



A HUMAN RIGHTS-BASED APPROACH TO WATER AND SANITATION

Briefing Paper

Executive Summary

SDC has extensive cooperation experience in water supply and sanitation, stemming from programmes and projects and national and global policy dialogues. About ten percent of SDC's bilateral resources and a significant part of its multilateral resources are allocated in this domain. Nevertheless, the achievement of the water related Millennium Development Goals requires additional efforts by government authorities and international cooperation, both in terms of increased sectoral performance and additional funds. The recognition that equitable access to safe drinking water and sanitation is a human right buoys SDC's efforts to meet these challenges. A human rights based approach to development integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development. The norms and standards are those contained in international treaties and declarations. The principles include equality and equity, accountability, empowerment, participation, non-discrimination and attention to vulnerable groups¹. Approaching development from a rights perspective informs people of their legal rights and entitlements, and empowers them to achieve those rights. Governments, as primary duty-bearers, must take concrete steps to respect, protect and fulfil the right to water and other water-related rights and to ensure that anyone operating within their jurisdiction – individuals, communities, civil society, and the private sector – do the same².

The right to water entitles everyone to access to sufficient, safe, acceptable, physically accessible and affordable water and sanitation. It holds State authorities accountable for their water and sanitation policy. Governmental obligations with regard to human rights can broadly be categorised as obligations to respect, protect and fulfil³. The recognition that the realisation of human rights is dependent upon resources is embodied in the principle of *progressive realisation*. This

principle mandates the realisation of human rights within the constraints of available resources. It also creates a constant and continuing duty for States to move quickly and effectively towards the full realisation of a right.

There are already several examples from both economically developed and developing nations where the adoption of a human rights based approach to water by the government has led to direct improvements in the situation of water users, especially the poor. Nevertheless, making the right to water a reality poses a number of practical challenges both to governments and water users.

Access to water and sanitation has always had an important place in SDC's work. More recent is the human rights perspective on water. Ensuring that access to sufficient safe water is recognised as a human right constitutes an important step towards making it a reality for everyone. It means that fresh water is a legal entitlement, rather than a commodity or service provided on a charitable basis. It underlines the responsibility of partner governments to achieve basic and improved levels of access to water. It helps to focus on the needs of the poorest and most marginalised groups in partner countries by empowering communities and vulnerable groups to take part in decision making processes. By engaging in water and sanitation projects with a human rights perspective, SDC supports partner governments in meeting an internationally recognized obligation. The right to water helps to frame SDC's dialogue and cooperation with its partners, particularly with respect to alignment and donor harmonisation.

This briefing paper aims to help SDC colleagues and partners understand the issue of the right to water, the challenges associated with its implementation and how such challenges might be addressed.

1 Source: OHCHR at <http://www.unhchr.ch/development/approaches-04.html>
2 Source: OHCHR, WHO, COHRE, CESR, Water Aid, The Right to Water, 2003
3 Source: WHO, 2002

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1. SDC's experience in the water sector

International development cooperation has long considered access to water as an important factor for development and poverty reduction. Access to water in partner countries has been a priority for SDC since its inception in the 1960s. SDC currently has about 170 active water projects mainly in Asia, Africa, Latin America, and the Middle East. Much has been achieved over the past decades. Today, projects are implemented in a participatory manner, with the partner "in the driver's seat". SDC's strategy aims to establish links between projects in the field, capacity building of key actors and policy dialogue bilaterally with governments as well as at the global level. This renders the projects more effective and promotes a dynamic process of mutual influence and support among the different levels.

Water and Sanitation in Peru: an example of SDC's strategy

SDC in Peru combines financing and technical support to local projects that may be replicated on a larger scale. At the micro level, local actors make the decisions, participate in the process, and provide input in cash and manual labour. Private firms or NGOs provide construction, capacity building for operation as well as maintenance and hygiene education, under the supervision of a community committee. SDC focuses on capacity building with respect to local NGOs, the private sector and local authorities in order to increase their responsiveness to beneficiaries, especially the rural poor. SDC emphasises transparent decision-making that includes the participation of poor people. SDC uses such field experience to assist with the shaping policy reform and national projects through its partnership with the World Bank's Water and Sanitation Programme (WSP) in Peru, participation in a national multi-stakeholder platform of dialogue as well as for a direct dialogue with Peru's water and sanitation authorities.

SDC also actively participates in international policy work on water-related issues by supporting several multilateral organisations active in the water sector.

Together with other stakeholders, SDC was instrumental in developing the concept of Integrated Water Resource Management (IWRM). SDC supports the Global Water Partnerships (GWP) in order to establish national plans to harmonize the different (and sometimes conflicting) uses of limited water resources, while also giving priorities to basic needs. SDC co-founded the Water and Sanitation Collaborative Council in 1990, a network of local partners in the South which established and advocates for a common global approach to water and sanitation for all. SDC also supports the Joint Monitoring Program (JMP) in charge of follow-up related to the MDGs that are relevant for water management.

