

IWRM

Understanding and integrating human rights-based approaches

Communities and Integrated Water Resources Management

The human rights approach – A constitutional imperative

Human rights are an inherent entitlement to every person as a consequence of being human, and are founded on respect for the dignity and worth of each person. The right to sufficient water, enshrined in South Africa's constitution, cannot be denied. The government is legally bound to comply with this constitutional mandate, and, to this end, has enacted policies, legislation, strategies and institutions to manage water resources and deliver water services.

Despite this, the implications and obligations of this relatively new constitutional right are not yet fully understood by the spectrum of stakeholders, ranging from institutions that have custody over water resources, to individuals entitled to water. This is clearly reflected in the many instances of deficient water security witnessed at grassroots level and the severe gaps that exist between the constitutional right to water and the current practice and understanding of this concept.

Understanding the human rights approach

Research has been necessary to satisfy the vital need for enhanced understanding of what a human rights approach to water management entails and for providing a basis against which to evaluate current efforts of government to meet its constitutional mandate.

The major achievement of the research has been the creation of a **human rights framework** for water that is succinct and accessible to a wide array of stakeholders; that provides definitions and explanations for important human rights concepts; that can serve to initiate dialogue, raise awareness and guide thinking about water-related issues from a human rights perspective; and, that can be

applied in assessing South Africa's efforts to realise the right to water.

A framework for human rights-based approaches to water management

The human rights framework enables the wide range of stakeholders involved in realising the right to water to develop a common understanding of what a human rights-based approach means. The framework's simplification of legal language facilitates this, as does the simple, orderly presentation of an array of complex human rights principles that have key practical uses for those involved in water resource management and services provision.

The framework draws primarily from international human rights law, for several sound reasons:

- International law has provided the most succinct elaboration of human rights to date, specifically relating to water;
- The purpose of international human rights law is to create obligations on every country to comply with and implement specific rights, with such compliance also being supported in South Africa's constitution; and
- The South African Human Rights Commission has highlighted the importance of using international human rights law to help interpret the right to water provision in the South African Constitution.

The human rights framework consists of four inter-related components, namely:

- **Content of the right to water**
Content has three elements, namely, availability of water, quality of water and accessibility to water. Accessibility is broadly defined and includes physical accessibility, economic accessibility (affordability), non-discrimination regarding access and the right to seek, receive and impart information concerning water.

- **Broadly applicable human rights principles**

Human rights principles that are broadly acceptable are equality (non-discrimination), participation, the indivisibility/interdependency of rights and accountability/transparency.

- **State obligations**

Under international human rights law, states have four types of obligations, namely general, specific, core and international. Since the general obligation, namely the right to water, has been formalised in the South African Constitution, the framework focuses on:

- * **Specific obligations** – obligations to respect rights, protect rights and fulfil rights.
- * **Core obligations** – those that must be immediately satisfied, e.g. for disease prevention or for compliance monitoring.
- * **International obligations** – relating to non-interference with another country's enjoyment of the right to water.

- **State violations**

Violations can occur through acts of commission (direct actions) or acts of omission (failure to act).

These four components of the human rights framework are clearly inter-related. The **content of the right to water** (first bullet) is the foundation on which the framework rests. It is through the **content** that state obligations must be interpreted and identified, and objectives for implementation set. Before steps are taken to comply with state obligations, the manner of compliance must be tested against those **human rights principles that are broadly applicable** to the process of realisation of all human rights. States can violate the right to water through non-compliance with any of the obligations elaborated above.

Specific violations are closely tied to specific obligations, while core obligations, which require immediate action, are violated through delayed implementation. A state cannot logically act if it does not have the resources to comply with all its obligations, but unwillingness to use the maximum of its resources for the realisation of the right to water places it in violation of its obligations.

Testing the human rights framework

Besides developing the framework, several issues relating to the use of the framework as a learning and evaluation tool have been investigated. The most important features of recent legislation as they relate to ensuring the right to sufficient water, have been analysed from a human rights

perspective. The range of actors in the water sector and how they relate to one another have been considered and accommodated in the human rights framework.

Outcomes of major cases in South Africa law that are relevant to the right to sufficient water have been reviewed from the point of view of compatibility with the framework. Using the framework, South Africa's compliance with its legal obligations as well as its efforts to ensure the right to water have been evaluated, focusing specifically on the principle of non-discrimination and on applicable legislation and policies. Through giving special consideration to the Reserve, and how this important concept fits into the human rights framework, a more comprehensive human rights focus on water resource management has been initiated than has hitherto been the case.

Emerging issues

Countrywide workshops held to discuss the framework with stakeholders revealed issues of concern regarding its implementation, such as the additional demands that the human rights approach is perceived to impose with regard to meeting of obligations to fulfil rights, being held accountable for violations, adapting to changing roles and satisfying documentation requirements. These issues complemented the numerous issues relating to virtually all components of the human rights framework that had emerged during the course of the research, thereby indicating specific needs for further work in four broad categories:

- Awareness-raising/education/capacity-building activities;
- Operational research/monitoring activities;
- Applied research; and
- Implementation-related activities.

It is logical that progressive realisation of the constitutional imperative of the human rights approach to water management will require such emerging issues be continuously identified and addressed.

Further reading:

- *The Development of a Framework for Understanding Rights-based Approaches and Integrating Them into Water Resources Management in South Africa (Report No: 1512/1/07).*
- *Water as a Human Right, Made Easy! Workbook 1 & 2 (Report No: TT 269/07),*

To order these reports contact Publications at Tel: (012) 330-0340; Fax: (012) 331-2565; or E-mail: orders@wrc.org.za; Web: www.wrc.org.za