

Water as a Human Right in the MENA Region: Challenges and Opportunities

ASIT K. BISWAS

Third World Centre for Water Management, Atizapán, Mexico

ABSTRACT *Even though hundreds of millions of people do not have access to clean drinking water and adequate sanitation, these issues only entered the global political agenda around the mid-1970s. The period 1981–90 was declared as the International Drinking Water Supply and Sanitation Decade, with the objective that everyone would have access to clean water and sanitation by its end. The Decade did not meet its objective. The issue was then chosen as a Millennium Development Goal, with the objective that by 2015 the number of people not having access to clean water can be reduced by half. By 2002, the Committee on Economic, Social and Cultural Rights of the United Nations reinterpreted Articles 11 and 12 of the Covenant on Economic, Social and Cultural Rights and concluded that water is a human right under this agreement. Several governments have opposed the concept that new rights can be derived by reinterpreting existing treaties. The paper analyses the developments leading to the recommendation that water is a human right, and then assesses the implications of this new development and its implementation potential in the developing world, especially for the Middle East and North African region. It identifies seven priority areas where research is now needed.*

Introduction

Throughout history, water has always been considered to be an essential requirement for human survival. Not surprisingly, the early civilizations developed near major perennial rivers such as the Nile, the Tigris-Euphrates and the Indus. However, during the earlier times, the clusters of the human population were small, the ranges of the human activities were very limited and generally water was plentiful and of reasonably good quality. However, as the human population steadily increased over the centuries, and the range of the human activities expanded, especially after the Industrial Revolution, water resources, both in terms of quantity and quality, started to come under increasing stress in many parts of the world than ever before in history.

The world population and the associated economic activities have continued to increase very significantly since the post-1950 period. This has meant that not only have humans needed an increasingly higher quantum of water for various uses, but they have also produced larger and larger quantities of wastewater which have been discharged to the environment, mostly to water bodies such as rivers, lakes and

Correspondence Address: Asit K. Biswas, President, Third World Centre for Water Management, Avenida Manantial Oriente 27, Los Clubes, Atizapán, Estado de México 52958, Mexico. Email: akbiswas@thirdworldcentre.org

0790-0627 Print/1360-0648 Online/07/020209-17 © 2007 Taylor & Francis

DOI: 10.1080/07900620701523277

oceans, with limited or no treatment. Accordingly, by the late 1960s, because of the continued indiscriminate discharges of the inadequately treated wastewater, the water quality of the rivers, lakes and the coastal areas had declined steadily. On the one hand, the demand for water for various uses had progressively increased, but on the other hand, the quality of many of the water sources had increasingly declined, which meant less and less water was available for human consumption without adequate treatment.

By the early 1970s, most industrialized countries had realized the importance of proper water quality management to ensure the availability of good quality water for human consumption, industrial development and ecosystems conservation. Continuing eutrophication of numerous water bodies from domestic discharges, as well as water contamination due to the regular discharge of untreated or partially treated industrial effluents containing heavy metals and chemicals, became a serious social concern because of human and ecosystem health considerations. Attempts were made to clean up major water bodies such as the river Trent in England, the Great Lakes between Canada and the United States and the Rhine in Europe from decades of continuing neglect of water quality management.

As knowledge and technology advanced, economic conditions improved, and the general public, especially in the developed world, became increasingly aware of the importance of the environmental issues. Societal and political interests in the industrialized countries steadily increased in issues related to drinking water quality, mainly during the post-1980 period. This interest was manifested in rapidly increasing requirements for water quality monitoring and management in the recent decades. For example, in the City of Ottawa, the number of water quality parameters that had to be monitored to ensure proper water quality management simply skyrocketed towards the latter part of the 20th century (Figure 1). The situation was very similar in most major urban centres of the developed world. These developments have posed significant techno-economic challenges in terms of cost-effective water quality management which have yet to be successfully overcome.

Emerging environmental awareness was reflected in newer legislations and regulations, including their strict enforcement. These developments ensured that the people in the Western countries generally had access to better and better

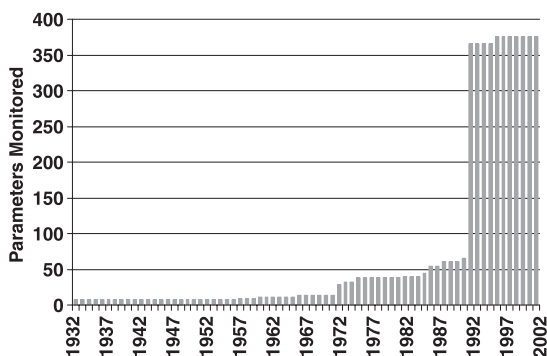


Figure 1. Number of water quality parameters monitored, Ottawa 1932–2004

quality of water for domestic uses than ever before in human history. It also ensured that efficient urban water and wastewater management became an increasingly complex and difficult task.

