



22 March 2011

STATEMENT

Bridge Over Troubled Water: Importance of Freedom of Expression and Free Flow of Information in Right to Water Agenda

On the occasion of World Water Day, ARTICLE 19 reminds the international community that freedom of expression, the free flow of information and transparency are central to the full realisation of the right to water. The watershed developments in the right to water campaign over the past year particularly, demonstrate that the realisation of the right to water necessitates transparency and accountability, the recognition of the right of communities and individual consumers to raise concerns and complaints and seek remedies without fear, and a free and independent media, providing key information to people affected and reporting about water related practices and policies. Local initiatives and community's participation, particularly amongst poor and marginalised people, also need to be fostered in order to promote transparency, accountability and good governance related to water management.

Right to water today

On World Water Day 2011, one billion people lack access to clean water or sanitation. Twenty seven countries are affected by severe water scarcity, and Yemen may be the first country to be dry by 2020. Such water poverty has led to increased health problems and diseases. It has undermined economic development by stifling agriculture and industries that rely on water. Poor and vulnerable groups are often denied the right to participate in water related decisions and policies that concern them, with often serious results: large dams for water supply and irrigation have forcibly displaced tens of thousands, even millions, across many places around the world, such as India, Mauritania or Brazil. Water scarcity drives conflict in Israel/Palestine, around Lake Chad, and along the Danube, Senegal and Mekong rivers, amongst others. WHO estimates that fresh water will be the focus of intense political disputes in the coming decade and will become the natural resource most likely to cause armed conflicts in the 21st century.

The right to water is not yet enshrined in a binding treaty. However, several international treaties contain explicit reference to safe drinking water and sanitation, such as the 1972 UN Convention on the Elimination of All Forms of Discrimination against Women, the 1989 UN Convention on the Rights of the Child, the 2006 UN Convention on the Rights of Persons with Disabilities and others. Also, more than 100 countries have a right to a clean and healthy environment in their constitutions.

International commitments related to the right to water have been also made through the UN Millennium Development Goals (MDGs), one of which aims to halve the proportion of people who are unable to reach or to afford safe drinking water by 2015. Meeting the targets on water and sanitation would also contribute significantly to the realisation of other MDGs, including reducing poverty, promoting gender equality, reducing child and maternal mortality and providing universal primary education.

The year of 2010 was a watershed year for the right to water movement. For the first time, both the UN General Assembly (in the Resolution 64/ 292 of 28 July 2010) and the UN Human Rights Council (in the Resolution Human Rights and Access to Safe Drinking Water and Sanitation of 30 September 2010) affirmed that the human right to water and sanitation is legally binding. The Human Rights Council resolution states 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.” As stated by UN Independent Expert on human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque, the resolution signifies that “*The right to water and sanitation is a human right, equal to all other human rights, which implies that it is justiciable and enforceable.*”

The resolution also states clearly that the delegation of the delivery of safe drinking water and/or sanitation services to a third party does not exempt the State from its human rights obligations. It also calls on states to ensure full transparency of the planning and implementation process in the provision of safe drinking water and sanitation and the active, free and meaningful participation of the concerned local communities and relevant stakeholders. It further highlights the need for grievances, accountability and redress mechanisms.

Importance of freedom of expression and free flow of information in the right to water agenda

Although the right to water has been recognised, significant work is required to ensure its implementation at international, regional and national levels. ARTICLE 19 believes that freedom of expression, the free flow of information and public participation in related decision-making are central to a successful implementation of government obligations regarding the right to water.

Two ARTICLE 19 policy statements highlighted the importance of free expression and of the free flow of information in the development and implementation of effective development strategies. The *London Declaration for Transparency, the Free Flow of Information and Development* asserts their necessity for achieving the MDGs. *Changing the Climate for Freedom of Expression and Freedom of Information* outlines their impact in adjusting to and mitigating environmental issues.

Experiences to date in the field of water and/or sanitation and right to water support such an approach. Some recent examples include.

- The government of Bolivia awarded a 40-year contract in 1999 to multinational company Aguas del Tunari to supply water services in the city of Cochabamba. Inequitable and unfair fixed pricing schemes, and a doubling or tripling of price left many Cochabambinos unable to afford water. February

2000 saw outbreaks of protesters calling for revision of national water policies to take account of public opinion and the cancellation of the contract with Aguas del Tunari. The government responded with severe restrictions; gatherings of more than four people were banned, journalists arrested, and press and radio freedom curbed. Protesters were violently confronted by the army, leading to the death of a 17-year old boy, and leaders calling for the right to water were detained. Eventually under the pressure of the international media and local protesters, the government was forced to concede, cancelling the contract with Aguas del Tunari, releasing detainees and compensation those injured during the ‘water war’.

