

HUMAN RIGHT TO WATER

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ABSTRACT: *Human rights are legally binding instruments and any mechanisms built around human rights have the benefit of its substantive coherence and legal and normative foundation in international law. Every individual has a legitimate expectation that the state he belongs to will guarantee the right to water. To understand the human rights link to water conservation, one needs to understand the genesis of the Legal framework for Human Right to Water.*

KEY WORDS: *Human rights, legitimate expectation, water, protection and conservation.*
JEL Code: K2

Topic : *How resource conservation outcomes may be achieved through a human rights framework.*

Human rights are legally binding instruments and any mechanisms built around human rights have the benefit of its substantive coherence and legal and normative foundation in international law. Being founded on objective legal standards as a solid non-negotiable, normative basis, it provides a compelling framework and a source of authority and legitimacy. Hence when such a powerful framework relates to a natural resource then the state and other relevant parties are incentivized to devise strategies that have a beneficial impact on conservation of that natural resource. In this article I shall analyze the human right to water and how the current human rights mechanisms have the capacity to promote its conservation. Water can be defined as a liquid found on Earth that has no color, odor or taste and yet is the most precious resource on Earth. Without water there would be no life on Earth.

Every individual has a legitimate expectation that the state he belongs to will guarantee the right to water. It is fundamental for sustaining health and leading a life in dignity.¹ Access to water is not a matter of benevolence, charity or welfare, but rather of legal entitlements and claims². A great number of countries have developed case law on the human right to water but there are three countries (South Africa, Argentina, and India) that excel in the remarkable body of jurisprudence that they have amassed.

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¹ United Nation Development Programme

² Human Rights and Development (Bloomfield, Kumarian Press,2004)

The discussion of how Human rights mechanisms will help achieve conservation of water will require us to understand the legal framework and characteristics of Human right to water, Human rights impact on water allocation and prioritization given the many competing demands on this vital resource and finally the benefit of Human rights framework in helping conserve water. However, before one can understand how human rights framework will help achieve water conservation goals it is prudent to ask what are the key goals of water preservation? Water conservation encompasses the policies, strategies and activities made to manage fresh water as a sustainable resource to protect the environment and to meet current and future human demand. The main goals of water conservation include ensuring availability of water for future generations, energy conservation, as water delivery and waste management consume significant amounts of energy, and habitat conservation. Some activities can be considered beneficial in achieving these goals. For example any beneficial reduction in water loss, use and waste or avoiding damage to a water body such as a fresh water lake or improving water management with an aim to enhance beneficial use of water all contribute significantly towards the goals of water preservation. Many of these activities are directly supported by the human rights framework through the human right to water.

To understand the human rights link to water conservation, one needs to understand the genesis of the Legal framework for Human Right to Water. Whilst the need for water is a basic human right, this alone doesn't imply that it is recognized as a basic human right. Access to water is explicitly or implicitly guaranteed in a broad range of human rights treaties. It is also essential for the realization of other human rights guaranteed in the Social Covenant and the Civil Covenant. It is covered under the human right to health or human right to housing. To a limited degree it is also covered under the human right to life as much as water is essential for human survival. In all these human rights water is indirectly covered as a human right. However on 30 September 2010, the UN Human Rights Council passed a resolution affirming the human rights to water by stating that "the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity".³

This UN resolution constitutes a breakthrough of rights as neither the Universal Declaration of Human Rights nor the International Covenant on Economic, Social and Cultural Rights explicitly guard the human right to water. The human right to water guarantees access to safe and affordable water in sufficient quantities without discrimination.⁴

Aside from the treaty provisions a potent question, with respect to achieving resource conservation goals, also arises whether Human right to water is also an essential part of the customary international law according to Article 38(1)(b) of the Statute of the International Court of Justice. This question is significant because the states that have not ratified the respective human rights treaties could nonetheless be bound by a customary human right to water⁵. Many states that have scarcity of water such as in the Arabian Peninsula or small island states who are under threat of becoming water deficient have not

³ Human rights and access to safe drinking water and sanitation

⁴ The Human right to water – significance, legal status and implications for water allocation – Inga T Winkler

⁵ Human rights and Humanitarian Norms as Customary Law (Oxford, Clarendon Press, 1989)

ratified these treaties because as water is scarce and water allocation needs arising out of these treaties cannot be met there is a pertinent question whether human right to water applies as a customary human right. The customary human rights law can even be relevant for states that have actually ratified the respective human rights treaties because many times such states use reservations⁶ to circumvent the treaties.