While the situation in the Western world in terms of availability of good quality water in appropriate quantities for domestic consumption has improved very significantly since the post-1970 period in both urban and rural areas, commensurate progress for the most part did not occur in the vast majority of developing countries. High population growth rates, increasing urbanization, lack of investment funds, corruption at various levels and poor overall governance, including inefficient water management, ensured that increasingly more people did not have access to clean drinking water and adequate sanitation on a regular and consistent basis. As the number and the extent of the urban areas of the developing world increased very significantly during the past three decades, their water and wastewater management problems posed major social, economic and political challenges which have not proved easy to resolve. By the early 1970s, it had become evident that the number of people in the developing world who did not have access to clean drinking water was increasing steadily. The situation became significantly worse in terms of access to sanitation and proper wastewater treatment and disposal.

Water and Sanitation, 1975–2000

Even though access to clean water and sanitation in the developing world had become an important social, economic, environmental and political issue by the early 1970s, these concerns were not adequately reflected in the national and international political agendas until about the mid-1970s. In retrospect, it is somewhat surprising that these were not considered to be important development issues before this period, even though they had major implications in terms of human health, adverse social and environmental impacts, and improvement of the overall quality of life of the poor people all over the developing world.

The issue of the increasingly deteriorating global situation in terms of access to clean water supply and adequate sanitation was raised during the United Nations Conference on Human Settlements, held in Vancouver in June 1976. In the resulting Vancouver declaration, water was considered to be a basic human need. The Conference noted in its Recommendation C. 12 that in developing countries, “nearly two-thirds of the population do not have reasonable access to safe and ample water supply”, and thus in most countries urgent action was needed to:

- “adopt programmes with realistic standards for quality and quantity to provide water for urban and rural areas by 1990, if possible”;
- “reduce inequities in service and access to water as well as over-consumption and waste of water supply”;
- “promote efficient use and reuse of water by recycling, desalination or other means taking into account the environmental impact; and
- “take measures to protect water supply sources from pollution”.

The Vancouver Conference also very specifically recommended that:

Safe water supply and hygienic waste disposal should receive priority with a view to achieving measurable qualitative and quantitative targets serving all the population

by a certain date; targets should be established by all nations and should be considered by the forthcoming United Nations Conference on Water, ...

The challenge posed by the Vancouver Conference was picked up by the United Nations Water Conference, held at Mar del Plata, Argentina, in March 1977. This Conference proposed that the period 1981–90 should be proclaimed as the International Water Supply and Sanitation Decade so that the interest in water supply and sanitation could be increased very significantly at the national and international levels. This recommendation for a Decade was subsequently approved unanimously by the United Nations General Assembly on 10 November 1980. It should be noted that the primary goal of the Decade, that is, the provision of clean water and sanitation for 100% of the global population by 1990, was most ambitious, and thus, not surprisingly, could not be achieved. The initial optimism resulting from the proclamation of the Decade soon gave ground to sober realities. This reality was reflected by the fact that by 1985, mid-way through the Decade, only a small percentage of developing countries had made plans for full coverage by 1990, let alone ensure their full implementation.

On 28 July 1983, being aware of these shortcomings in terms of progress in implementing the goals of the Decade, the Economic and Social Council of the United Nations urged the governments of developing countries “to adopt national targets for drinking water supply and sanitation services, commensurate with resources availability, absorptive capacity and ability ...”. By all accounts, by then the possibility of achieving the Decade goal of universal access to clean water supply and adequate sanitation by 1990 was considered to be mostly unachievable.

This fact was later recognized by the UN General Assembly, which noted somewhat gently on 17 December 1985 that “significant progress towards meeting the objectives of the Decade by 1990 will require a much greater sense of urgency and priority on the part of the Governments and the continued support of the international community”.

The Decade did not reach its goals in terms of universal access to clean water by 1990. However, it had major impacts in terms of putting water supply and sanitation firmly in the global development agenda. In addition, hundreds of millions of people all over the developing world received accelerated access to clean water and sanitation which would not have happened without its proclamation. Thus, in terms of its overall achievements, there is no question that the Decade was a remarkable success, even though it did not achieve its originally stated very ambitious goals.

The issue of access to safe water supply and adequate sanitation was subsequently taken up during the formulation of the Millennium Development Goals (MDGs). While access to water supply was made an explicit MDG, an even bigger problem, access to sanitation, could not be made a Goal primarily because certain major developed countries were not in favour of this particular approach. This was indeed surprising, since, historically, a significantly larger number of people have not had access to sanitation compared to water supply. For example, for 2004, the latest year for which data are available at present, 2612 million people did not have access to sanitation, compared to 1069 million people who did not have access to improved drinking water source (WHO & UNICEF, 2006).

Access to sanitation has to be an important component of any quality of life indicator, irrespective of however it is defined. In addition, most regrettably, sanitation generally continues to have a lower profile in development considerations of most developing

countries compared to water supply, even though everyone agrees that it has major impacts on health, social well-being and gender-related issues.

