

What role can law play in safeguarding the right to water?

H.E. Mr Barend ter Haar

“Right” as it is used in the phrase “the right to water” is a wonderful word. It implies that we, human beings, do not accept reality as it is, and that we are convinced that reality should be adapted to our view of a just society. “Right” is a wonderful word, yet also a very heavy word; one that should not be used lightly. Taking rights seriously means making laws, respecting laws and, if necessary, enforcing laws.

At high school my friends and I enjoyed debating and fooling each other with debating tricks. One of them went more or less as follows: I would write down a sentence on paper and say to my friend: “If you read this sentence out loud you will get \$1000.” He knew perfectly well that I did not have \$1000, but he thought “Why not give it a try?”, so he said OK and read the sentence aloud. Then, of course, he asked me for the money. But I would say: “I did not say that you would get the money from me, neither did I specify when you will receive it. But I am sure you will receive such an amount of money sometime in the future.”

I was reminded of this silly game when I was reading the well phrased international declarations about the right to water and the right to sanitation. Of course safe water and proper sanitation are no laughing matter. But then, how is it possible that while we recognize the right to water, at the same time about 800 million people still lack safe water and two and half billion people lack proper sanitation? Are we serious? Or are we fooling each other?

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It is against the background of this question that I will say something about the preconditions that enable laws to play their role. My remarks should be seen as personal observations from an ambassador to UNESCO, who works in the misty world of diplomacy, between visionary statements on the one hand and grim realities on the ground on the other.

What role can law play in safeguarding the right of water and the right of sanitation?

I will start with two introductory remarks.

One: Safe water and adequate sanitation are of crucial importance to humanity

Whenever an unexpected disaster occurs, such as a hurricane, a war or a new infectious disease, it immediately receives a lot of attention and rightly so. But if an even larger, but continuous disaster kills about 10,000 people every day, such as is the case with the lack of safe water and adequate sanitation, we hardly notice. In sub-Saharan Africa, for example, half of all hospital beds are occupied by people sick from unclean water or unsafe sanitation. In these countries 90% of the cause of deaths in children is linked to a lack of safe water and sanitation.

Two: Safe water and sanitation are essential for reaching all Millennium Development Goals

As the director of the Stockholm International Water Institute pointed out: "Without water, we can never fight hunger; without toilets in schools, girls will continue to drop out before finalizing their education; and without adequate sanitation and hygiene, diseases will continue to spread, resulting in increasing child mortality and bad maternal health."

Let me now mention a number of preconditions for law to play its role.

Water and sanitation are primarily national responsibilities

First of all we have to decide what type of law we are talking about: national law or international law?

It is tempting to concentrate on the principles of international law with regard to the right to water and the right to sanitation and I will not deny the usefulness of that. I also recognize that some governments would rather discuss international assistance to support their national policies with regard to water and sanitation than discuss these national policies.

However, the key to fulfilling the right to water and the right to sanitation is not to be found in international law, but in national law, because the primary responsibility to assuring the fulfilment of these rights is in the hands of national governments, not in the hands of the international community.

The role of law requires the Rule of Law

Secondly, the role of law requires the Rule of Law. People that lack safe water and adequate sanitation are usually not rich and powerful, but poor and powerless. Laws can help to assure that they nevertheless get their fair share. But such laws will not work when the rich and powerful are in a position to disregard them. For law to play a role, the Rule of Law is an essential precondition. The Rule of Law means inter alia that laws are obeyed by all – also by the rich and the powerful and also by government officials – and it furthermore requires an independent judicial system.

Corruption undermines the rights of the powerless

Thirdly, it should be noted that corruption undermines the rights of the powerless. Water, as they say, streams uphill to money. To prevent that, we need laws that assure that the poor get their fair share. But some of the rich might be willing to bribe officials in order to get more than their share. If safe water is scarce, the result of such corruption is that the poor will not get a fair share of the water.

It is sometimes argued that in poor countries corruption should be tolerated, as part of the local culture, because, for example, people working at the public water company need the extra income. But think again: if you bribe the water company in order to be able to wash your car, the result might be that a poor family will have to do without sufficient water, possibly leading to disease and death.

People should be empowered to exercise their right to water and sanitation

Furthermore, it is essential that people are empowered to exercise their rights. The best way to fulfil the right to water and the right to sanitation is to give these rights to the people involved. That might sound self-evident, but in practice this is often a real problem because exercising the right to water often requires other rights.

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The exercise of the right to water therefore requires the exercise of other rights. When people lack safe water and proper sanitation, they usually also lack other rights, such as property rights of the land they live on and of the buildings they live in. Safeguarding the right to water is therefore closely linked to the safeguarding of other rights. Among the rights that can be essential for exercising the right to water are:

- freedom of expression

- freedom of assembly
- right to vote

and requires openness about the state of water

And finally: to promote a fair distribution of water it is essential that relevant figures are publicly available, i.e. about storage, use and contamination.

In short:

Law can play an important role in safeguarding the right to water and sanitation provided a number of preconditions are fulfilled, such as Rule of Law; repression of corruption; empowerment of the people concerned; safeguarding the other rights of these people and openness about the state of water.