There is a growing awareness at international, national and local levels that, despite current efforts, the need for water continues to increase whilst water resources are becoming increasingly scarce. In many countries water scarcity is an issue of power, poverty and inequality, rather than of physical availability⁴. Many poor people continue to have no access to safe drinking water or toilets and poor hygiene conditions. Millions of poor people, the majority of who are children under five, die because of polluted water related reasons. Despite some progress, recent analyses by the JMP and UNDP's Human Development Report on the global water crisis show that there is a pressing need to do more to address this situation. The water and sanitation sector needs more funds and to increase its performance, in order to reach the targets set by the Millennium Development Goals⁵.

⁴ Source: UNDP Human Development Report 2007.

⁵ See: http://www.unesco.org/water/wwap/facts_figures/mdgs.shtml The Millennium Development Goals and Water: UNESCO, World Water Assessment Programme.

The right to water is now firmly anchored in SDC policy, being one of two priority values of SDC's 2004 Water Strategy⁶ and underpins recent strategic and political tools relevant to the water sector. SDC supports various initiatives that analyse the challenges and potential of the right to water in the practices of developing and transition countries. The following chapters will elaborate upon what this means in practice.

2. The human rights perspective on water

a) A human rights based approach to development

Since the 1990s, the close links between development and human rights have been widely recognised. Development is viewed as a process of realising human rights. Peaceful and sound economic and social development requires political and legal systems based on non-discrimination, participation, accountability, the rule of law, and an active civil society at both the national and international levels. These governance principles are enshrined in the human rights framework. Moreover, poverty is no longer understood merely as a lack of income, but more broadly as a lack of the basic capabilities and opportunities, freedoms and rights that are necessary to live life in dignity. Therefore, development cooperation is no longer perceived as mere "service delivery". Its role includes the empowerment of rights holders as well as the strengthening of those institutions and stakeholders who have a duty to respond (duty bearers) in order to realise basic human rights.

Human rights and development in international policy

The close relationship between human rights and development has been affirmed by key international policy meetings, including the 1993 Vienna Conference on Human Rights, and the UN Millennium Development Conference. The landmark UN Inter-Agency Common Understanding on a human rights-based approach to development (2003) provides the basis of relevant work of UN agencies such as ILO, UNICEF and UNDP. In 2005, SDC adopted a new human rights policy⁷ which establishes the human rights based approach to development as a strategic orientation.

One of the key questions is how a human rights based approach can provide a tool for strengthening development cooperation. According to SDC's human rights policy, a human rights based approach⁸ includes three key elements:

1. Use the standards of the international human rights framework as a reference;

⁶ The other is "water as a common good".

⁷ SDC's human rights policy: Towards a life in dignity, realizing rights for poor people, Bern, (SDC) 2006

⁸ There is no overall definition of a human rights based approach to development: The definition used in SDC's policy paper draws upon the UN Common Understanding.

2. Integrate key human rights principles, namely non-discrimination and equality, inclusive participation, accountability and the rule of law, universality and indivisibility into strategies, programmes and policies;
3. Empower right-holders to claim their rights and strengthen capacities of duty-bearers to meet their obligations.

b) Access to safe water: a fundamental human need and a basic human right

The right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for essential personal and domestic uses. Every person is entitled to access to basic sanitation in or near their homes as well as at schools, hospitals and places of work. The right to water means that every person should have access to information on water and sanitation issues and to hygiene education. This right must be afforded without discrimination to men and to women.

Access to water as a human right: The legal basis for international accountability

The human right to water has been recognised by most states as well as by international organizations, NGOs and the business community. It is explicitly recognised in the Convention on the Elimination of Discrimination Against Women (1979) and the Convention on the Rights of the Child (1989), as well as in a number of regional human rights and environmental treaties and political declarations. It is implicit in the right to an adequate standard of living and the right to health guaranteed in the International Covenant on Economic, Social and Cultural Rights (1976).

In its General Comment No. 15 on the Right to Water (2002) the UN Committee on Economic, Social and Cultural Rights affirms this right and clarifies its scope. Although the General Comment is not legally binding, it is an authoritative interpretation of the International Covenant on Economic, Social and Cultural Rights by the Committee who is responsible for monitoring its implementation in the countries which have ratified the Covenant. Pursuant to the UN human rights treaties, States are required to periodically report on their implementation to specific expert bodies that monitor the implementation of the treaties and provide a platform for accountability.

The right to water is a precondition to the enjoyment of other human rights or is narrowly linked to them. For example:

- The right to food: unsafe water consumption and absence of basic sanitation and hygiene undermines the efforts to assure basic nutrition and consequently the right to food.
- The right to life and the right to health: unsafe water, inadequate sanitation and the lack of basic hygiene are the main causes of infant mortality worldwide.
- The right to education for all: in many countries fetching water is the task of women and girls. Where there is no easy access to water, girls have to help their mothers with this heavy task and often

refrain from going to school as a result. In other cases, the lack of adequate sanitation facilities in schools poses a particular risk to the dignity and safety of girls and encourages parents to prohibit the schooling of their daughters. Moreover, water borne diseases often mean that children do not go to school.

