Authority (PA) has expressed its commitment to realising the human right to water and sanitation by the explicit inclusion of the right to water in Water Law No.3 (2002) and the mainstreaming of human rights principles in water sector policy and strategies. The critical question however is to what extent the PA can provide for this right within the context of occupation. Key impediments include unequal allocation of water resources shared between Israel and Palestine to the detriment of Palestinians; Israel's veto of infrastructure developments through the Joint Water Committee; Israel's punitive destruction of water and sanitation infrastructure; and security measures, such as the Wall, roadblocks and checkpoints, which restrict access to water resources, services and facilities. The financial boycott and the blockade on Gaza have only worsened the situation. Jazairi explained that the responsibility for this retrogression of the right to water and sanitation lies primarily with Israel and the western States participating in the boycott.

Domingo Lovera, University of Diego Portales, noted that a decades old property law in Chile constituted a serious curtailment of governmental initiatives within the realm of the public sphere. The right to water and sanitation were also not included in the constitution although some other economic, social and cultural rights are contained in a rather weak fashion in the constitution. Chile's laws provide for the commodification of water services and are susceptible to peddling on the market despite waters' legal qualification as a public good. This has resulted in concerted

efforts to put pressure on the government to redress historical injustices against the indigenous peoples, who have been negatively impacted by water laws as their lands, resources and culture have come under systematic attack from settlers and the State. Chile's water laws continue to conceive water as a commodity, a decision made aiming at facilitating its use for hydro-electric purposes. It was highlighted that indigenous groups and civil society groups have responded to the water law with various legal strategies though it was pointed out that lack of participation may be one of the main reasons to explain indigenous people's undermined position.

The increasing demands for energy consumption in China originate from the objectives of establishing an industrialised society and maintaining high economic growth. This has catalysed the State to exploit resources in areas inhabited by minority groups according to **Associate Professor Maria Lundberg** and **Yong Zhou** of the Norwegian Centre for Human Rights. This has resulted in environmental degradation and plummeting living conditions impacting the right to water and other rights. Autonomy has long been adopted as a means for the realisation of the rights of minorities and indigenous people and within its legislative framework, the Chinese Regional National Autonomy Law provides for autonomy in minority concentrated areas. This includes the right of minorities to administer their internal affairs and the autonomy to develop, manage and protect the natural resources. Implementation of regional autonomy involves minority groups to a certain degree, but subject to unified state leadership. The Nu River Hydropower Project was given as a case study; it is being carried out mainly in regional national autonomous areas and it is estimated that it will displace around 50,000 persons from ethnic minority groups.

Thorsten Kiefer, Legal Officer, COHRE Right to Water Programme, gave an overview over how the right to water and sanitation had

been developed in the UN Human Rights Council. Its roots lay in an initiative by the Germans and then Spaniards, who joined forces and created a 3-step strategy for the Council: obtain a mandate for the Office of the High Commissioner to prepare a study; secure a resolution establishing an additional special procedure; and then obtain a full normative resolution recognizing the right to water and sanitation. In November 2006, the Council requested such a study and, although concerns were expressed by a few, the decision was unanimously adopted by 32 co-sponsors. Kiefer highlighted the two key messages that in his view were critical in paving the way for subsequent developments in the field: First, the OHCHR Report, explicitly states that the UN High Commissioner for Human Rights "believes that it is now time to consider access to safe drinking water and sanitation as a human right" and, second, the report in no ambiguous terms underlines the need for an additional UN Special Procedure. In March 2008, the German-Spanish initiative was successful in securing a resolution by consensus to establish a new UN Special Procedure despite serious revision and protest led by Canada and the US. The three-year mandate is a very open and mentions human rights. States made two things clear: the politics of international watercourses must be excluded and the mandate is not to primarily focus on monitoring and violations - although looking for good practices will undoubtedly lead to the discovery of bad practices. But beyond that, a strong mandate holder as per the resolution is not prevented from anything, including country visits on invitation by States, for which the Independent Expert also has been given a budget by OHCHR.