The sanitation goal was finally addressed to by the UN World Summit on Sustainable Development, held in Johannesburg, South Africa, 26 August–4 September 1992. Under paragraph 8, the Conference Report (1992) noted:

The provision of clean drinking water and adequate sanitation is necessary to protect human health and the environment. In this respect, we agree to halve, by 2015, the proportion of people who are unable to reach or to afford safe drinking water (as outlined in the Millennium Declaration) and the proportion of people who do not have access to basic sanitation, ...

At present, it is generally accepted that the development goals are to reduce by half the number of people who do not have access to water supply and sanitation by 2015, compared to the situation that existed in 1990. However, almost halfway through the 2000–15 period, it now appears that goals will not be met in several parts of the world, unless accelerated attention is given to the achievements of these targets during the second half of the period, compared to what has been witnessed in the first half. Realistically, there are no indications that this accelerated attention is likely to take place.

Water as a Human Right

Within the overall context of these developments, the Committee on Economic, Social and Cultural Rights (CESCR) that was established by the United Nations to oversee the implementation of the Covenant on Economic, Social and Cultural Rights, presented a document (General Comment No. 15) at its 29th Session, in Geneva, during 11–29 November 2002. This Comment re-interpreted Articles 11 and 12 of the Covenant, and concluded that water can be considered to be a human right under this Covenant. Additionally, some other international agreements can be interpreted as promoting this view. Under Article 11, the General Comment noted that:

The adequacy to water should not be treated narrowly, by mere reference to volumetric quantities and technologies. Water should be treated as a social and cultural good and not primarily as an economic good. The manner of the realization of the right to water must also be sustainable, ensuring that the right can be realized for present and future generations.

The timing of the publication of the General Comment, just before the Third World Water Forum, in Kyoto, in March 2003, was not coincidental. It was expected that the General Comment No. 15 would have direct impact on the direction and the level of the discussions at Kyoto, especially in terms of increased focus on water supply and sanitation, and also on funding availability for this sector. It was expected that the decision that water is a human right might encourage national governments and international organizations to earmark funds to improve access to water supply and sanitation significantly.

Not surprisingly, the World Health Organization noted in one of the publications distributed during the Kyoto Forum that “a right-based approach integrates the norms,

standards and principles of the international human right system into the plans, policies of development”.

It should also be noted that the World Panel on Financing Water Infrastructure, which was chaired by Michel Camdessus, former Director of the International Monetary Fund, presented its report at the Kyoto Forum. It was thus not unrealistic to expect that the Camdessus Report and the resulting discussions at Kyoto, and thereafter in other appropriate international fora, may generate additional investment funds for the water supply and the sanitation sectors. The Panel was expected to “address the ways and means of attracting new financial resources” The report was entitled *Financing Water for All* (2003), which at least gave the initial impression that it would seriously address how new sources of investment can be marshalled to promote water infrastructural development, including universal access to clean water.

Unfortunately, however, the General Comment No. 15 had no perceptible impact during the Kyoto Forum in generating new investment funds for the water supply and sanitation sectors, or in terms of shaping the discussions as to what are the implications if water is accepted as a human right. In fact, the entire Camdessus Report mentioned only once the issue of human right to water and this too only in the initial part. This issue was not mentioned in any significant way in more than its 80 recommendations as to how human rights to water could be achieved, or what could be its financial implications in terms of operationalization.

The Report’s main philosophy centred on the establishment of an ‘enabling environment’, within which the poor can pay for their access to water. The focus was on the needs of ‘bankable’ projects, including their ‘commercial and funding’ structures. The ‘dream’ of access to clean water would be realized only when appropriate and necessary financial mechanisms could be established in different parts of the world. It also concluded that the ideal long-term aim had to be “full cost recovery from users”, although in the short term “some subsidy is inevitable” for poor isolated and rural communities where “affordability is a distant prospect.” It pointed out that: “Tariffs will need to rise in many cases, but the flexible and imaginative use of targeted subsidies to the truly poor will be called for to make this cost recovery acceptable, affordable and so sustainable”. It should be noted that this conclusion was very similar to the recommendation of the World Commission on Water, which presented its report in 2000 during the Second World Water Forum in The Hague.

At the risk of over-simplification, it can be said that neither the Camdessus Report nor the General Comment No. 15 had much impact either on the discussions and the meagre results of the Kyoto Forum, or on the subsequent developments in the water supply sector. In fact, by early 2007, Camdessus Report had become mostly history, without having any visible impact on financing of water infrastructure or in generating any new investments for the water sector. As far as the General Comment No. 15 is concerned, it probably had thus far a marginally better fate than the Camdessus Report in terms of its implementation, or its acceptance by the mainstream water profession. To the extent the discussions on water as a human right are kept alive, this is probably because of the professionals working in the human rights area (in contrast to the water professionals) and activist NGOs who are against water pricing and private sector involvement in terms of universal access to water supply and sanitation.