- The right to adequate housing: sanitation is also an important aspect of the right to adequate housing, included in the right of everyone to an adequate standard of living.
- The right to security of person is an important issue in situations where it is unsafe to fetch water or use the existing sanitation facilities, particularly for women and girls.
- Civil and political rights are essential for effective participation in shaping decisions in the water sector as well as for the accountability mechanism to function.

The ‘human right to water’ should be distinguished from ‘water rights’, which generally refer to accessing or using water for specific purposes. The law concerning water rights may define who can use water and under which circumstances. Individuals may be allocated water rights, which may consist of a predefined amount of water for specific purposes under specific conditions (e.g. farmers have water rights for irrigation purposes). However, these two types of rights are interlinked. The right to water focuses on the amount of water necessary for basic human needs (between 20 to 100 litres per person per day), which is a small amount in comparison to the large quantities used for economic purposes (1500 litres per person per day in France, for example).

General Comment No. 15 does not broach general issues linked to environmental protection or integrated management of resources, although the concept of “safe” water is substantially linked to such issues.

c) Duties, rights and responsibilities

The human rights based approach to water and sanitation sets out the particular duties of authorities and rights and responsibilities for water users.

General Comment No. 15 of the UN Committee on Economic, Social and Cultural Rights states that the right to water, like any human right, imposes three types of obligations

on States parties: obligations to *respect*, obligations to *protect* and obligations to *fulfil*.

- **The duty to respect:** maintaining existing access. The obligation to *respect* requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to water. The obligation includes, *inter alia*, refraining from engaging in any practice or activity that denies or limits equal access to adequate water; arbitrarily interfering with customary or traditional arrangements for water allocation; unlawfully

diminishing or polluting water, for example through waste from State-owned facilities or through use and testing of weapons; and limiting access to, or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts in violation of international humanitarian law.

- **The duty to protect:** regulating third parties. The obligation to *protect* requires State parties to prevent third parties from interfering in any way with the enjoyment of the right to water. Third parties include individuals, groups, corporations and other entities as well as agents acting under their authority. The obligation includes, *inter alia*, adopting the necessary and effective legislative and other measures to restrain, for example, third parties from denying equal access to adequate water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems.
- **The duty to fulfil:** facilitate, promote and provide. The obligation to fulfil requires States parties to adopt the necessary measures directed towards the full realization of the right to water. The obligation includes, *inter alia*, according sufficient recognition of this right within the national political and legal systems, preferably by way of legislative implementation; adopting a national water strategy and plan of action to realize this right; ensuring that water is affordable for everyone; and facilitating improved and sustainable access to water, particularly in rural and deprived urban areas.
- **The duty to respect, protect and fulfil without discrimination:** treating people equally. The authorities should establish standards and implement their policies in a way that does not discriminate against certain groups. Different treatment must be reasonably justified. Special attention should be focused on vulnerable individuals and groups who have traditionally faced difficulties in exercising this right (including women, children, minority groups and indigenous peoples).

These responsibilities may be discharged at the national, regional or local level depending on a country’s institutional set-up. National governments must ensure that the responsible authorities are provided with the resources and mandate to fulfil their duties. In implementing the right, governments can legitimately expect that users will also do their part in ensuring access to water and sanitation for all, for example, by respecting the rules for service delivery and paying for water and sanitation where they are able to do so.

Taking into account limited resources and capacities, and core obligations

States are required to take steps to the maximum of their available resources (including international assistance) so as to **progressively achieve** the full realisation of the right to water. The right can be achieved over time, but States are required to move as expeditiously and effectively as possible towards this goal. Thus, the level of the facilities and services provided should be in accordance with the available resources and capacities. In less developed areas, basic water and sanitation systems may be used rather than complex technology. If resources are limited, the largest possible number of people should be provided with basic services that can be upgraded, instead of giving a small part of the population access to high-tech facilities.

General Comment No. 15 lists some “**core obligations**” **States are required to meet and prioritise immediately**, such as to:

- Ensure access to the minimum essential amount of safe water that is sufficient and safe for personal and domestic uses to prevent disease;
- Ensure the right of access to water and water facilities and services on a non-discriminatory basis, especially for disadvantaged or marginalised groups;
- Ensure physical access to water facilities or services that provide sufficient, safe and regular water that have a sufficient number of water outlets to avoid prohibitive waiting times; and that are at a reasonable distance from the household;
- Ensure personal security is not threatened when having to physically access water;
- Ensure equitable distribution of all available water facilities and service;
- Adopt and implement a national water strategy and plan of action addressing the whole population;
- Monitor the extent of the realisation of the right to water;
- Adopt relatively low-cost targeted water programmes;
- Prevent, treat and control diseases linked to water and ensure access to adequate sanitation.

Where core obligations are not met, a State must be able to show that this situation is due to their inability, rather than their unwillingness, to implement the right.

