

Chapter 29

Water and Law: Study of the Human Right to Access Water

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ABSTRACT

The various consequences of climate change are increasing rapidly, and most of its negative effects are on poor and marginalized people around the world. This situation has made existing human inequalities more vulnerable because these societies are less able to adapt to the current situation due to poverty, and this has made the issue of climate change and human rights more intertwined as the consequences of change. This chapter is a descriptive-legal analysis. Much of the research material is on the contents of human rights instruments and the United Nations Security Council. Because their analysis needs to introduce and describe the contents of these documents, the need to provide information and introduce these documents has caused some parts of the research to be descriptive, and in other parts, the analytical method has been used.

INTRODUCTION

Water means life. Healthy drinking water and sanitation facilities are essential for the survival and health of life. However, 884 million people still do not have access to the improved drinking water resources, just as 2.5 billion people do not have access to the improved sanitation facilities (Fantini, 2014). Although these figures shed light on a worrying situation, the truth is that the situation is much worse, as millions of poor people living in informal housing are not included in the national statistics. The root of the current water and sanitation crisis can be traced to poverty, inequality, and unequal power relations, which are exacerbated by social and environmental challenges such as: accelerating urban planning, climate change, increasing pollution, and reducing water resources (Gleick, 1998).

The international community has dramatically recognized the need for access to safe drinking water and sanitation facilities within the human rights framework to address this issue. Such access is explicitly mentioned in the conventions such as the Convention on the Rights of the Child, the Convention on the

DOI: 10.4018/978-1-7998-7356-3.ch029

Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of Persons with Disabilities. In 2002, the Economic, Social, and Cultural Committee adopted its Interpretative Opinion No. 15 on the right to water as a universal right to “have adequate, safe, acceptable, physically accessible and affordable water” economical for personal and home use (Harris, 2015). Four years later, the UN Subcommittee on the Promotion and Protection of Human Rights issued the guidelines for exercising the right to drinking water and access to sanitary facilities. UNDP has also emphasized that the starting point and unifying principle for the collective action in the water and wastewater debate is water recognition as a fundamental human right. In 2008, to clarify the scope and content of these requirements, the Human Rights Council established a mission entitled “Independent Expert on Human Rights Requirements for Access to Safe Drinking Water and Sanitation (Jiménez and Pérez-Foguet, 2010.”

Several governments’ constitutions protect the right to water and set out the government’s public duties to ensure public access to safe drinking water and sanitation facilities. Judicial authorities in various legal systems have also dealt with various water rights cases, including water pollution, arbitrary and illegal water cuts, or lack of access to sanitation facilities (Kotzé, 2014).

Water isn’t always explicitly referred to inside the worldwide bill of Human Rights, the keystone of global human rights regulation composed via the popular assertion of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), and the worldwide Covenant on financial, Social, and Cultural Rights (1966). At that point, environmental concerns were not at the pinnacle of the worldwide timetable. But, some many years later, this accidental void allows pupils and activists with the venture of arguing for the life of the human proper to water, justifying its moral and prison foundations, and advocating for its specific popularity (Bluemel, 2004; Fantini, 2005; Gleick, 1998; McCaffrey, 1992) additionally by clarifying its definition and scope (Cahill, 2005) and emphasizing its introduced cost in addressing major water troubles (Langford, 2005). Scholars’ debates interwove with the tendencies in distinctive legal systems. Specific reference to water inside international human rights gadgets was firstly materialized in the Convention at the elimination of All styles of Discrimination towards ladies (1979, Article 14.2 on good enough residing standards of girls in rural areas) and later in the Convention at the Rights of the child (1989, Article 24.2 on the proper to fitness). At the domestic level, the human right to water has been enshrined in the country-wide constitutions, as an instance in South Africa (1996) or Uruguay (2004), in which it changed into upheld via a national referendum.

Compilations of country-wide and international criminal units assisting the right to water (Centre on Housing Rights and Evictions, 2007), or UN files clarifying its content (United nations office of the excessive Commissioner for Human Rights, 2010) offer an indication of the more than one dimensions of the human proper to water: a man or woman proper it intersects with other social and economic rights such as health and food; as collective proper, it has been connected to the right to improvement, to participation in cultural and political existence, or indigenous human beings proper to self-willpower inside the use of natural assets consistent with their conventional practices and religious ideals; as environmental trouble, it addresses both present and future generations’ rights. This complexity demands a consensus around a standard definition and common understanding of the human right to water. Within the UN gadget, two milestone events paved the way for advancement towards such consensus. The first became the adoption in 2002 via the UN Committee on Economic, Social and Cultural Rights of general remark 15, acknowledging that “the human proper to water is vital for main a life in human dignity. it is a prerequisite for the belief of different human rights” (UNCESCR, 2002), clarifying its normative content material, and identifying states parties’ and non-state actors responsibilities. The second milestone

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