As the former World Bank President Wolfensohn (2005) has noted, to some governments who constitute the Bank’s shareholders, “the very mention of the words human rights is inflammatory language”. It should be noted that the word “rights” often

has different meanings for different constituencies; knowledge and familiarity of discussions on rights vary widely between the different interest groups; and the discussions on water as a human right between its proponents and opponents have focused almost exclusively on domestic water use; other types of water uses are mostly conspicuous by their absence. Serious discussions of water as a human right in the overall context of water resources management is mostly missing at present.

It is fair to note that at present no sane individual opposes the concept that all humans should have access to clean water. Similarly, not a single country opposes this concept either. The main issue thus hinges around not whether water is a human right, but how to ensure that all humans have access to clean water and proper wastewater management within the social, economic, physical and political conditions and constraints within which they live. The solutions and the implications for the problems to be solved are complex, and these are likely to differ from one place to another. The implementable solutions may even be different in the same location over time, thus making the solution even more difficult to identify, let alone implement.

The Republic of South Africa is probably the only country which has come close to promulgating the concept of water as a human right. However, this is not because of the General Comment No. 15, which was issued in 2003, but due to its 1998 National Water Act which specifically promoted 'equitable access to water' for all its citizens, and stipulated that the water institutions must "have appropriate community, racial and gender representations". However, 11 'factors' should be considered that reflect different economic, social and environmental perspectives, and cover a variety of wide-ranging conditions. Not surprisingly, some of these perspectives and conditions may be conflicting, and thus policy making and successful implementation of the objectives have not been an easy task to accomplish.

The concern of some of the countries that are not in favour of promulgating the concept that water is a human right stem from the fact that they are unsure of the legal implications if they approve the overall philosophy. Some countries are worried that they will be sued for compensation because they will be unable to meet this universal obligation for some considerable time to come. Others are worried that human rights to water may mean free provision of clean water and proper wastewater management for everyone, which they simply cannot afford. Since this simply cannot be achieved within the foreseeable future, these countries prefer not to approve this concept until their responsibilities and accountabilities are clarified, as well as those of the consumers. Until this happens and a critical number of important countries decide to recognize this right, progress in terms of acceptance of the concept of water as a human right is likely to be slow.

The Situation in the MENA Region

The water profession and the vast majority of the governments in the Middle East and North Africa (MENA) region have for the most part not paid much attention to the UN declaration that water is a human right, especially in terms of what it means, and what are the implementation requirements to extend universal water and sanitation coverage. In fact, based on interviews carried out in several MENA countries, policy makers in the majority of the water-related institutions appear to be either unaware, or somewhat superficially aware, of this declaration and how it may affect their work. In practical terms, because the world community accepted universal access to water as a goal some three

decades ago, the 2002 declaration of the United Nations that water is a human right is somewhat unlikely to change the existing and foreseeable activities in any significant fashion, at least over the near and medium terms. This, plus the fact that many major countries are reluctant to expand further the domain of human rights, including that on water, may mean that the declaration based on the General Comment No. 15 may at best have only limited impact in improving access to clean water.

In the MENA countries, with perhaps the exception of Morocco, the governments do not appear to have modified their water supply and sanitation policies, plans or programmes because of the UN General Comment. Morocco appears to be the only country in the MENA region that has now incorporated the concept of rights to water in its national water supply policy. However, it can be argued that even for the case of Morocco, the government would have most probably followed the same policy in terms of promoting universal access to clean water, but perhaps without noting that water is a human right. In other words, the end results for Morocco, in all probability, may have been very similar with or without the UN General Comment No. 15.

The Roles of the Private Sector

In Morocco, where all important urban water supply and sanitation activities have either been handed over, or are in the process of being handed over, to the private sector, and in Jordan, where the private sector is playing an increasingly important role, the vast majority of the private sector managers and professionals are unaware of the General Comment No. 15 of CESCR.

The general view of the private sector is that they have specific contracts with the governments to provide certain services to the people with specific targets to be met within prescribed time periods. Thus, their task is to meet these targets as efficiently, promptly and cost-effectively as possible. The private sector companies are regulated by the governments. They have received concessions for fixed time periods to provide certain specific services to the people, and there are contractual agreements in terms of prices that they can charge their consumers, and the targets they must meet. They do not see why or how the issue of water as a human right should be their consideration, especially as it is not a part of their existing contractual agreements. The private sector is not accountable to the United Nations, nor is it important for them to keep abreast of what goes on at the UN. One senior manager summarized the prevailing view of the private sector succinctly as follows:

If the UN considers water is a human right, we have no problem. The UN should discuss this directly with the governments. We have received a concession to do a specific task, and we plan to do it, nothing more and nothing less. We have limited interest in philosophical discussions irrespective of its relevance, whatever that may be.

This view appears to be representative of the vast majority of private sector companies active in this area.

The Roles of the NGOs

The human rights groups and many NGOs (especially the activist ones) have taken a somewhat different approach to access to clean water, compared to the water profession in

general. As noted earlier, during the past several decades the human rights community has tried to expand the concept of rights to many new areas, water being one of them. Limited thought has been given as to how once water is declared to be a human right, it can be ensured that everyone will actually have access to clean water and sanitation. The focus of the human rights community appears to be more on expanding the areas of human rights, compared to how the previous or the newly derived rights can be implemented or operationalized.