For customary international law to evolve two elements are necessary. One is State practice i.e. *consuetudo* and the other is the conviction to be legally obliged to act in this way i.e. *opinio iuris sive necessitates* (B & P , fără an). To be consistent the behavior of states must be almost identical. And if there are a small number of divergences these have to be considered as violations of the general rule. In terms of human rights almost all States must be involved in the general practice. However a special feature of human rights has to be considered that distinguishes it from other areas of international law. Whereas international law in general deals with relationship between two states the human rights law is essentially a relationship between a state and an individual and is an area of law that is generally seen falling within the domain reserve of states. This has implications for ways in which state practice can evolve in particular because the states do not act physically in relation to human rights (C , 2003). This leads to an important question i.e. what is to be regarded as State practice with regards to human rights law given the lack of interaction between the State and an individual. Broadly three positions clarify this, one is that the decisive element is the actual behavior of States whilst another puts the focus on verbal and legal statements as they are expressed in declarations, resolutions and other documents. A third opinion takes both of these into consideration. The first opinion fails to take into account the particularities of human rights law as it focuses on the actual behavior of the state. Following this opinion it would be impossible to establish customary human rights law. In contrast, the alternative opinion that puts the onus on the statements is very far reaching as it completely disregards the traditional element of actual State practice. Only the third opinion which takes into consideration both these positions achieves a reasonable balance where on the one hand it takes into consideration that many States tend to pay only lip service to human rights and being ready to commit to human rights as they are aware these are non binding. Therefore actual State conduct is included in determination of State practice. On the other hand it acknowledges that State conduct may also amount to a violation of an existing human right norm and this does not constitute State practice that is relevant for evolution of customary international law.

Many documents such as Universal Declaration of Human Rights are relevant in determining the customary nature of right to water. While it can be said that UDHR as a whole has not attained the status of customary international law a more recent trend towards recognition of the right to water may be detected. This has mainly been triggered by the issuance of General Comment No 15 by the CESCR, which explicitly recognizes the right to water under the Social covenant. Even though the General Comment isn't legally binding it has acted as a catalyst towards recognizing this human right as a customary international law. Similarly other international documents such as Draft Guidelines by the Sub-Commission and the Report of the High Commissioner have followed.

⁶Reservations to Human rights treaties, Human Rights Committee, Comment 24, 4 November 1994, CCPR/c/21/Rev1.

Thus it can be seen that Water is a human right as affirmed by the UN General Assembly and Human rights council resolutions and it has a sound legal foundation in international Law, in particular as a component of the right to an adequate standard of living. Having established the legal foundation of water as a human right, we next need to understand the legal characteristics of the human right to water by examining its legal nature, States obligations arising from it and its normative content.

The legal characteristic of human right to water defines the States obligations. Some have argued that economic, social and cultural rights do not impose legally-binding obligations upon states but are mere programmatic clauses or goals. (Vierdag, 1978) According to this perspective, socio-economic rights are regarded as entailing, resource-intensive positive obligations requiring resource allocations that are political rather than legal in nature. Others argue that socio-economic rights give rise to legally-binding obligations like other human rights. This legally binding nature is disputed using three main arguments: the argument that socio-economic rights require resource-intensive positive interventions, their alleged lack of precision and the argument that they cannot be judicially enforced.

The reason why socio-economic rights are regarded by some as not being 'real' legal rights is seen as lying in their nature, which is defined in contrast to civil and political rights. Whereas the latter are regarded as simply requiring non-interference by the State, the former are said to require positive intervention i.e. the two set of rights relate to negative and positive obligations, respectively. The argument that socio-economic rights require positive intervention is closely linked to the view that the realization of socio-economic rights is very resource intensive. Therefore such decisions regarding resource allocations are considered to be political in nature rather than a legal one. According to this reasoning they should be dealt in legislative branch instead of courts⁷. Admittedly the focus of the two sets of rights does differ to a certain extent. The realization of socio-economic right requires the State to take positive measures more often than in the realization of civil and political rights⁸. Nevertheless even if their emphasis is different, there is no fundamental distinction in State obligations arising from human rights. The claim that socio-economic rights including the right to water are of a completely different non-binding nature is therefore not justified.

