

Thematic section: The human right to water and sanitation: The glass is half full

Jeroen Warner

Acting Editor-in-Chief, International Journal of Water Governance
Associate Professor of Disaster Studies, Social Sciences Group, Wageningen University, Netherlands.
Email: jeroen.warner@wur.nl

The Human Right to Water and Sanitation: The Glass is Half Full

Given the cliché that ‘water is life, it is something of a shock that we’ve only had the human right to water since 2010, when the United Nations’ General Assembly first adopted a resolutions to that effect. The 1980 UN Convention of the Rights of the Child already referred to water, but despite the arduous work on the part of tireless experts of law like Dutch Professor Paul de Waart, it took all of three decades to see the adoption of a human right entitling everyone to “sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses”. The adoption of an UN resolution would seem to evidence a growing global convergence. However, as **Andrea Gerlak, Madeline Baer and Paula Lopes’** contribution to this IJWG Mini-symposium notes, there are still significant barriers to its fulfilment, to make it more than a beautiful principle. This is where fundamental issues of water governance are brought to bear: who is responsible for ensuring this right, and on what conditions – should water be provided free of charge? If not, what is an equitable price?

The authors’ discourse analysis reveals that we still can see traces of contestation among actors over time on what the right to water and sanitation means in practice and how to implement a rights-based approach to water services. This contestation only deepened in the 1990s, when the World Bank (IBRD) embraced the claim that applying market principles to the water sector and privatization of water utilities, was the solution to ineffective, cash-strapped state-run water and sanitation services. Privatisation however proved dramatic for the human right to water, curtailing states’ policy space. NGOs began to incorporate human rights in their campaigns for water justice, and several states made water a constitutional right. Given the anti-privatisation slant, one would expect private companies to resist the human rights discourse, insisting water is primarily an economic good. But unlike their American counterparts, big European private players have come round too. Things started to shift in multilateral networks as well.

It is a truism in international law that social and economic rights are harder to fulfil than political and civil rights, as they require a state to do something rather than leave something. It is all well and good enshrining the human right to water, as the UN December 2015 resolution does, but without access and affordability, people are still in a dire situation. As it happens, the global community has pledged to do their darnedest to provide safe, affordable water services to all people by 2030 (SDGs). Redressing this injustice is going to take significant direct costs, but also the indirect costs of corruption and mismanagement.

Colin Brown and Léo Heller note in this Thematic Section that there are no clear affordability standards. States, duty bound to provide water to all, may insist on full cost recovery. Economic downturn and restructuring may impel states to start charging for and metering water that used to be provided for free. The poor spend hours fetching water, which may be of dubious quality. Extension of services is of the essence, as time, not money, may be the biggest constraint for the poor to access water supply and sanitation, so the authors note.

Might it be a better idea to work independently from both the public sector and multinational water companies? Brown and Heller explore the Community Level Total Sanitation (CLTS) initiative as an example of home-grown community action with a global reach to take charge and improve sanitation services without depending on subsidies.

A major and well-recognised shortcoming of water as a human right is that it neither clarifies nor enforces the duties for those supposed to fulfil those rights. **Mia Tamarin** draws our attention to ways in which international human rights law may be deployed to *limit* or distort rights and legitimise breaches in contexts of conflict, occupation and territorial annexation. She adduces three arguments: (1) the right to minimum water provision can be taken to mean: just above crisis level (2) despite not only covering the right to life and health but also livelihood, agricultural use is not included and (3) self-determination over one's natural resources. She applies this to water negotiations between Israeli and Palestinian authorities, with devastating outcomes for the latter, enshrining the vast imbalance and legalising the former's territorial claims. The example throws into stark relief the limitations of the emancipatory potential of human rights as a liberal theory of justice (d'Souza 2008).

As Andrea Gerlak and her co-authors note, the debate on human rights does not have to render water a technical issue. It has the potential to give pride of place to the political and ethical back into an otherwise depoliticized environment of water governance. There is a danger, however, as Tamarin notes, of the juridical depoliticization of social conflict and social rebellion. In the context of highly asymmetrical negotiations, water rights can all too easily be "knocked off the table".

Reference

- D'Souza, R. (2008). Liberal Theory, Human Rights and Water-Justice: Back to Square One? *Law, Social Justice & Global Development Journal*, (1), 1–15. U. of Westminster School of Law. Research Paper No. 09–10. Available at SSRN: <https://ssrn.com/abstract=1348610>