Most activist NGOs interested in this area have picked up the declaration that water is a human right, and have used it to reinforce their prevalent views in certain areas. Among these areas are the following:

- Since water is a human right, provision of water supply and sanitation should be strictly restricted only to the public sector.
- Profit-making by the private sector should not be allowed in the water sector, since water is a human right and also a basic human need. Thus, the private sector should not be allowed to participate in providing water supply and sanitation services. Activist NGOs in certain MENA countries where the private sector is becoming an increasingly important player, e.g. Jordan and Lebanon, have taken this stand.
- Since water is a human right and need, it should be provided either free, or at highly subsidized prices, to all the people.

A major factor in the MENA region has been that the NGO movement has not developed as fast and extensively as has been the case in South and Southeast Asia or Latin America. The activities of NGOs may sometimes be tolerated officially but not encouraged. Not surprisingly, there are still many red lines that the NGOs simply cannot cross if they plan to continue their activities. However, the situation appears to be changing in several MENA countries, albeit somewhat slowly.

In addition, the academic and research community in the MENA countries do not appear to have taken any special interest in water as a human right approach and its implications. It is not easy to find any serious and sustained research underway, or significant publications, from the research of the academic community in this overall area.

Furthermore, in view of the following facts, the subject of water as a human right is neither reasonably known nor fully appreciated within the water profession of the MENA region:

- water as a human right was not established through an international treaty that was ratified by the requisite number of countries;
- opinions in the legal profession vary as to whether a right can be unequivocally established through derivation and inferences from existing legal conventions; and
- water and development professionals have seldom given any attention to the discussions at the UN Committee on Economic, Social and Cultural Rights (in fact, during the research on this overall area, very few water professionals in the MENA countries were found who are even aware of the existence of this Committee, let alone its General Comment).

If any significant progress is to be made in increasing the awareness on this topic, a major information dissemination campaign needs to be started. However, at this stage, it is not

very clear whose responsibility it is to initiate such an information campaign: the United Nations, other regional and international organizations, and/or the national governments. Unless the water community is made aware of these developments, progress, if any, will continue to be minimal or even non-existent. It should also be noted that even if such an information campaign can be initiated, and the campaign becomes effective, there is no guarantee that it will expedite the universal coverage significantly.

A few activist NGOs seem to be promoting this concept. Paradoxically, because these NGOs are activists, governmental water institutions have not taken their views seriously.

Legal, Institutional, Social and Economic Implications of Implementing Human Rights to Water

Based on the information available at present, it has not been possible to identify a single MENA country where legal, institutional, social and economic implications of implementing human rights to water have been analyzed in any serious way by any governmental organization, university and research institution, private sector or NGO.

It is possible that the prevailing legal frameworks in one or more MENA countries consider water as a human right. However, in a small project such as the present one, having very limited financial resources, it has not been possible to review the various different national constitutions and numerous water legislations to find out if water is already considered to be a human right in different MENA countries. If any country considers that water is a human right, this has happened independently, and not primarily because of the UN General Comment.

Main Issues to be Considered

There are several fundamental issues that need to be considered in this overall area of water as a human right. These are as follows.

Water: A Human Right or a Basic Need?

While the General Comment No. 15 of CESCR has given a considerable momentum to those who believe the human right to water is now clearly established under the existing international laws, analysis of the resolutions and declarations that have been adopted since the United Nations Conference on the Human Environment, held in Stockholm in 1972, indicate that these have regularly vacillated between declaring water as a basic human need and as a human right. It may even be said that the concepts that water is a basic need or a human right have often been used interchangeably during these forums, without clear understanding of either the concepts or their operational implications. Regular references to these two concepts have further 'muddied' the water in terms of their legal relevance and overall acceptance. The general approach has been basically inconsistent.

It should also be noted that all the various declarations and resolutions, including the General Comment No. 15, cannot be considered to be legal instruments that have a formal binding effect on the governments. At best they can be considered to be 'soft laws', and may have relevance in terms of evolution or emergence of principles of customary international law. However, since they are not legally binding to the nations, their

implementation has been consistently poor, and their practical relevance in terms of impacts has been somewhat weak and often indiscernible.

Human Rights and Sovereign Rights

In the final analysis, even for treaty-based human rights, it is the states that have the necessary sovereign powers to implement all the rights within their territories. Declaration of any issue as a human right, and its acceptance through an international convention is a step, albeit an important one, in the right direction. However, declarations are only a beginning: by themselves they are not enough or sufficient. It is essential that these declarations are implemented by the states. Regrettably, it is in the implementation process where most of the problems now remain.

Within this overall context, it is important to make a distinction between two types of human rights: civil and political rights, and economic, social and cultural rights. The implications, especially in terms of implementation for these two groups of rights are very different. For example, civil and political rights are endowed upon individuals by ensuring that the governments do not interfere with them. These rights generally do not require appreciable budget or major institutional arrangements to be properly enjoyed by the citizens of the various countries. These rights are thus comparatively easy to implement, given the necessary political will.