A human rights based approach to water and sanitation not only sets out **particular rights**; it also implies that **water users have responsibilities**, i.e. not to impede others in enjoying their right to water:

Rights
Right to be informed about roles and responsibilities
Right to benefit from safe water and sanitation services at an affordable price within a defined area
Supply of water in emergency situation
Accessible and affordable water sources and public sanitation for the poorest
No disconnection of essential levels of supply to poor users
To request the assistance of social services

Responsibilities
To claim accountability from the authorities
Not to waste water
Not to pollute the resource
To ensure proper individual sanitation or to be connected to collective sanitation services
To pay a fair price for the services, incl. fees and taxes
To pay the charges for extending services
To comply with restrictions in the case of drinking water shortages
To cooperate with water services

Source: adapted from World Water Council *et al.*, The Right to Water: From Concept to Implementation (2006), p. 11

3. Practical aspects of the implementation of the human right to water and lessons learned

a) Key Elements: Safe, acceptable, affordable, accessible and sufficient water

General Comment No. 15 of the UN Committee on Economic, Social and Cultural Rights not only describes the normative content of the human right to water; it also provides some guidance for its practical application: drinking water must be safe and acceptable, it must be affordable, it must be accessible and it must be sufficient. What does this mean in practice?

- **“Safe and acceptable” water: what quality of water is required?** The water must be safe for domestic use, and a minimum quantity must be safe for drinking, i.e. free from health hazards such as microorganisms, chemical substances, and radiological hazards. It must also be acceptable in terms of colour, odour and taste.
- **Affordable services: what is considered “affordable” in relation to a person’s income?** Payment for water is unaffordable when it reduces the ability of a person to purchase other essential goods such as food, housing, health and education. This should be taken into account in the design of water and sanitation services, in subsidy policies and in water price regulation. No household should spend more than 3% of its income to meet its water and sanitation needs (UN Human Development Report 2006).

- **Accessible services: when are water services considered “accessible”?** A government should ensure access to water in or near the home, school or workplace. Where this is impossible due to a lack of resources, a government should at least ensure basic access, which normally implies that a water source is within 30 minutes collection time. Physical security when accessing water and sanitation should be ensured.
- **“Sufficient” water: how much water per person/day does the human right to water guarantee as a minimum?** The UN General Comment No. 15 indicates that there should be sufficient water for drinking, personal sanitation, washing of clothes, food preparation and personal and household hygiene. These uses will normally require at least 20 litres per person per day. Where resources permit, a government should ensure access to at least 100 litres, as the World Health Organization indicates that this amount is normally required to meet all health requirements.
- **Non-Discrimination: water and water facilities and services must be accessible to all,** including the most vulnerable and marginalised sections of the population, in law and in fact. There should be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.
- **Accessible information:** A human right to water also implies that there should be broad access to information about the government’s water strategies and policies, with a view to making roles and responsibilities transparent and to enable citizens to benefit from services, participate in decision-making and demand accountability.

What is sanitation in terms of human rights ?

The right to an adequate standard of living (enshrined in the International Covenant on Economic, Social and Cultural Rights) also includes access to sanitation.

From a human rights perspective, sanitation means access to, and use of, excreta and wastewater facilities and services that ensure privacy and dignity in a clean and healthy living environment for all. Access to sanitation is required to realise many other rights, such as the right to health, the right to housing, the right to water.

To meet human rights standards, sanitation must be:

- **Safe:** Sanitation must effectively prevent human, animal and insect contact with excreta. Toilets (including latrines) must provide privacy and a safe and dignified environment for all. Water must be available for good personal hygiene, and facilities for safe wastewater disposal must be in place.
- **Physically accessible:** Toilets must be within, or in the immediate vicinity of, each household, public places (in particular schools) and workplace and available for use at all times of the day or night, along with associated services such as removal of wastewater and sewerage or latrine exhaustion. Appropriate facilities for use by children, disabled and elderly persons must also be available.
- **Affordable:** Access to sanitation, including maintenance, must be affordable, without reducing the individuals or household’s capacity to acquire other essential goods and services, such as food, education and health.
- **Culturally sensitive:** The construction and design of latrines should be culturally appropriate. Male and female public facilities, in particular in schools, need to be separate so as to ensure privacy, dignity and safety.

(adapted from: COHRE, WaterAid, SDC and UN-HABITAT, Sanitation: A human rights imperative, Geneva 2008).

b) Making the human right to water a reality: essential factors

In practical terms, a number of factors are required for effective implementation of the human right to water.

First, a country must have **effective laws and institutions**, including a public authority that has a clear mandate and the financial and human resources to implement the human right to water. The national constitution does not necessarily need to recognise the human right to water (in fact, few constitutions do!). However, the law must clearly define the relevant rights and obligations, and identify the respective rights holders and duty bearers. While service providers may be private, public authorities have the responsibility and must have the capacity to set and implement a coherent legislative and contractual framework and monitor the performance of private (and public) service providers. There should be a monitoring process based on structural, process and outcome indicators. Without access to national accountability mechanisms (for example courts, national human rights institutions, water tribunals, the media) it would be difficult for citizens to have their rights respected and realised.