Discussion: In relation to the UN Human Rights Council, it was said that it was imperative to get African States on board with regards to the campaign for the recognition of the right to water and sanitation as they have shown commitment to women and children by adopting the Protocol to the African Charter on Women's Rights, which has very progressive

provisions. Another asked whether or not Chilean laws incorporated and adopted customary rules and principles. It was pointed out that within the broader concept water is seen as a cultural and spiritual issue and such concepts need to be taken into account.

Kiefer remarked that African States have been on the forefront on many issues, but have been hesitant on water. He pointed out that the main challenge is to have the right explicitly recognised in human rights treaties before talking of monitoring and enforcement. He further pointed out that the constitution of Maldives recognises the right to water and sanitation. Lovera commented on the need for a broader understanding of the right to water and sanitation as the quality of life is also affected. Indigenous laws recognising ancestral rights are often not taken into consideration and that can only happen when a case is taken to court, which can determine which rights have more weight in a particular case. Lundberg pointed to the provisions of Article 25 of the Declaration on the Rights of Indigenous People, which provides that indigenous people have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations.

It was asked what was the practical value of the human rights based approach to water and sanitation and the MDGs. It was also enquired as to the meaning of a human rights based approach in the OPT. In response, El Jazairi pointed out that the problem was that Israel is not applying human rights treaties within the OPT. Kiefer noted that the human rights based approach changes the relationship between the duty holders and the rights holders and allows for transparency, participation and accountability. He referred to a forthcoming report by COHRE on MDGs and the right to water.

8. Concluding Panel Debate



In concluding remarks, it was contended by **Thomas van Waeyenberge** from Aqua Fed that the debate on the right to water and sanitation goes beyond the legal context and further research and advocacy is needed on the right to sanitation. **Semund Haukland** of NORAD noted that the importance of water as a human right is unquestionable and Norway has consistently supported such a position. He however voiced his concern that the human rights approach has not proved its validity and it has not added value to the achievement of MDGs. **Catherine Mwangi**, Kenya Water for Health, pointed out that countries are at different levels of development and the right to water needs more emphasis in developing countries, particularly in rural areas and informal settlements. **Nandita Singh** noted that human rights are a matter of human dignity, but there is a need to link the right to water with the human right to an adequate standard of living. **Peter Newbourn** of ODI underscored the need for further research to be carried out before embracing the value of a human rights-based approach to water and sanitation. Semund Haukland from the Norwegian Agency for Development Cooperation (NORAD) concluded the discussion by pointing out that even though the destination has not been reached so many lessons have been learnt. The need for regulation and good governance has been stressed. He also stressed the importance of speaking with one language to communicate the value added from operationalising a human rights based approach.