Some also claim that socio-economic rights are not legally binding because they lack precision or the provisions are not sufficiently detailed.⁹ It is true that most of the provisions of the Social Covenant are formulated in relatively vague terms. However, the same holds true for the formulations of many civil and political rights. A lot of work has recently been done to concretize economic, social and cultural rights. The General Comments of the CESCR are very valuable instruments in this regard¹⁰. In contrast to other socio-economic rights the right to water not only lacks precision but it is not even explicitly mentioned in the Social Covenant. However access to water may be based on a number of rights, most prominently the right to an adequate standard of living. Making use of the concept of this right and the recent pronouncement on the right to water, such as

⁷Vierdag,93

⁸Simma,872

⁹Cranston,47

¹⁰Verfassung und Rechts in Uebersee 182,194.

General Comment No 15 and the Report of the High Commissioner, it is possible to delineate the normative content of the right to water as well as the specific obligations deriving from such a right. As such, the right to water becomes more precise. Closely linked to the argument of this right lacking precision is the argument that it is not judicially enforceable. The possibility of judicial enforcement is seen as a prerequisite for the status of a real legal right¹¹. Yet such a view is not compatible with international law where enforcement mechanisms comparable to national courts are the exception rather than the rule. The lack of enforcement mechanism cannot generally be used as an argument to dispute the legally-binding nature of the rules of international law accepted by States. Moreover from a factually point of view judicial enforcement of the human right to water and other socio-economic rights increasingly takes place in reality. A case in point is the Indian Constitution, which includes a provision in Article 37 that the directive principles of State policy, including, for example, the right to adequate means of livelihood and the protection and improvement of environment (Article 39(a), Article 48A respectively) shall not be enforceable in court. However since 1980 the Indian High courts and the Supreme Court have developed sophisticated case law on the right to a healthy environment, including air and water. One may therefore discuss the precise content of socio-economic rights and the specific nature of State obligations but the legally-binding nature of the human right to water is beyond question.

The legally-binding nature of human right to water raises the question of a States obligations corresponding to this right. There exists a tripartite typology of obligations to respect, to protect and to fulfill the human right to water. The obligation to respect requires the States to abstain from interfering with the enjoyment of human rights. In regards to respect to human right to water the States must respect any existing water supply in line with human rights standards. They must not engage in any activity that limits access to safe water for example by polluting drinking water resources.¹² The obligation to protect requires the States to prevent third parties from interfering with the enjoyment of human rights. States have the obligation to adopt the necessary measures to prevent third parties from extracting unreasonable amounts from water resources that would hinder an equitable allocation of water allowing for sufficient resources for all people's needs. The obligation to protect is particularly relevant in the context of water pollution. People have to be protected from water pollution committed by third parties that could hinder the realization of their right to water¹³. With regards to water supply the obligation to protect requires the State to take measures to ensure equal access to enjoyment of rights in case of provision by third parties, in particular aimed at protecting vulnerable and marginalized groups. Finally, the obligation to fulfill requires the State to adopt the measures necessary to ensure that each person has the opportunity to realize his or her rights. In order to do so States first have to allocate sufficient water resources to satisfy everyone's basic needs. They need to develop a national water strategy. Further, States have to ensure that people gain access to water for personal and domestic use which relates to provision of water services through development of infrastructure. These

¹¹Vierdag 1,73,76

¹²Committee on Economic, Social and Cultural Rights, General Comment No 15, The right to Water, January 2003

¹³Langford 47,278

obligations indirectly advance the main goal of water conservation by protecting water bodies from pollution and achieving efficient use of water.

Another obligation of non-discrimination is laid down in Article 2(2) of the Social Covenant. Similar provisions are included in Article 2(1) and 26 ICCPR as well as Article 2(1) CRC. States are not only obliged to ensure non-discrimination in current and future measures, they also have to address existing de-facto discrimination and pay specific attention to disadvantaged, marginalized and vulnerable groups. In this regard the human rights framework mandates reduction of disparity (Darrow & Thomas, 2005). While the general obligation of non-discrimination is not dependent on the availability of resources and must therefore be regarded as being of immediate effect, it has to be recognized that it takes time to address and remedy the existing inequalities and discriminatory conditions. In this regard the Limburg Principles, a set of principles elaborated by a group of experts in 1986 that constituted a significant step in determining the nature and scope of obligations under the Social Covenant, point out that de-facto discrimination occurring as a result of the unequal enjoyment of economic, social and cultural rights, on account of a lack of resources or otherwise, should be brought to an end as speedily as possible.