- The South African government awarded the publicly-owned Johannesburg Water Company (JWC) and private company Suez Lyonnaise des Eaux a contract in 2002 to deliver pilot water projects to Orange Farm, the largest and one of the poorest townships in the country. There followed widespread controversy over the installation of water meters, new sanitation services and the death of Emily Lengolo a 61-year old right to water activist under suspicious circumstances. Researcher and journalist Ebrahim Harvey tried to use the Promotion of Access to Information Act to request contractual information from JWC but was refused on the grounds of “commercial confidentiality”. The community responded to the lack of transparency by establishing the Orange Farm Water Crisis Committee to campaign for accountability and participation in decision-making.
- Investigative journalist Charles Yates uncovered in 2009 serious water pollution in Liberia coming from Firestone Rubber Plantation. The pollution caused skin disease, made fish unsafe for consumption and water unsafe for drinking. Yates, who had been trained by the organisation Journalists for Human Rights, found at least two people had died from the pollution. Through his article in *The Inquirer* and subsequent coverage by Radio UNMIL, a UN station, President Ellen Johnson-Sirleaf ordered audits to be conducted throughout the area.
- In Azerbaijan, investigative journalist, Elkhan Salahov, pressured the government to address water poverty in 2011. Salahov had discovered that water treatment facilities along Kur and Araz rivers had broken pipes and taps and were no longer working. Local communities were being forced to drink untreated and polluted water and the local authorities were failing to deliver support or maintenance.
- A multi-million dollar contract to decide how to privatise the water supply in New Delhi, India, was awarded to a subsidiary of PricewaterhouseCoopers in 2001. Anti-corruption organisation, Parivatan subsequently requested details of the opaque bidding process under India’s Right to Information Act, revealing that the World Bank had consistently intervened throughout on behalf of PricewaterhouseCoopers, and pressured the government to sign up to unreasonable terms. The released information also showed that the price of water may increase six-fold under the plan, and would only be supplied if local communities installed pipe work themselves. Under public outcry, the government was forced to cancel any privatisation.

- Right to water activist Major General SCN Jatar filed in 2011 a request under the Right to Information Act in Pune, India to release information on the effectiveness of the municipality's water supply department. The government admitted following the request that they had no systems in place to measure the delivery of water supplies and agreed to set up a committee including civil society to look into reforming the department and developing policies to proactively release information to the community.

In response to current and growing challenges in water resources and management, ARTICLE 19 calls on the international community and national governments to integrate the respect for freedom of expression and free flow of information to all water related treaties, resolutions and/or decision making. Key principles guiding this approach include:

- The public has a **right to speak**, voice concerns and grievances, file complaints regarding water and/or sanitation services, quantity and quality. This means that governments must respect, protect and fulfil the right to freedom of expression, in accordance with international human rights law. It also implies that governments are taking all necessary measures to ensure that all sectors of society, including women and vulnerable groups, are able to exercise their right to speak and to impart and access information.
- The public has a **right to know** the assumptions, costs and benefits of water resource decisions that affect them. They also have the right to access all information regarding the quality of water available, whether or not the delivery of water and sanitation services is state-owned or privatised. The right to know can best be implemented through the adoption and the implementation of national laws, regulations and policies on access to information which applies to private companies exercising public interest functions.
- The right to know includes a government responsibility to **proactively** inform the population about issues related to water, sanitation resources and management, and activities that may affect access, services and quality. Considerations must also be given to how information should be presented so that it is accessible and understandable to a variety of intended users.
- A **free and independent media** is crucial to the effective realisation of the right to water. The media plays a central role in providing key information to people most likely to be affected by water scarcity, sanitation problems, and any issues regarding the quality of water. The media also relays back key messages to officials and policy makers. Free and independent media can monitor national and international policies and practices related to water resources and management, promote transparency, accountability and good governance and also uncover serious violations of the right to water. This requires the establishment of an enabling legal, regulatory and public policy framework for the media, including new media, which promotes their independence, diversity and pluralism.
- Independent **civil society organisations** (CSOs) are also central to the realisation of the right to water. They should be able to operate without fear, organise communities, seek information, hold governments or private companies to account, participate in public debates and decision-making regarding water and sanitation management, and represent the interest of impoverished populations. In turn, this requires governments to establish an

enabling legal and regulatory environment for CSOs which recognises their independence and right to carry out their peaceful work without fear of harassment, reprisal, intimidation and discrimination.

- National water strategies, plans of action and policies should be based on the principles of **accountability** and **transparency**. Water related agreements should provide that states establish at domestic level accountability mechanisms to properly enforce the right to freedom of expression and freedom of information on water issues. Such mechanisms should include access to administrative and judicial remedies in cases of violations. In the light of the increasing privatisation in water-management and supply, states should take all necessary measures to ensure that the right to speak, the right to know and the right to participate in matters related to water and sanitation are fully protected and that the private business sector is fully aware of its human rights duties and held to account in case of abuses of such responsibilities.

FURTHER INFORMATION:

- For more information, please contact JUDr Barbora Bukovska, Senior Director for Law and Programmes at barbora@article19.org or +44 20 7324 2500.
- To view the London Declaration for Transparency, the Free Flow of Information and Development, go to <http://www.right2info-mdgs.org/full-declaration>.
- To view the ARTICLE 19 report Changing the Climate for Freedom of Expression and Freedom of Information, go to: <http://www.article19.org/pdfs/publications/changing-the-climate-for-freedomof-expression-and-freedom-of-information.pdf>.
- ARTICLE 19 is an independent human rights organisation that works around the world to protect and promote the right to freedom of expression. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees free speech.