In contrast, economic, social and cultural rights require active interventions by the appropriate governmental machineries at various levels, including formulation of national policies and programmes, and structuring of functional institutional arrangements to first formulate and then implement such policies and programmes. Appropriate budgets must be provided in a timely manner, over a long timeframe, for the institutions responsible for overseeing the implementation of these rights. In other words, enjoyment of economic, social and cultural rights cannot be realized without significant deployment of resources, whereas civil and political rights may be endowed at relatively low cost. This fundamental difference between these two types of rights is mostly missing in the current debates on various human rights issues, including on water.

It should be recognized that the implementation of water as a human right will not be cost-free: in fact, its implementation will require very substantial financial resources and technical, managerial and administrative capacities, as well as a strong political will at senior policy-making levels. These rights cannot be endowed on all citizens without the direct involvement of the governments at all levels. Based on the current experience, this enabling environment is unlikely to develop in most countries automatically, especially for a water-based right, since it will require major changes in the mindsets of policy makers and senior government officials. For the enabling environment to develop, it is essential that the citizens demand this right vociferously and are willing to pay for the provision of all the necessary services directly and/or indirectly through taxes. Without such demands, the progress at best is likely to be slow in terms of ensuring universal access to clean drinking water.

Issue of Rights in Terms of Drinking Water and Other Water Uses

At present, nearly all the discussions on water as a human right have been almost exclusively targeted to drinking water and sanitation-related issues. While unquestionably,

availability of clean drinking water and access to sanitation are important societal and environmental requirements, water also has other equally important uses in terms of agriculture, energy production, industrial and regional development, environmental conservation, tourism, etc. The implications of the concept of water as a human right, for all water use considerations, except for domestic consumption, have not been considered very much, either by the human rights groups or by the water community. If the concept of water as a human right is to progress further, it will be essential to consider other water uses since water allocations between the various groups of users are always complex and difficult. This is especially important since other well-established rights, such as the right to food or health, have major water-related implications in terms of both quantity and quality. These issues are mostly neglected at present. In addition, the issues related to wastewater management of the various different water uses are neglected. Only sanitation-related issues are considered at present, and this too in a somewhat restricted sense. The debate and discussions need to cover a much wider territory.

A detailed analysis of the General Comment No. 15 indicates that it mainly focuses on the issue of the human right to water in terms of domestic consumption. This is in keeping with the current global interest and discussions on this issue. However, in Article 6, it does briefly note that:

water is necessary to produce food (right to adequate food) and ensure environmental hygiene (right to health). Water is essential for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take part in cultural life).

Subsequently, however, the General Comment basically ignores other water uses and the associated rights. It concluded that priorities 'must be' given to personal and domestic uses, and 'should be' given to the use of water to prevent starvation and diseases. In other words, CESCR has implicitly allocated priorities in terms of rights, first to domestic water supply, and then to health. This means that the Committee did not consider other water uses as priority issues under human rights considerations either explicitly or by omission. Many water and development experts are likely to disagree with this interpretation for a variety of reasons, including rapidly evolving global and national views and conditions.

Consideration of Other Water Uses as a Human Right

If water for domestic consumption is to be considered to be a human right, use of water for other already agreed human rights must be considered, as well as other rapidly evolving water uses like water for energy production. Furthermore, all the various water-related rights and uses need to be interlinked, at least conceptually. This is especially relevant for food production because not only nearly two-thirds of the global water use is for agricultural production but also food is considered to be a human right under a treaty-based international agreement, whereas in contrast water can be considered to be a right under inference and soft laws. In other words, consideration of water as a human right for domestic consumption may appear to be a 'simple' issue at first sight, but its implications and operationalization are exceedingly complex. Research on these complex issues is mostly missing at present.

Acceptance of Water as a Human Right

Water professionals and human rights groups are taking two very distinctive but somewhat different approaches to the issue of water as a human right. The end objective of both the groups is similar, that is, all people should have access to clean water and to wastewater management. While water professionals and government officials have long tried to achieve this goal, at present the human rights groups appear to be more interested in expanding the areas of human rights, rather than focusing on how these rights can be met. Surprisingly, in the human rights literature, there is very little discussion of how water as a human right can be achieved and which parties will be responsible for this achievement, where the funds will come from, what policy measures are necessary, and what the rights and the responsibilities of the consumers will be. Equally, there is very little discussion in the human rights literature as to whether water as a human right means that governments are obliged to provide good quality water free to all citizens, or if the citizens are expected to pay for these services. If the people are expected to pay, how should the tariffs be structured for different socio-economic strata? In addition, what are the roles of the private sector within this human rights concept, and how should the public-private partnership be structured to accelerate acceptable levels of service delivery? Objective, in-depth and sustained discussions on these complex issues within the human rights community have yet to begin.

