

The - international- legal concept of human right to safe water

Aouataf ouanas doctoral researcher university of annaba
Sethaoui abd elkarime doctoral researcher university of batna

ملخص:

تعد المياه المأمونة حقا من حقوق الإنسان الاقتصادية والاجتماعية والثقافية ، وهي عصب حياة الإنسان وصحته وكرامته ، ومع ذلك فإن العديد من الناس لا يتمتعون بسبل الوصول إلى المصادر المحسنة لمياه الشرب والاستخدام الآدمي ، ولقد أدرك المجتمع الدولي وجوب التصدي لهذه الأزمة والنظر في إمكانية الحصول على مياه شرب مأمونة ضمن إطار قائم على حقوق الإنسان ، وتبرز هذه الدراسة الجانب القانوني العام لهذا الحق و الذي يستند إليه في قيامه و إلزاميته .

الكلمات الدالة : المياه المأمونة، شروطها ، الأدوات القانونية.

Abstract:

Safe water is truly one of the economic, social and cultural rights , and an essential element of human life, health and dignity, nevertheless many people cannot have access to safe drinking water and human use. The international community has recognized that this crisis must be addressed and safe drinking water is within the human rights framework, this study highlights the general legal aspect of this right as a basis for its establishment and obligation.

key words: *Safe water, conditions, legal tools.*

Introduction:

Water is a limited natural resource and a public good fundamental for life and health⁽¹⁾.and the safe water is one of the economic, social and cultural rights but many people suffer from the lack of this right. In November 2002, the Committee on Economic, Social and Cultural Rights adopted its general comment No. 15 on the right to water⁽²⁾, and defined this

¹- United nations committee on economic, social and cultural rights , general comment No. 15 (2002) The right to water , contained in Document E/C.12/2002/11 , united nations economic and social council , 20 January 2003, p 1.

²- The Right to Water , Fact Sheet No. 35 , Printed at United Nations, Geneva, August 2010 , p4.



right as " The human right to water entitles everyone to sufficient ,safe, acceptable, physically accessible water for personal and affordable water for personal and domestic uses .An adequate amount of safe water is necessary to prevent death from dehydration , reduce and domestic hygienic requirements ,the water is essence of life ,without water ,human beings cannot live for more than a few days "(1) ,**what are safe water as a human right conditions and legal tools must be available in order to benefit from this right to the fullest?**

Chapter One : Factors applied in right to safe water

The following factors are to be applied according to the general comment No. 15 - The right to water – the latter defined them as the following :

1- Availability:

" ...The water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene. The quantity of water available for each person should correspond to World Health Organization (WHO) guidelines. Some individuals and groups may also require additional water due to health, climate, and work conditions..."(2)

The World Health Organization recommends a hundred liters a day. Some individuals and groups may require additional water due to health conditions ,climate, and work conditions (3) .

2 -Quality :

"...The water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health. Furthermore, water should be of an acceptable colour, odour and taste for

¹- United nations committee on economic, social and cultural rights , general comment No. 15 (2002) The right to water ,op .Cit ,p2.

²- Ibid,p5.

³ - أورلي ألي . ترجمة نبيل ارملي. من أجل نقطة ماء . المياه الدولة والقرى غير المعترف بها في النقب . أيار 2006 . 13.



each personal or domestic use... ⁽¹⁾, according to the World Health Organization the drinking water quality must maintain quality at the highest possible level⁽²⁾.

3- Accessibility:

"Water and water facilities and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

(i) Physical accessibility: water, and adequate water facilities and services, must be within safe physical reach for all sections of the population. Sufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace. All water facilities and services must be of sufficient quality, culturally appropriate and sensitive to gender, lifecycle and privacy requirements. Physical security should not be threatened during access to water facilities and services;

(ii) Economic accessibility: Water, and water facilities and services, must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realization of other Covenant rights;

(iii) Non-discrimination: Water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds; and

(iv) Information accessibility: accessibility includes the right to seek, receive and impart information concerning water issues... ⁽³⁾

Chapter Two: International and Regional Treaties related to safe water

The human right to safe water based on some legal instruments ; treaties , human rights guidelines and principles like the Convention on the Elimination of All Forms of Discrimination against Women -Article 14 (2)" , and Convention on the Rights of the Child (CRC)- Article 24, Convention on the Rights of Persons with Disabilities (CRPD)- Article

¹ - United nations committee on economic, social and cultural rights , general comment No. 15 (2002) , The right to water , op .Cit ,p 5.