The realization of socio-economic rights is characterized by the principle of progressive realization and depends on the availability of resources. States have to accomplish the aim of an adequate standard of living as soon and quickly as possible but they do not have to realize all rights immediately in full. Nevertheless there exists certain minimum core obligations that States must realize immediately as the rights guaranteed in the Social Covenant would otherwise be deprived of their *raison d'être*. These relate to a minimum essential level of water necessary to ensure human survival and dignity.

Having analyzed the legal foundation and characteristics of human right to water we need to establish the exact scope and content of the human right to water i.e. the normative content of the human right to water. The main obligation of the States is progressively to realize the right to water. In this regard the aim is to attain an adequate standard of living and the highest attainable standard of health. At the same time, certain elements of the normative content are part of the core content of the right to water, which is not subject to progressive realization but has to be realized immediately. The normative content can therefore be determined at two separate levels i.e. floor and ceiling. The floor symbolizes the core content and the ceiling refers to the standard which is to be accomplished progressively. Hence the normative content of water has to be considered at different levels of States obligations.

The right to water forms part of the right to adequate standard of living and access to water is also guaranteed under the right to health and life. The right to adequate standard of living relates to all features of the right to water such as water quantity and quality as well as physical and economic accessibility. To begin with water has to be available in sufficient quantity. In order to determine what is sufficient one must understand the water uses encompassed by the right to water. First, water has to be guaranteed for the purpose of drinking, as this is necessary for survival. Due to close link to human dignity and health, water for personal hygiene and other basic human needs is also covered. In order to achieve an adequate standard of living, water for domestic uses has to be guaranteed. It is not contentious that the right to water covers these uses (Gleick, 1998). Furthermore, a question arises whether irrigation water for food production, in particular subsistence

agriculture, should be guaranteed by the right to water¹⁴. This would result in significantly higher quantities of water being covered by the human right to water. To determine the scope of the right to water as well as its limits it is important to look at the purpose of the water use in question. Water used for producing food does not aim at fulfilling water requirements as such but food requirements. This is in line with General Comment No 15 which recognizes that the water is required for a range of different purposes, including food production. It stresses the importance of sustainable access to water resources for agriculture and realization of the right to adequate food but does not regard the human right to water as covering water for food production but rather as a right to food¹⁵. The next question to be considered relates to the amount of water necessary to satisfy personal and domestic needs. It is impossible to determine in general terms the precise amount of water that is needed to fulfill the human right to water as requirements may vary for example due to differing climatic conditions as well as varying individual requirements. Nevertheless the approximate amounts of water usually necessary for meeting personal and domestic needs can be estimated. Firstly water for drinking is covered which usually amounts to 2 to 4.5 liters per day depending on activity level, climatic conditions and diet¹⁶. A large amount of water is needed for other personal and domestic uses. In order to provide for the highest attainable standard of health and to allow for an adequate standard of living, the guaranteed amount has to exceed the minimum quantity necessary for survival. The fulfillment of all basic human needs has to be fulfilled. It is extremely difficult to convert these requirements into a specific amount of water. However, many international recommendations for example WHO refer to 20 to 25 lt/c/d as the absolute bare minimum amount needed.

However significant health concerns remain even with such minimum levels. A large quantity of water is required to fulfill the right to water. The WHO regards 50 l/c/d as sufficient to meet most basic consumption and hygiene needs, even though this is not considered optimal. Aside from the amount, water also has to be safe and not pose a threat to human health. This feature demonstrates a strong link to right to health as contaminated water is an important route to many infectious diseases. Provision on drinking water quality can be found in many National Laws. At the international level the WHO Guidelines for drinking water quality constitutes a reference point and are widely accepted as standard setting. The right to water also entails its physical accessibility¹⁷. The distance to the point from which water is collected must not be so great that it would prevent sufficient quantities being collected. Thus it has to be accessible in the vicinity of the household. Finally from the perspective of legal obligations the water also has to be affordable. The UNDP Human development report 2006 assumes 3 percent of the household income is an appropriate bench mark for affordability whereas the Camdessus Report talks about 5 percent.