Approach of the Water Profession

Following the United Nations Conference in Human Settlement, held in Vancouver in 1976, the global objective has been consistently to provide clean drinking water and sanitation to every human in the world. This issue was extensively discussed during the UN Water Conference in Mar del Plata in 1977, which recommended the declaration of the International Water Supply and Sanitation Decade for the period 1981–90, with the target that by the end of the Decade, everyone should have access to clean water and sanitation.

As noted earlier, the Decade did not reach its objective. In retrospect, it has to be admitted that its targets were unrealistic, and thus unachievable. However, there is absolutely no question that the Decade very significantly increased both national and international momentum to provide clean water and sanitation to all. Equally, the Decade was instrumental in significantly increasing the number of people who received access to water supply and sanitation, which would not have happened without this event. It also put universal access to water squarely on the global development and political agenda. Thus, the universal acceptance of this international goal is no longer an issue: the issue is how this goal can be implemented cost-effectively within a limited timeframe in a socially acceptable and environmentally-friendly manner.

Some 10 years after the Decade ended, one of the Millennium Development Goals (MDGs) very specifically addressed this issue. This time the goal was much more restrictive than before: between 1999 and 2015 reduce by one-half the proportion of people without access to safe drinking water. Thus, the overall view of the water profession and a vast majority of the governments has been that the recent UN Committee's interpretation that water should be considered to be a human right did not change the situation materially since the international community had unanimously accepted the principle of universal access to clean water for all for over three decades.

It appears that the water profession and the governments currently feel that the declaration of the UN Committee that water is a human right does not make much practical difference since they have been working to achieve this universal goal for decades. In this sense at least, there is no real difference between the human rights and the water professionals because both have the same end objective. The water profession generally believes that declaring water is a human right will not necessarily ensure that more people will automatically have access to water. Declarations are easy to make. The problems invariably lie as to how the declarations can be translated into reality to improve the quality of life of the poor people in developing countries.

Constraints to Universal Coverage for Drinking Water

There are several fundamental problems that need to be resolved before there could be universal coverage to clean drinking water. Among these problems are the following:

- How to manage escalating water demands since in the developing world new sources of water are now not only becoming increasingly more and more expensive to develop but also may contribute to serious social and environmental disruptions. The World Bank has estimated that the cost per cubic metre of water for the next generation of water supply projects is often two to three times higher than the last generation of water projects that were completed with the Bank funding. Increasing water supply to meet continually higher demands, as generally has been the case in the past, is no longer a viable option for the future because of economic, social and environmental constraints, as well as physical availability of water.
- Water pricing has to be a part of the overall solution in balancing demand and supply. However, structuring and implementing equitable water pricing in the developing world has been a very difficult task. In addition, even though the idea of water pricing has been accepted in many developing countries, including several in the MENA region, the prices charged often do not cover even operation and maintenance costs, and most certainly not investment costs. In most developing countries, water for domestic consumption is very heavily subsidized, and social and political acceptance of water pricing is still not high. This has ensured that the people who now have access to water do not use this resource wisely and efficiently. There has been very little practical and usable research on the links between water pricing, water conservation, poverty alleviation and their social, economic and political implications.
- Investments required for construction of new water supply projects, wastewater collection, treatment and disposal systems and the modernization of existing water supply and sanitation works in developing countries are going to be very high. According to the Inter-American Development Bank, only about 11% of the people in Latin America had access to wastewater treatment in 2000. The situation is likely to be somewhat similar for the MENA region, the main focus of this analysis. To improve the existing wastewater management practices in Africa, Asia and Latin America, will require high levels of investment, as well as good technical, managerial and administrative expertise. A main issue that needs to be resolved is how to raise this high level of investment in a timely manner, as

well as how to build of capacities for the construction, operation and maintenance of water supply systems.

- The provision of water supply and wastewater management is primarily in the hands of the public sector in developing countries, and are likely to remain so for at least the next two decades. The overwhelming majority of these public sector institutions are inefficient, riddled with corruption and face continual political interferences. Under these conditions, even if the investments required are somehow made available, the funds are highly unlikely to be used properly and efficiently. Thus, a major constraint to ensure universal access to clean water will be how to make the existing public sector institutions increasingly more and more efficient and then maintain their efficiency. This type of institutional research has thus far been mostly conspicuous by its absence, not only in the MENA region but also in the entire developing world.
- From around 2002, multinational private sector companies have lost their earlier enthusiasm in managing water supply projects in the developing world. Furthermore, the potential roles of the national private sector companies are mostly unresearched and unexplored, even though their roles are likely to be increasingly significant in the future. New types of models of public-private partnerships need to be formulated in the coming years, with national, or even regional, private sector companies, which could accelerate access to clean water in developing countries. Local or regional private sector companies can play an important role in water supply, the desalination of seawater or brackish water and wastewater management. In order to promote private sector involvement, the public sector has to become more aware of the aspects that the private sector can do better than the public sector, and where the private sector may have a competitive advantage. These aspects can be outsourced to the national private sector. This will require transparent and enforceable laws and regulations. Again, very little, if any, research has been conducted in the MENA region as to what types of legal and regulatory frameworks are needed which will encourage private sector participation, and also assure that the consumer receive the expected benefits on a long-term basis.