South Africa's legislation requires water services authorities to prepare a water services development plan providing a time-frame within which basic water and sanitation will be provided to those in its jurisdiction. Where an authority cannot meet the requirements of all its existing consumers, it must give preference to the provision of basic water supply and basic sanitation to all. It is required to take reasonable steps to bring its draft water services development plan to the notice of its consumers and potential within its area of jurisdiction and to invite public comment. It must consider all comments received before adopting a development plan and, where requested, report on whether this comment was taken into account or not, and provide reasons. Poor people have a right to 25 litres of free basic water a day. South African legislation requires that in allocating licences for raw water use, regulations must take into account the socio-economic considerations and the need to address past racial and gender discrimination.

(Source: A. Khalfan and A. Russell, 'The Recognition of the Right to Water in South Africa's Legal Order' in *Le droit à l'eau potable et à l'assainissement en Afrique et en Europe*, Académie de l'eau, 2005)

In Romania, the priority of providing drinking water over other uses is expressly stipulated in the Water Law. It also stipulates free use of surface or ground waters for household needs, from sources independent of the centralized supply, for a flow up to 0.2 liters per second. Limiting the quantity of drinking water for domestic uses in favor of other uses is illegal.

(Source: S. Hoffmann, *The Implementation of the Right to Water and Sanitation in Central and Eastern Europe*, 2006, Appendix 2: Case Studies)

Information and education are cornerstones of the human right to water. They are particularly important for transparent and accountable water governance. On the one hand, information and education should be addressed to the general public, especially women, as well as poor and marginalised groups. People need to be aware of their rights and the legal possibilities for enforcement, as well as their responsibilities vis-à-vis other rights-holders. Potential beneficiaries of solidarity mechanisms such as subsidies should be familiar

with their entitlements. On the other hand, public authorities also have to be informed and formed, in order to ensure that they are sensitive to the implications of the human right to water, that they know their duties and are able to act accordingly.

In **South Africa**, each water service institution must have a consumer service to which non-compliance with the regulations can be reported. The Department of Water Affairs is required to establish a national information system on water services that is reasonably accessible to the public. South African legislation requires that in providing financial assistance to users in making applications for raw water use licences, regulations must take into account socio-economic considerations and the need to address past racial and gender discrimination.

(Source: A. Khalfan and A. Russell, 'The Recognition of the Right to Water in South Africa's Legal Order' in *Le droit à l'eau potable et à l'assainissement en Afrique et en Europe*, Académie de l'eau, 2005)

Individual households, communities and municipalities have a role to play in the implementation of the human right to water at the grassroots level. **Community action and active participation of user groups** can ensure that services delivered by public institutions or private actors are adapted to actual needs and respect traditional methods of water management where possible. This contributes to a sense of ownership, which means that people will use the facilities properly, will care for them, will be willing to pay for the services, and will demand accountability.

In **Porto Alegre, Brazil**, the public water company's operations undergo a participatory budgeting process. In public meetings, every citizen can have a say on which new investments should be made first. This model has contributed to dramatic increases in access to water by poor communities in Porto Alegre.

(Source: H. Maltz, 'Porto Alegre's Water: Public and For All,' in B. Brennan et al., *Reclaiming Public Water* (Transnational Institute & Corporate Europe Observatory, 2005).

A **multistakeholder dialogue** involving the various authorities concerned, the private sector, civil society organisations, and poor and marginalized groups, can contribute to the building of political will and the appropriate design of reforms in water management, taking into account the various needs and rights of various groups. It can also effectively contribute to making decisions transparent and holding public authorities accountable.

A basic value for both public and private water and sanitation operators

The right to water is not just relevant for public authorities. Recognition of the right to water can become an element of corporate identity and governance of both private and public operators. In fact, the human right to water and sanitation is recognised by the International Federation of Private Water Operators *AquaFed*, which represents various private water operators ranging from small to the very largest international operators.

Three elements are required for an operator to successfully implement the right to water: (1) a clear contractual definition of the roles and responsibilities of partners in order to facilitate access to water for the urban and peri-urban poor and/or informal settlements; (2) existence of a

low and/or subsidised connection price for poor areas; and (3) existence of a sustainable social mechanism permitting access to the service for vulnerable groups.

Mechanisms of solidarity in cost sharing are essential to ensure equitable distribution of the costs of water and sanitation services. For example, financing basic infrastructure by the State budget can be an effective mechanism to privilege poor users. Tariff systems can be implemented to ensure that the rich users pay more than the poor, or that urban populations pay more than rural populations. If not designed properly, such cross subsidy mechanisms can result in perverse outcomes such as benefiting rich users over the poor who are simply not connected to distribution networks.

Hungary, Colombia and Chile have introduced subsidies that are targeted at particular categories of consumers. In Colombia, the tariff structure is such that users in wealthy areas pay a surplus, while those in poor areas receive subsidies. In Chile, subsidies are granted on the basis of individual means-testing of households.