² - Guidelines for Drinking-water Quality, volume1,third edition, World Health Organization, 31aout 2004,p2.

³ - United nations committee on economic, social and cultural rights , general comment No. 15 (2002) The right to water , op .Cit ,p 6



28⁽¹⁾ , through these sources we can see that the safe water is a legally binding human right with a set of conditions that must be met.

1- International Human Rights Treaties and their Protocols:

1-1 Convention on the Elimination of All Forms of Discrimination against Women- Article 14 (2):

" States parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular shall ensure to women the right: (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

The Committee on the Elimination of Discrimination against Women considered that this article obliges States parties to take all appropriate measures to ensure adequate living conditions in relation to water and sanitation, which are critical for the prevention of diseases and the promotion of good health care."⁽²⁾

1-2 Convention on the Rights of the Child- Article 24 (1) :

" States parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health ...

(2). States parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, (...) the provision of adequate nutritious foods and clean drinking water (...)The United Nation Committee on the Rights of the Child underlined that under article 24 States have a responsibility to ensure access to clean drinking water and that such access is particularly essential for young children's health."⁽³⁾

1-3 Convention on the Rights of Persons with Disabilities-Article (28):

¹ - See the :table contains the most important instruments - in the public international law , according to: the office of the united nations high commissioner for human rights ,available on : <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWWater/Pages/InternationalStandards.aspx>,last entry 08-04-2017,23:16.

² - Convention on the Elimination of All Forms of Discrimination against Womenm , article 14 .

³ - Convention on the Rights of the Child, article 24.



" Adequate standard of living and social protection

(2). States parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures: appropriate steps to safeguard and promote the realization of this right, including measures:

(a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs."⁽¹⁾

1-4 Convention No. 161 of 1985 on Occupational Health Services-Article 5:

"Without prejudice to the responsibility of each employer for the health and safety of the workers in his employment, ... occupational health services shall have such of the following functions ...

(b) Surveillance of the factors in the working environment and working practice which may affect workers' health, including sanitary installations, ..."⁽²⁾

2- Regional Treaties related safe water:

2-1 African Charter on the Rights and Welfare of the Child- Article 14 (1):

Every child shall have the right to enjoy the best attainable standard of physical, mental and spiritual health.

(2). States parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures: ...

(c) To ensure the provision of adequate nutrition and safe drinking water."⁽³⁾

¹ - Convention on the Rights of Persons with Disabilities, article 28.

² - Convention No. 161 of 1985 on Occupational Health Services, article 5.

³ - African Charter on the Rights and Welfare of the Child, article 14.



2-2 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa -Article 15:

" Right to Food Security States parties shall ensure that women have the right to nutritious and adequate food. In this regard, they shall take appropriate measures to:

(a) Provide women with access to clean drinking water... "(1)

Chapter Three: United Nations instruments:

1- Standard Minimum Rules for the Treatment of Prisoners:

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness...

20. (2) Drinking water shall be available to every prisoner whenever he needs it.... "(2)

2- U N Rules for the Protection of Juveniles Deprived of their Liberty -Article 34:

" Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner."

-Article 37:

" Every detention facility shall ensure that every juvenile receives food that is suitably prepared ... Clean drinking water should be available to every juvenile at any time." (3)

3- United Nations Principles for Older Persons:

1. " Older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help... "(4)

¹- Protocol to the African Charter on Human and Peoples' Rights, on the Rights of Women in Africa, Article 15.

²- Standard Minimum Rules for the Treatment of Prisoners.

³- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Article 34, Article 37.

⁴- United Nations Principles for Older Persons.



4- Guiding Principles on Internal Displacement- Principle 18''1

All internally displaced persons have the right to an adequate standard of living.

2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:

(a) Essential food and potable water;...

3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies."⁽¹⁾

5- Recommendation No. 115 of 1961 on Workers' Housing:

" Suggestions concerning methods of application ...7. The housing standards referred to in paragraph 19 of the General Principles should relate in particular to ...

(b) The supply of safe water in the workers' dwelling in such ample quantities as to provide for all personal and household uses;

(c) Adequate sewage and garbage disposal systems; ...