After discussing the human right to water in general by establishing the legal foundation and determining its legal nature we now discuss its impact on water allocation as this has a huge significance on the preservation of this vital resource. To begin with

¹⁴Food and Human Rights in Development, Vol II

¹⁵CESCR, General Comment No 15

¹⁶P Gleick, 'Basic Water Requirements for Human Activities'

¹⁷Ibid, Human Rights Council, Report of the High Commissioner.

one needs to understand the framework with which to balance competing water uses and establish priorities in water allocation. It is based on different levels of realization of human rights. The aim is to determine priorities through these different levels of realization of human rights by considering all human rights related to water. This framework also takes into consideration the alternatives for realization of the human rights that show a link to water but do not rely on it exclusively as a resource in their realization. Focusing on these alternatives helps conserve fresh water which is already scarce in many parts of the world.

The issue of water allocation can be understood by studying some influential declarations on international water policy and some national water legislation that address this. The Mar del Plata Action Plan, adopted at the UN conference on Water in 1977, refers to all sectors of water use i.e. domestic, agriculture and industrial use thereby highlighting the importance of community water supply. It recommends that national development policies and plans should give priority to the supplying of drinking water for the entire population with an aim to achieve water access that is justly and equitably distributed among the people. The concept of Integrated Water Resource Management has come to play a central role in this regard. The Global Water Partnership has defined IWRM as a process which promotes the coordinated development and management of water, land and related resources in order to maximize the resultant economic and social welfare in an equitable manner without compromising the sustainability of vital ecosystems. It is a broad paradigm that aims at the interaction of the natural system and the human system. This approach stresses three criteria i.e. economic efficiency, equity and environmental sustainability. Under the equity criteria IWRM allows for the prioritization of basic human needs. Yet it is a subjective notion and a broad and elusive subject and so does not provide clear guidelines on how to achieve the prioritization of basic human needs. The economic efficiency aspect within the IWRM approach is also very influential and a way to achieve the most efficient allocation of water resources. This is manifest in the Principle No 4 of the Dublin Principles, adopted at the International Conference on Water and the Environment¹⁸. This acknowledges that water has an economic value in all its competing uses and states that it should be recognized as an economic good. This is regarded as important in order to avoid wasteful and environmentally damaging use of the resource and thus a way of achieving efficient and equitable use. Provisions that prioritize the domestic use of water over other water uses are extremely common in national water laws and policies. Many of these provisions are framed in very general terms, so that the entire domestic sector is accorded priority over other kinds of water usage¹⁹. This is not required from a human rights perspective, as amenity water uses, such as washing cars, watering flowers or filling swimming pools are not guaranteed under human rights to water. Moreover it is questionable if such a general priority is useful when water availability is low as it leaves less water for other sectors such as agriculture having detrimental effect on other rights such as right to food.

Considering the issue of prioritization of water uses from human rights perspective the priority for the fulfillment of basic human personal and domestic needs follows from the

¹⁸International Conference on Water and the Environment, Development issues for the 21st century.

¹⁹B van Koppen, P Moriarty and E Boelee, Multiple-Use Water Services to Advance the Millennium Development Goals, Research Report No 98.

acknowledgment of the human right to water. This is explicitly regarded as one of the advantages of recognizing the right to water²⁰. In the process of adoption of the General Comment No 15 the prioritization between competing claims for water was pointed out as one of the issues requiring attention, in particular between water for personal consumption and water for food production. Yet the General comment No 15 barely touches upon the issue. Firstly, it does not state how far the priority for personal and domestic uses shall reach. The priority for the household uses cannot be understood as an unconditional, unlimited priority. If one were to accept such an unconditional priority, water used for car-washing or filling pools would be included. Yet the exact extent of the promised amount and the underlying reasoning for establishing it are not elaborated on in the General Comment. Secondly, priorities for other water uses are only briefly alluded to so that their extent remains vague. The Report of the High Commissioner²¹ again addresses the issue of water allocation and identifies the prioritization between various kinds of uses of water as one of the issues that require further elaboration. Establishing priorities is impossible when looking at only one sector of water use in isolation. Therefore one must consider other water uses and their link to human rights. We need to establish to what extent other water uses are guaranteed by human rights and therefore must be considered in an allocation of water that conforms to human rights.