(Source: Andrés Gomez-Lobo and Dante Contreras, "Water subsidy policies: A comparison of the Chilean and Colombian Schemes." World Bank Economic Review 17, no. 3 (2003): 391-407)

In both the Walloon and Brussels Regions of **Belgium**, social funds have been established and are financed through a levy on water consumption. The revenues of the social funds are used by social centres to cover the costs of water services for the poorest residents. In the Flanders Region, a social tariff has been introduced with progressive pricing of water based on the amount consumed per person per household. Each household is entitled to 15m³ of water per person/year for which only sanitation services must be paid.

(Source: Henri Smets in La mise en oeuvre du droit à l'eau, Institut International de Droit d'Expression et d'Inspiration Françaises, 2005, p. 95-96)

In Switzerland even if the right to water and sanitation is not formally written in the law, cantonal and communal laws ensure that everybody has access to enough water (for example, there are regulations that require each commune to assure that Roma and Travellers have places where there can be connected to water and sanitation). However, for a country like Switzerland with abundant water resources, the right to water implies solidarity with less privileged regions and people. A process of solidarity has been recently launched. SDC facilitates the platform **solidarit'eau suisse** whereby water utilities and Swiss communes wishing to contribute to the extended coverage of access to water and sanitation in poor countries can find development projects waiting for financing or to directly transfer their know-how in a public-public partnership. The platform mobilizes additional financing for water and sanitation programmes and thus contributes to the MDGs.

c) Open questions

A human rights based approach is not a magic formula: it cannot solve every issue related to water management. It does not provide a blueprint on how to respond to the key challenges in ensuring access to safe and secure drinking water for all. However, it pro-

vides an important guidance for decision-making on water issues, the trade offs and gives a framework for accountability of State authorities in water management. For example:

- **How to deal with non-payment of water fees, particularly by those who are not able to pay?** Many countries prohibit disconnection of water services due to non-payment (e.g. United Kingdom); some allow it only in cases of non-essential supply, e.g. to secondary residences, or provide for maintenance of minimum service to cover basic needs (e.g. Argentina). In Hungary, water can be disconnected after 6 months of non-payment, but the person concerned must have access to a public tap. The right to water forces duty bearers to be innovative and to create flexible instruments and approaches, cutting off the bad payers from service delivery without affecting the poorest who cannot pay.
- **How to deal with access to water in slums?** The right to water forces authorities and practitioners to focus on marginalised sectors, areas and groups. Authorities must be innovative and pragmatic in order to realise access to basic services even in poor urban settlements, which are often illegal, provisional and weighed down by security risks, without making these overpopulated areas even more attractive for new inhabitants.
- **How to deal with fragile states where governmental institutions do not exist?** The human rights based approach focuses on the duties of State authorities and thus implies that such public institutions exist. International cooperation should generally and directly engage in rebuilding political, legal and social institutions where they do not exist. However, in fragile states local and traditional institutions often assume the role of State authorities in many respects. The human rights approach could be an impetus at the local level to identify a minimum level of services to be provided by those effectively in power and reduce the marginalisation of the poorest with respect to their basic need to safe water and basic sanitation. Furthermore, the Geneva Conventions (particularly Article 4 of the Fourth Geneva Convention and of the Second Additional Protocol, protecting civilians from inhumane treatment) can be used as a complementary tool to protect the right to water in conflict zones.
- **What is the accountability of non-state actors?** How can private sector actors (e.g. water service providers) and international financial institutions (e.g. the World Bank and regional development banks) be induced to work towards access to water for all and implement the human right to water in their sphere of action? Human rights treaties bind States directly. They are obliged to implement human rights within their jurisdiction and to take their treaty obligations into account when

voting within the context of inter-governmental institutions. International financial institutions are obliged by the terms of their statutes to promote development, and it is increasingly recognised that effective and sustainable development is linked to the realisation of human rights.

Common misunderstandings: the human right to water does not mean...

- *...that water and water and sanitation services must be provided free to all users.* Access must be affordable for everyone, which means that those able to pay must do so. A minimum essential amount may have to be provided at a low cost, or even free of charge (through for example a social fund), to the poorest users. The need for subsidies may be reduced through use of low-cost technology, adequate tariff structure and flexible payment terms for poor users.
- *...that every dwelling must be served by a direct connection to water distribution and sewerage systems even where this is not financially feasible.* Where there are insufficient resources, the right to water and sanitation may be met through non-piped systems (e.g. protected wells) that are safe and in reasonable condition.
- *...that a government would be held responsible for violation of the right to water if it does not have the resources or capacity to fulfil it.* Where resources are lacking, the government may implement the right progressively, but it is bound to take concrete and expedited steps in this direction and must respect some core obligations, including the principle of non-discrimination.
- *...that the government has to provide the relevant services itself.* It may delegate this to an autonomous public institution, such as a municipality) or to a private actor. However, it must provide an adequate regulatory framework and exercise effective control over the service provider to ensure the implementation of the right.