8. Where housing and accommodation for single workers or workers separated from their families is collective, the competent authorities should establish housing standards providing, as a minimum, for:

(c) Adequate supply of safe water;

(d) Adequate drainage and sanitary conveniences; ..."⁽²⁾

6- Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national security:

"3.6 In their poverty reduction strategies, States should also give priority to providing basic services for the poorest, and investing in human resources by ensuring access to ... clean drinking water, adequate sanitation ...

¹- Guiding Principles on Internal Displacement, principle 18

²- Recommendation No. 115 of 1961 on Workers' Housing.



8.1 States should facilitate sustainable, non-discriminatory and secure access and utilization of resources consistent with their national law and with international law and protect the assets that are important for people's livelihoods. States should respect and protect the rights of individuals with respect to resources such as land, water, ..." ⁽¹⁾

7- The right to adequate food in the context of national security:

" 8.1 States should facilitate sustainable, non-discriminatory and secure access and utilization of resources consistent with their national law and with international law and protect the assets that are important for people's livelihoods. States should respect and protect the rights of individuals with respect to resources such as land, water, ..." ⁽²⁾

8- Resolution 64/292, The human right to water and sanitation:

(... Recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights...) ⁽³⁾

Chapter Four: The link between the right to water and other human rights and some specific groups.

Access to safe drinking water is a fundamental precondition for the enjoyment of several human rights, including the rights to education, housing, health, life, work and protection against cruel, inhuman or degrading treatment or punishment. It is also a crucial element to ensure gender equality and to eradicate discrimination. ⁽²³⁾

1- Links between the right to health and the right to water :

"health is associated with the ingestion of or contact with unsafe water, lack of clean water (linked to inadequate hygiene), lack of sanitation, and poor management of water resources and systems, including in agriculture. Most diarrhoeal disease in the world

¹ - Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national security.

² - * The right to adequate food in the context of national security

- Resolution 64/292, The human right to water and sanitation , Resolution adopted by the General Assembly on 28 July 2010. General Assembly, A/RES/64/292, 3 August 2010, p 2.

³ - The Right to Water , Fact Sheet No. 35 , Printed at United Nations, op.Cit, p12.



is attributable to unsafe water, sanitation and hygiene. In 2002, diarrhoea attributable to these three factors caused approximately 2.7 per cent of deaths (1.5 million) worldwide."⁽¹⁾

2- Links between the right to food and the right to water :

"The right to food cannot be realized if people lack access to safe drinking water for personal and domestic uses, defined as water for drinking, washing clothes, food preparation and personal and household hygiene".⁽²⁾

3- Links between the right to food and the right to water : "Human rights are interdependent, indivisible and interrelated. In other words, the violation of the right to adequate housing may affect the enjoyment of a wide range of other human rights and vice versa Access to adequate housing can be a precondition for the enjoyment of several human rights, including the rights to" safe water.⁽³⁾

4-Links between the to water and some specific groups: "Some groups or individuals have a particularly hard time exercising their right to water as a result of discrimination or stigma, or a combination of these factors. To protect the right to water effectively, it is necessary to pay attention to the specific situation of individuals and groups, in particular those living in vulnerable situations. States should adopt positive measures to ensure that specific individuals and groups are not discriminated against in purpose or effect..."⁽⁴⁾.The specific groups are: The rural and urban poor, women, children, persons with disabilities refugees and internally displaced persons, indigenous peoples.

Through the above-mentioned article, we noted that this right is legally binding and must be respected by all countries , and in the resolution 7/22, the Human Rights Council created the mandate of the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation. Catarina de Albuquerque was appointed as the first Independent Expert in 2008 ,and she working on:

- Identify, promote and exchange views on best practices related to access to safe drinking water and sanitation.

¹- The Right to Health , Fact Sheet No. 31 , Printed at United Nations, Geneva, June 2008, p6.

²- The Right to Adequate Food Fact Sheet No.34 , Printed at United Nations, Geneva, April 2010, pp 5-6

³- The Right to Adequate Housing, Fact Sheet No.21Rev.1 , Printed at United Nations, Geneva, May 2014,p9.

⁴- The Right to Water , Fact Sheet No. 35 , Printed at United Nations,op.Cit,p17



- Prepare a compendium of best practices.
- Clarify the content of human rights obligations in relation to access to safe drinking water and sanitation.
- Make recommendations that could help the realization of the millennium development Goals, in particular Goal 7.
- Apply a gender perspective, including through the identification of gender-specific vulnerabilities. ⁽¹⁾

¹ - The Right to Water , Fact Sheet No. 35 , Printed at United Nations, op .Cit ,p 46.