With respect to water allocation and human rights the main questions are how do human rights influence the question of allocation among varying uses and which priorities can be established relating to the various uses? In order to answer these questions and establish priorities one needs to establish a broad framework whose first component is the notion of progressive realization of human rights and the second one puts the question of water allocation into the broader context of using all available resources for the realization of human rights as not all human rights that are linked to water are exclusively dependent on it for the realization of the human right. To begin with States are obliged to realize human rights included in the Social Covenant progressively and move as expeditiously and effectively as possible towards the goal of full realization. As a consequence of this obligation States have to accord priority to the realization of human rights which imposes limits on their freedom in allocation. For example the Limburg Principles²² state that in the use of the available resources due priority shall be given to the realization of rights recognized in the Covenant. Hence States have a duty to accord priority to the realization of human rights. The concept of progressive realization entails that States have to start the realization at a certain point, i.e. the minimum essential level of human rights. From that minimum they have to move onto realize human rights progressively in order to achieve full realization of rights. The concept of core obligations is useful in guiding resource allocation and setting priorities. The Limburg principles put particular emphasis on the need to assure to everyone the satisfaction of subsistence requirements as well as the provision of essential services. Applying the minimum core approach recognizes that certain minimum needs are more urgent than others. It aims at guaranteeing a minimum standard that is indispensable for human survival and dignity. This lead to a general framework that consists of four different levels i.e. the survival level, the core level, the

²⁰J Scanlon, A Cassar and N Nemes , Water as a Human Right? Environmental Policy and Law Paper No 51.

²¹Human Rights Council , Report of the United Nations High Commissioner for Human Rights 16 August 2007

²²Limburg Principles , para 28

level of full realization of human rights and the level beyond human rights guarantees. The human rights principles of non-discrimination cuts across all four levels and the States must not discriminate in any of their actions, including decisions on water allocation, which may require targeted intervention aimed at vulnerable and marginalized groups to remedy existing de-facto discrimination. The different levels of realization are only used as a starting point and will not, on their own be sufficient to establish priorities in water allocation. While many human rights relate to water in their realization, some of them can also be realized in different ways. Whenever such alternatives exist it becomes necessary to take into account the broader picture and to determine the availability of other resources necessary for the realization of these rights. This varying reliance on water due to alternatives in the realization of the rights becomes relevant in the balancing process. It can be split into three main factors i.e. whether alternatives exist, whether direct access is required and what quantity of water is required. The first factor refers to alternatives for the realization of human right to water for example while productive uses of water may be linked to the right to work, this right can also be realized without access to water. For the second factor, the realization of human right to food is an example where the direct access to water is not necessary to fulfill this right. For example while water is essential in production of food, the food can also be produced in areas with high water availability at a distance from the point of consumption. The third set of factors relates directly to water as one of the resources required in realization of human rights, referring to the quantity of water required. Some water uses require minimal amounts and therefore can be almost ignored in the water allocation process. In other cases the quantity of water actually required for the realization of human rights may be influenced as there is an enormous potential for water saving for example in the agricultural sector.

There are many ways in which water is used, the two main ones being industrial and agricultural. These different water uses need to be considered more closely to determine which human rights are involved and to establish to what extent these rely on water in their realization. Evidently not the entire amount of water used for any of these purposes evidences a link to human rights. The balancing process will have to take into account the extent to which these water uses are guaranteed by human rights and which water uses reach beyond human rights guarantees.

To begin the understanding of different uses of water and the human rights implication in their balancing and allocation processes we begin with the basic use i.e. personal and domestic use. This use entails a guarantee of safe, acceptable, accessible and affordable water. The right to water becomes relevant at all levels of the framework as to ensure survival a minimum amount of drinking water is required which as discussed before amounts to 5 l/c/d. This can be considered as the right to free from thirst corresponding to the right to hunger in Article 11(2) of the Social Covenant. Moreover water to ensure basic health is required at the survival level. The core content of the right to water reaches beyond mere survival requirements. Fulfilling other basic human needs that are necessary to lead a life in dignity such as personal hygiene is part of the core content as well. The level of an adequate standard of living occurs with the full content of the human right to water that is to be achieved progressively. When balancing water for personal and domestic uses with other water uses it is essential to consider that water for drinking, hygiene and most domestic uses cannot be substituted with any other resource in any circumstance.