4. The human rights based approach to water management: Significance for SDC

a) Supporting the implementation of a human rights based approach to water

SDC already has wide-ranging experience in fighting poverty in a manner consistent with the protection and promotion of human rights, including in the areas of water and sanitation. Based on this experience, and in accordance with the relevant policy documents, SDC interventions can effectively support partner countries in addressing the challenges and strengthening the

factors important for making the human right to water a reality for all. SDC aims to strengthen the human right to water at all levels, although considering its limited resources it is important to focus on those aspects where SDC's support is most effective.

The human rights based approach to water and sanitation could be reflected in the following SDC actions at the policy and programme level as well as in humanitarian and multilateral work:

At the **policy** level, SDC can

- **Emphasize the human right to water and its importance** in negotiations with partner countries and country programme design;
- **Use global and regional treaties** and policy statements setting out the human right to water as a common **basis for partnership and political dialogue on national policies and development priorities**, for adding legitimacy to the partner country's own efforts;
- Use the core obligations, the relevant recommendations of the international human rights monitoring mechanisms and the human rights principles as substantive **guidance for designing, implementing and monitoring country programmes** in water and sanitation;
- Orient its **support to reforms, national strategies and/or sectoral law** and regulation development towards the human rights based approach to water;
- Support the development of **multistakeholder platforms and/or dialogues** giving a voice to the rights holders, particularly to the poor and discriminated segments of the society (i.e. through a representative NGO) in the local water decision making processes, and foster a dialogue with the relevant duty bearers (c.f. policy principles and guidelines for Private Public Partnerships-SDC seco, SwissRe-)

At the **programme and projects** level, SDC can

“Strengthen duty bearers”: Support partner authorities in meeting their core obligations, respecting human rights principles and overcoming practical challenges, in particular

- in raising awareness about the added value of a human rights based approach to water governance;
- **in building and strengthening the legal and institutional framework needed**, for example,
 - elaborating and implementing adequate legal norms and procedures,
 - defining and delegating concrete tasks and responsibilities for establishing, operating and maintaining services,
 - developing national plans and sector programs,
 - strengthening/streamlining administrative institutions at central and decentralised levels,

- building capacity of water regulators
- developing accountability mechanisms and practical solutions for conflict settlement);
- in **building capacity for the management and the delivery of water and sanitation services**, for governmental or private service providers at the central and/or local level;
- in **sensitisation and information efforts** about human rights and obligations with regard to water, particularly targeting public authorities and judicial institutions;
- in **tackling discriminatory and exclusive policies and practices, corruption and power abuse** in the water sector.

“Empower rights holders”: Support users in invoking their rights and make an active contribution towards their fulfilment, in particular by promoting:

- **Information and education**, including on human rights and responsibilities, common misconceptions, entitlements under solidarity mechanisms, and available administrative and judicial remedies and other accountability mechanisms;
- **Active participation and ownership** of water users in the selection, design and implementation of water and sanitation projects, including providing the option of community management of development projects and services where appropriate;
- **Implementation of grassroots projects** at community level, linking them explicitly to national strategies and programmes;
- **Partnerships with grassroots NGOs** experienced in water and sanitation projects and sensitive to the human rights approach, but keeping in mind the duties of State institutions to ensure services and avoiding the development of parallel structures;
- Cooperation with **human rights NGOs** able to monitor governments’ and service providers’ performance and accountability;
- Focus on **women and poor, disadvantaged and marginalized groups** in water and sanitation projects and programmes;
- Building on and strengthening **traditional water management systems** where possible, so as to strengthen community participation.

At the level of **humanitarian aid**, SDC can

- Advocate for the human rights of victims of conflicts and natural disasters, including the human right to water, empowering them to recognise and defend their own rights, including the right to information and participation in rehabilitation programmes.
- Use emergency situations as an entry point to address long term needs regarding the right to water.

At the level of **multilateral development cooperation**, SDC can

- Participate in global efforts to promote human right to water as part of the development agenda, in particular continued financial support to and participation in the work of UN organizations engaged in practical efforts to implement a human rights-based approach to development.

b) **Value added for SDC’s work**

The human right to water means that the provision of access to water and sanitation is not a charitable act, but an internationally recognized duty of every state. It helps authorities to address issues of water distribution in a comprehensive way, responsive to the needs of its citizens.

- **Lack of political will to prioritise water and sanitation can be challenged.** In the Integrated Water Resource Management (IWRM), the right to water gives priority to water for people. Governments are obliged, as a priority, to ensure access to water and sanitation, as well as to food, health and education, particularly for those without such access. Depending on the circumstances, this might be addressed in SDC’s negotiations with a partner government, for example where support or cooperation in an ongoing water project is insufficient, or if the partner government expresses preference for having ODA directed to other, more “attractive” areas of development cooperation which do not have the same priority from a human rights point of view (e.g. electricity, or road infrastructure).
- **States can be held accountable for the provision of access to water and sanitation.** The human right to water allows citizens as well as national courts, national human rights institutions, NGOs and international monitoring mechanisms to monitor the implementation of this right. Denial of access to water and sanitation as a political tool and in the context of corruption can be challenged. Although development cooperation agencies do not have an acknowledged “watchdog” function as such, SDC can assist national actors in monitoring implementation. The international accountability framework can be strengthened by using international standards and the findings of international monitoring mechanisms as an explicit basis for political dialogue. Finally, by focusing on making public authorities assume responsibility for the delivery of public services, the human rights based approach helps development cooperation to avoid supporting parallel service structures that are not sustainable in the long run.
- **The human right to water sees users as citizens and not as passive recipients, empowering them to genuinely participate in decision-making processes.** Citizens and users have the right to **be informed** about the orientation of public policies and projects before they occur and must