Annexure 1: Programme

DAY ONE	
OPENING SESSION 1	9:00-10:00
<p><i>Welcome: University of Oslo, University of Oxford</i></p> <p><i>Facilitator: Asbjørn Eide, Emeritus Professor, Norwegian Centre for Human Rights, University of Oslo</i></p> <p><i>Erik Solheim, Minister of the Environment and International Development, Norway</i></p> <p><i>Catarina de Albuquerque, UN Independent Expert on Human Rights Obligations related to Access to Safe Drinking Water and Sanitation</i></p> <p><i>Joakim Harlin, Office of UN-Water</i></p>	
SESSION 2: LAW, POLITICS & POWER: CHALLENGES IN CONTEXT	10.30-12.15
<p><i>Facilitator: Bjørn Føerde, UNDP Oslo Governance Centre</i></p> <p>From law to political economy: the human right to water and sanitation, <i>Malcolm Langford, Norwegian Centre for Human Rights, University of Oslo</i></p> <p>The right to water from a political ecology perspective: the case of Zimbabwe's water reforms, <i>Professor Bill Derman, Norwegian University of Life Sciences and University of Michigan and Dr. Emmanuel Manzungu, Soil Science and Agricultural Engineering, University of Zimbabwe</i></p> <p>Women, water and access: grounded reflections on the right to water and sanitation, <i>Professor Anne Hellum, Institute for Women's Law, University of Oslo</i></p>	
SESSION 3: CONFLICT OR CONGRUENCE: WATER ALLOCATION	13:30-15:30
<p><i>Facilitator: Professor Anne Hellum, Institute for Women's Law, University of Oslo</i></p> <p>National water allocation legislation – A human rights perspective. <i>Stefano Burchi, Food and Agricultural Organisation (FAO)</i></p> <p>Rights, customary law and water resource management: comparative perspectives, <i>Dr. Barbara van Koppen, International Water Management Institute, Pretoria</i></p> <p>The human right to water in India and Water Law Reforms, <i>Dr. Philippe Cullet, SOAS, University of London</i></p> <p><i>Comment: International water law and the long path towards the human rights dimension: the UNECE Water and Health Protocol, Professor Attila Tanzi, University of Bologna</i></p>	
SESSION 4: THE BROADER DEVELOPMENT CONTEXT	16:00-17:30
<p><i>Facilitator: Dr. Nandita Singh, Royal Institute of Technology, Sweden</i></p> <p>Empirical reflections on the role of human rights in international development discourse: a case study of the right to water, <i>Dr. Anna Russell, University of Oxford</i></p> <p>South Africa: law, practice and contestation, <i>Dr. Jackie Dugard, University of Witwatersrand and Malcolm Langford, University of Oslo</i></p> <p><i>Comment: Roma and the right to water and sanitation in Bulgaria, Daniela Mihailova, Equal Opportunities Foundation</i></p>	

DAY TWO

SESSION 5: WATER SERVICES AND THE MARKET

9:00-10:30

Facilitator: Dr. Philippe Cullet, SOAS

Argentina: Privatisation and re-municipalisation in the community context, *Carolina Fairstein, Centro de Estudios Legales y Sociales (CELS), Argentina*

From a 'political good' to an 'economic good': the Case of Jakarta, Indonesia, *Nicola Colbran, Norwegian Centre for Human Rights*

Comment: Privatisation from below, Professor Bill Derman, University of Michigan

SESSION 6: SOCIAL CHOICE AND SOCIAL NORMS

11:00-12:30

Facilitator: Karin Lexén, Swedish Water House

Water policy and societal choice, *Dr. Rob Hope, Oxford Water Programme, University of Oxford*

Socio-cultural norms, human rights and access to water and sanitation, *Dr. Nandita Singh, Royal Institute of Technology, Sweden*

Mentioning the unmentionable: The right to sanitation in law and practice, *Virginia Roaf, COHRE and Malcolm Langford, University of Oslo*

SESSION 7A: FISCAL RESOURCES AND AFFORDABILITY

13:30-15:30

Facilitator: Dr. Rob Hope, Oxford Water Programme, University of Oxford

Testing the capacity defence: assessing local and national compliance using econometric modelling, *Dr. Ed Anderson, University of East Anglia and Malcolm Langford, University of Oslo*

Budgeting for the right to water and sanitation - reflections on integrating the right to water in MDG costing models, *Virginia Roaf, COHRE and Emilie Filmer-Wilson, UNDP*

Full cost recovery, affordability, subsidies and the poor, *Dr. Simone Klawitter, GTZ Zambia*

Quantifying affordability of water supply and sanitation, *Henri Smets, French Water Academy*

SESSION 7B: EQUALITY, LAW AND DEVELOPMENT

13:30-15:30

Facilitator: Andrew Preston, Association for Water Studies (FIVAS) Norway

Palestine: challenges to progressive realisation in the Occupied Territories, *Lara El-Jazairi, COHRE*

Chile: Indigenous peoples and the sale of water resources, *Domingo Lovera, University of Diego Portales*

Natural resource exploration, autonomy and national minorities in China: an institutional approach to the implementation of the law in relation to the right to water, *Associate Professor Maria Lundberg, China Programme, Norwegian Centre on Human Rights and Yong Zhou, Chinese Academy of Social Sciences*