Next we consider the largest sector of water usage which is agriculture and linked to the human right to food. Article 11(1) of the Social Covenant guarantees the right to food as part of the right to an adequate standard of living. Moreover Article 11(2) recognizes the fundamental right of everyone to be free from hunger. The most basic obligation is referred to in Article 11(2) of the Social Covenant requiring States to prevent starvation and to guarantee access to minimum essential nutritionally adequate and safe food in sufficient quantity to ensure freedom from hunger. In order to fulfill this food requirements agriculture production is necessary which in turn is impossible without water. The agriculture sector is the largest water user accounting for about 70 per cent of global use²³. Not all of water used in the agriculture production is required to fulfill the human right to food. The cultivation of wide range of crops does not aim at fulfilling this right for instance cultivation of flowers, cotton or bio fuels. States have broad margin of discretion in realizing the right to food. It may either opt for self-sufficiency by ensuring that sufficient food is produced domestically and accordingly that sufficient water is allocated or it may import food. Key factor to be taken into account for balancing process is the potential for water saving. The comparably large amount of water necessary for food production entails a potential for increasing water productivity through improved cultivation methods and irrigation techniques. Several factors are relevant in this regard. Firstly, whereas the water for drinking cannot be substituted and the necessary amount is fixed, the amount of water necessary for food production depends on the kind of food being cultivated. As there are many kinds of crops and food stuffs, it is possible to substitute one kind of food for another. There is not only a great difference between the water requirements of a vegetarian and a meat-based diet but different crops also have different water requirements. Furthermore, modern technologies such as drip irrigation allow for a much more efficient use of water than less advanced techniques. This form of irrigation is very efficient in water usage and goes a long way in preserving water. Its usage accounted for only 1 percent of the global irrigated area as of 2003 and therefore its potential for water preservation is immense²⁴. Moreover traditional techniques such as rainwater harvesting also have a great potential to enhance water security. The question of these techniques is closely linked to agriculture water subsidies. If the water is highly subsidized or even provided for free of charge, farmers have no incentive to save water and to invest in modern technologies. Therefore the governments have great leeway in terms of prioritizing the water usage when it comes to their obligations towards realization human right to food. These priorities as obligated by the human rights framework encourage governments through legislative and tax policies to provide incentives to end users to use the most optimum and efficient technologies in agricultural sector.

With respect to water for production of clothing similar considerations as for water for food production apply as it is mentioned in Article 11(1) of the Social Covenant alongside food and housing. Clothing does not have to be produced at the place of consumption but can be easily transported. Additionally, there is the possibility of substituting products that require rather large amounts of water in their production with those that require less there by having a great potential for water saving.

²³World water assessment program, UN World water Development Report (Paris,2006)

²⁴Postel,96.

Additionally, water is also necessary for preserving and protecting the ecosystems. It is widely acknowledged that there is a close link between human rights and the environment²⁵. The realization of many human rights depends on the preservation of natural resources and the protection of soil, air and water. The realization of human right to water itself is jeopardized if sufficient attention is not paid to environmental protection. The necessary quality of water for personal and domestic uses can be guaranteed only if water bodies are protected from pollution²⁶ and waste. Support for a substantive right to environment may be drawn from non-binding declarations as well as from regional human rights treaties. An early reference can be found in the Stockholm Declaration, Principle 1. The right to environment put obligation on the State to establish an Ecological Reserve that relates to water required to protect aquatic ecosystems²⁷. This in turn relates to preservation of water bodies.

Human rights which relate to the special relationship of indigenous peoples to water is explained in the 'Indigenous Peoples' Kyoto Water Declaration'. These rights also go some way in helping achieve water conservation outcomes. Water has a cultural and spiritual significance for many indigenous peoples and is often used as the basis of subsistence example fishing at the same time. Water is inextricably linked to their way of life²⁸. The United Nations Declaration on the Rights of the Indigenous Peoples Article 26(1) states that the indigenous people have the right to the lands, territories and resources which they traditionally owned, occupied or otherwise used. This includes water resources. According to Article 29 of the Declaration, they have the right to the conservation and protection of the environment including water resources and the productive capacity of these resources.

States are obliged to accord priority in water allocation to the human right to water as long as they have other resources at their disposal that they can use for the realization of other human rights. Overall States are required to devote the maximum available resources to the progressive realization of human rights i.e. to realize all human rights to the greatest extent possible. This requires a mix of resources that is optimally employed to achieve the best possible overall result in the realization of all human rights. When other human rights such as food, clothing sanitation or work are able to be realized with the input of other resources, priority in water allocation has to be accorded to those human rights that depend directly on water. This relates most obviously to the human right to water. This priority in particular for water for personal and domestic use is based on the assumption that other resources exist that may be employed in the realization of other human rights in particular when water availability is low.