Research Agenda for the Future

Research on water as a human right is very limited at present, especially in terms of its operational implications. The following research areas should be given priority:

Water as a basic need or human right. Is water a basic need or a human right? As noted before, the world community has vacillated between these two concepts regularly during the past 30 years.

What are the basic implications if water is considered to be a basic need or a human right? Will consideration of water as a basic need or a human right accelerate universal access to clean water? If the answer is yes, why? If the answer is no, why not? Or, are these two issues red herrings in the sense that access to clean water will not be significantly enhanced irrespective of whether water is considered a basic need or a human right?

Rights and responsibilities of various stakeholders if water is considered to be a human right. If water is indeed considered to be a human right, what are the responsibilities of the various levels of the governments for the provision of water supply and sanitation? Would this mean that the governments are obliged to provide free water and sanitation to everyone? If the services are to be free, or highly subsidized, would the governments still have enough financial capacity to operate and maintain existing facilities and construct new ones to satisfy unmet demands? Can water conservation and efficient water management be practised if water is free? What are the responsibilities of the individuals if water is to be free or highly subsidized? Will there be enough water available under these conditions for everyone? Can society provide free services to all indefinitely?

Water pricing. If water is to be priced, how should the tariff structure be structured to satisfy the twin objectives of economic efficiency and social equity? The current tariff structure that is very extensively used has basically failed to achieve their objectives. In general, this has meant that each household is provided with 25 to 30 m³ of water each month at highly subsidized rates. This has ensured that the majority of households have felt no need for water conservation since their monthly consumption is well within this limit. This pricing structure has seriously restricted the income of the water authorities since these subsidized rates do not even cover their operation and maintenance costs, let alone the investment costs.

In addition, the present structure often puts an additional financial burden on the poor and subsidizes the rich, exactly the reverse of what was anticipated initially. This is because the poor households often have three generations of a family living together. The large numbers of family members in such poor households cannot manage to survive with 25 to 30 m³ of water each month. Thus they are forced to pay for water at a much higher marginal rate.

In contrast, the rich families mostly have a smaller number of family members, and as a result the subsidized quantity of water is more than enough for them.

Additional research is needed to devise appropriate tariff structures so that the rich and middle-class families pay for their fair share for water and sanitation services, but the poor receive targeted subsidies. The tariff structure should encourage water conservation and improve the financial conditions of the water utilities.

Public sector efficiency. In the MENA region, more than 92% of the people are now receiving water from public sector institutions. Even under the most optimistic projections, this percentage is highly likely to be less than 85% by 2020.

Therefore, research is urgently needed to show how the public sector water companies can be made significantly more efficient since the vast majority of the people will still be receiving services from them by 2020 and beyond.

Private sector involvement. In Morocco and Jordan, private sector companies (primarily multinational companies) are now providing services to major urban centres. For smaller urban centres, as well as for specific outsourced activities (for example, meter installation and repair, leak detections, etc.), what can be done to encourage national private sector companies to be actively involved in the water and the sanitation sectors in the future? National private sector companies can play an important role in the future.

Legal and regulatory frameworks. What type of functional and implementable legal and regulatory frameworks are needed in various MENA countries to ensure people have access to clean water and sanitation, irrespective of who provides the services: public or private sector? Absolutely no research is being done on appropriate legal frameworks for any MENA country.

Water and the elderly. In several MENA countries, attention is given to the water requirements of women and children, as well as water collection efforts by women and children. These are welcome developments. However, studies now indicate that the number of elderly people (more than 60 years old) will start to go up exponentially, from about 2010 for at least the next four decades. Yet not a single MENA country, or an international institution in a MENA country, has given any thought to the water needs and associated requirements for a rapidly rising elderly population. This is an area where further research is needed to define the nature and extent of the problem and the policy measures and concrete steps that should be taken to alleviate the anticipated problems cost-effectively and in a timely manner. Water for the elderly will be a major issue in the post-2020 period, not only in the MENA region but the entire developing world.

References

- United Nations (2003) *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights* General Comment No. 15 (2002), Economic and Social Council, Document E/C.12/2002/11, 20 January (New York: United Nations).
- United Nations (2002) *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August–4 September, 2002*, Document A/CONF.199/20 (New York: United Nations).
- WHO & UNICEF (2006) *Meeting the MDG Drinking Water and Sanitation Target: The Urban and Rural Challenge of the Decade* (Geneva: WHO).
- Wolfensohn, J. (2005) Some reflections on human rights and development, in: P. Alston & M. Robinson (Eds) *Human Rights and Development: Towards Mutual Reinforcement*, pp. 19–24 (Oxford: Oxford University Press).
- World Commission on Water for the 21st Century (2000) Report, *International Journal of Water Resources Development*, 16(3), pp. 289–320.