The politics of right to water at the Human Rights Council, *Thorsten Kiefer, Centre on Housing Rights and Evictions & Phd Candidate, University of Amsterdam*

SESSION 8: CONCLUSIONS

16:00-17:00

Concluding Panel: *Semund Haukland, NORAD; Susanne Schmidt, UNDP; Catherine Mwangi, Kenya Water for Health Org; Peter Newbourn, ODI; Nandita Singh, Royal Institute of Technology, Sweden, Thomas van Waeyenberge, AquaFed*

Annexure 2: Participants

Alice Mwangi, UNDP Kenya

Alma Burciaga, Norwegian Centre for Human Rights

Andrew Preston, Institute for Water Studies (FIVAS)
Norway

Anna Russell, University of Oxford

Anne Hellum, Institute for Women's Law,
University of Oslo

Ann-Mari Karlsson, Swedish Water House

Asbjørn Eide, Norwegian Centre for Human Rights

Attila Tanzi, University of Bologna, Italy

Barbara van Koppen, International Water
Management Institute, Pretoria

Bjørn Førde, UNDP Oslo Governance Centre

Carolina Fairstein, Centro de Estudios Legales y
Sociales

Catarina de Albuquerque, UN Independent Expert
on Water

Catherine Mwangi, Kenya Water for Health Org.

Cecilie Hirsch, Fivas Norway

Daniela Mihailova, Equal Opportunities

Domingo Lovera, Human Rights Center, U of Diego
Portales

Ed Anderson, University of East Anglia

Emilie Filmer-Wilson, UNDP Oslo

Emmanuel Manzungu, University of Zimbabwe

Erik Solheim, Minister, Environment and Int.
Development

Gad Awounda, Kenya National Human Rights
Commission (KNHRC)

Geir Lokken, Human Rights and Democracy Section,
Ministry of Foreign Affairs, Norway

Hakan Tropp, UNDP

Henri Smets, French Water Academy

Hugo Tremblay, Dundee University

Igor Palandzic, UNDP Bosnia

Inga Winkler, UNDP Consultant

Ingunn Ikhdal, University of Oslo

Jackie Dugard, University of Witwatersrand

Joakim Harlin, UNDP

Juan Camillo, Coordinador Campaña

Julie Aubriot, Action Against Hunger and UNICEF
Advisor

Karin Lexén, Swedish Water House

Khulekani Moyo, Norwegian Centre for Human
Rights

Kristen Lewis, UNDP Consultant

Lara El-Jazairi, COHRE Right to Water Programme

Louise Nylin, UNDP Europe and CIS

Malcolm Langford, Norwegian Centre on Human
Rights

Mara Bustelo, Office of High Commissioner for
Human Rights

Maria Lundberg, Norwegian Centre on Human
Rights

Nadia Sood, SN Power

Nandita Singh, Royal Institute of Technology,
Sweden

Nathalie Mivelaz, UN OHCHR

Nicola Colbran, Norwegian Centre on Human Rights

Peter Newbourn, ODI

Philippe Cullet, SOAS

Professor Bill Derman, Norwegian University of Life
Sciences

Rob Hope, Oxford Water Programme, University of
Oxford

Roland Werchota, German Development
Corporation Kenya

Semund Haukland, NORAD

Simone Klawitter, GTZ Zambia

Susanne Schmidt, UNDP

Stefano Burchi, Development Law Service, FAO

Tara Smith, Norwegian Centre for Human Rights

Tharaldsen Paul Sverre, Norwegian MFA

Thomas Van Waeyenberge, AquaFed

Thorsten Kiefer, Right to Water Programme, COHRE

Tobias Schmitz; Both Ends

Tor Edland, Norwegian Centre for Human Rights

Virginia Roaf, Right to Water Programme, COHRE

Yong Zhou, Chinese Academy of Social Sciences

For further information, please see the conference website:

<http://ocwr.ouce.ox.ac.uk/international-righttowater-conference/>