have an opportunity to shape such developments. This provides a political basis for SDC's work with central and local authorities, communities and user groups at the grassroots level. **The human right to water may boost willingness to establish new and innovative funding tools**, for example mechanisms of solidarity in funding water and sanitation services for the poor. This could provide an enhanced opportunity for SDC to support such efforts.

- **The human rights based approach to water calls for the prioritisation of access to basic water and sanitation services for all**, using available resources in a pro-poor manner, in contrast to the current practice where significant new infrastructure constructed with public resources does not benefit the poor. This consideration also justifies development assistance to least developed and fragile states, even though in general they may not be 'good performers.'
- **The human rights approach helps to identify situations of discrimination or neglect of marginalised groups, and build the political will to change it.** Lack of access to water and sanitation is sometimes a consequence of systematic neglect or even a deliberate choice of governments, rather than the direct result of poverty. Moreover, by focusing on marginalised groups within the communities, the human rights based approach helps to perceive partner communities and their interests in a more differentiated manner.

5. Additional information and links

a) Selected literature and documentation

- UN Committee on Economic Social and Cultural Rights, General Comment 15 : The Right to Water (2002)
- UN Sub-Commission on the Promotion and Protection of Human Rights, Draft Guidelines for the Realization of the Right to Drinking Water and Sanitation (2005).
- UNDP Human Development Report 2006, Beyond scarcity, power, poverty and the global water crisis, New York 2006.
- *Institut International de Droit d'Expression et d'Inspiration Françaises, La mise en œuvre du droit à l'eau* (2006)
- World Water Council *et al.*, The Right to Water: From Concept to Implementation (2006)
- International Secretariat for Water (ISE), The Implementation of the Right to Water and Sanitation in Central and Eastern Europe (2006)
- World Health Organization *et al.*, The Right to Water (2003)
- Centre on Housing Rights and Evictions (COHRE), Legal Resources for the Right to Water: International and National Standards (2004).
- V. Roaf, A. Khalfan and M. Langford, Monitoring the Right to Water; A Framework for Developing Indicators (Heinrich Boell Foundation, 2005).
- Eibe Riedel, Peter Rothen, The Human Right to Water, Berliner Wissenschaftsverlag 2006

- *Institut Suisse de droit comparé* (ed.), *La mise en oeuvre du droit à l'eau, Actes du XXIe Congrès ordinaire de l'Institut International de Droit d'Expression et d'Inspiration Françaises*, Schulthess 2006
- SDC Water Portfolio Analysis: A Brief Survey of the Water Sector Working Paper: Integrating Human Rights and Poverty Reduction – Towards a human rights based approach for SDC (2004)
- SDC's Human Rights Policy: Towards a Life in Dignity (2006)
- OECD, Integrating Human Rights into Development: Donor Approaches, Experiences and Challenges (2006).
- COHRE, WaterAid, SDC and UN-HABITAT, Sanitation: A human rights imperative (2008)

b) Selected organizations and contacts

- UN Committee of economic, social and cultural rights, www.ohchr.org/english/bodies/cescr/. For General Comment No. 15 www.ohchr.org/english/bodies/cescr/comments.htm.
- World Water Council / *Conseil mondial de l'eau*, Marseille, www.worldwatercouncil.org; contacts: Mr. Paul Van Hofwegen, Program Director (responsible for publication The Right to Water: From Concept to Implementation (2006)), p.vanhofwegen@worldwatercouncil.org; Ms. Céline Dubreuil (drafter of publication The Right to Water: From Concept to Implementation (2006)), c.dubreuil@worldwatercouncil.org
- International Secretariat for Water (ISE) The Implementation of the Right to Water and Sanitation in Central and Eastern Europe (2006), contact: sabine.hoffmann@iued.unige.ch
- Centre on Housing Rights and Evictions (COHRE), Geneva, www.cohre.org/water; contact: Mr. Ashfaq Khalfan, Coordinator, Right to Water Programme, ashfaq@cohre.org
- *Académie de l'Eau*, F-Nanterre, www.academie-eau.org, academie@oieau.fr; contact: Mr. Henri Smets, henri@smets.com
- AquaFed International Federation of Private Water Operators, Brussels and Paris, President: Gérard Payen, www.aquafed.org, info@aquafed.org
- GreenCrossInternational, www.greencrossinternational.net, contact: Mr. Bertrand Charrier, bertrand.charrier@gci.ch
- The International Secretariat for Water, www.i-s-w.org, contact: Mr. Raymond Jost, info@i-s-w.org

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