The above considerations demonstrate the difficulties in determining priorities in water allocation at an abstract level. When related to real life scenarios the question of prioritization does not always prove to be as difficult. When Industrial activities and golf courses that have little to do with human right are accorded priority over survival needs, this clearly is not in line with a human right-based prioritization. The same applies when within the household sector the well off are provided with almost unlimited amounts of

²⁵G Handl, Human Rights and the Environment.

²⁶Scanlon et al

²⁷Republic of South Africa, National Water act.

²⁸DH Getches, 'Indigenous Peoples Rights to Water under International Norm' (2005)

water while low income neighborhoods are not served at all. Rather, the minimum core approach and the human rights framework discussed above call for starting with the most basic requirements and first realize the core level for everyone and then move towards the full realization of human rights and beyond. This is reinforced by human rights principles of non discrimination. Human rights are not a straight jacket for States policy decisions but a human rights mechanism based prioritization can provide a broad framework that guides resource allocation and its efficient usage leading to achievement of resource conservation goals as laid out at the beginning of the essay.

Recognizing water as a human right and taking an approach to water allocation that is based on human rights demonstrates enormous potential for improving access to water and achieving a more equitable allocation of water and thus its preservation through prioritizing techniques that are more efficient in their usage. The benefits of human rights framework stem from the transformation of mere needs into rights. The human rights framework is based on legally-binding and coherent standards. As such it provides a non-negotiable normative basis and a source of authority and legitimacy. Furthermore, understanding water as a human right opens up a broad range of accountability mechanisms at the national and international level in the sphere of human rights. The justifiability of the human right to water has undoubtedly been established, and it should be beyond question that individuals have access to judicial remedies in the case of an alleged violation of their human rights²⁹. All in all, the human right to water provides a non-negotiable, consistent, authoritative and legitimate framework that may be relied upon for increasing access to and to achieve efficient usage of water and holding governments to account if fresh water bodies are polluted or exploited by third parties.

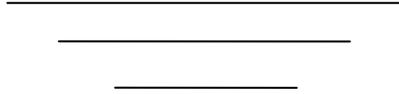
In summary, water is an essential natural resource which is vital for human existence. The goals of water preservation include protection and conservation of natural fresh water bodies and keeping these clean from pollution and exploitation. The human rights framework regarding human right to water goes a long way in conserving water by enforcing and obligating the State to prioritize its usage and encourage efficient use. Evidently an approach based on the human right to water is no panacea for all water-related concerns. It addresses the human dimension of the water crisis, focusing on water for personal and domestic uses and accord priority to these uses and provides a framework for prioritization other water uses that are linked to human rights. However many uses of water are beyond the guarantees established by human rights or do not link to human right at all. The human rights framework does not aim to replace the integrated management of water resources that takes account of all uses of water and all interrelated concerns, but rather complements it and enriches it with normative human rights considerations that guide resource allocation in a way that make efficient use of water and prioritizes its allocation.

The resolutions by the UNGA and the Human Rights Council in 2010 heralded a breakthrough in the recognition of the human right to water. It affirmed that the human right to water is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health as well as right to life and human dignity hence putting the right to water in the context of legally binding human rights instruments which provide a firm basis in international law. When

²⁹Porter 266

prioritizing water uses in accordance with human rights, all water uses that have been established to be linked to human rights have to be taken into account. Accordingly, no single use of water can be granted unconditional priority. Rather, the most basic requirements as relating to different human rights have to be met first. Priorities must move from survival level, to the core level, to the level of full realization of human rights.

The benefits of an approach that is based on the human right to water accrue from its status as a legally-binding instrument that has a solid normative basis in international law. More over these have significant benefits in procedural terms. It requires active, free and meaningful participation in any decisions on water management. It allows the stake holders to hold the State accountable to live up to its rights obligations. This aspect most distinctively distinguishes the understanding as human right from charity or welfare. The human right is a standard against which government actions may be measured. As far as the human rights framework enforce efficient use of water and stop exploitation of fresh water resources they immensely aid in achieving the goals of water conservation as set out in the Berlin rules³⁰.



³⁰Berlin Rules on Water Resources, adopted by International Law Association August 21, 2004.