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A Human Rights Approach to Development: Some Practical Implications for WaterAid's Work

By

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Rights and Humanity promotes respect for human rights as a foundation for global economic and social justice and human development. It has a particular focus on people living in poverty and social isolation, and is best known for pioneering a human rights approach to development. Rights and Humanity is established as a non-profit making association under Swiss Law. The UK Association of Rights and Humanity is registered as a charity.

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Good evening Ladies and Gentleman

Introduction

GK Chesterton once wrote:

“And Noah he often said to his wife
when he sat down to dine,
I don’t care where the water goes
if it doesn’t get into the wine!”¹

But really water is no joking matter.

I began to write this paper when I was sitting in my garden. I realised how badly my roses have suffered this summer from my rather too frequent travel overseas. I felt guilty for failing in my nurturing role. The irony of this thought struck me. If I felt guilty, can you imagine the sense of anguish that a mother feels when she cannot provide water for her children to drink? When after four hours of walking to a remote water source and waiting patiently in line for access to a muddy pool, she stumbles on the way home, smashing her calabash - seeing the life-giving water seep into the hungry ground?

I could equally well have begun my speech by saying that during the 50 minutes allocated to me to address you this evening, 375 children will die through preventable water-related diseases.

But this is a WaterAid meeting, and you know the statistics far better than I do. What I should like to focus on this evening is an analysis of a human rights approach to development, and an exploration of its benefits and its practical implications for WaterAid’s work. What is the value added by this approach? (although I have to admit I loath that term, it makes me nervous about our VAT returns!) I shall end with a few tentative recommendations for water and sanitation work generally, and that of WaterAid in particular.

1. The Human Rights Approach to Development

Over the last thirteen years my own work and that of my organisation, Rights and Humanity, has been focused on pioneering and developing “A Human Rights Approach to Development”. So before turning to a discussion of the benefits of this approach, perhaps I might explain why we adopted it in the first place.

The Need for a Human Rights Approach

Rights and Humanity was established in 1986 to prevent and alleviate human suffering by addressing the plight of people living in poverty and social isolation. It chose to do so through the promotion and realisation of human rights. Why was this necessary? What was wrong with existing approaches to development?

¹ GK Chesterton, 1874-1936, *Wine and Water* (1914).

Mr. Chairman, this is not the place to review the weaknesses of development policy, but let me point to just three concerns which were particularly evident to me during the early 1980s when I was working in the Horn of Africa on humanitarian relief and development.

First, development policies of the time portrayed the weaknesses of an over emphasis on economic growth rather human development, and an assumption that the benefits of growth would trickle down to the poor. In contrast, by using as its starting point the rights of individuals, a human rights approach stresses the importance of people-centred development.

Second, at a pragmatic level, development projects which fail to take into account the legal environment in which they are operating, miss the opportunity of redressing the inequalities and discrimination which are a cause of poverty and social isolation. At worst, such omission risks undermining the development outcome we seek. I saw this myself in an African village. A project designed to provide clean water for villagers, failed because the well was built on land belonging to an absentee landlord. He returned to the village and started charging for the water, leaving the villagers worse off than they had been before.

But perhaps my most important lesson of all resulted from witnessing the resistance of the international community to prompting a solution to the mass displacement of people in the Horn of Africa. Donors relied rather on the provision of assistance in neighbouring countries - but of course only to those who survived the arduous journey. The excuse I was given by Government representatives back in Geneva was that anything more would interfere with national sovereignty. But I could not believe that the drafters of the Charter of the United Nations really intended that the world should stand back whilst needy people died. In fact, as we all know, ensuring respect for human rights gives us the legitimacy for action. Human rights advocacy can therefore be used to prevent human suffering. We do not need to wait until violations have taken place. We can and should use the window of opportunity afforded by pro-active human rights strategies.

What are human rights?

The term “human rights” refers to those rights and freedoms that have been recognised by the global community and protected by international legal instruments. Human rights are universal. They are the birth-right of every man, woman and child. States are bound by their international obligations to respect, protect, promote and ensure the realisation of human rights. It is sometimes argued that human rights are a uniquely Western notion and that to link human rights and development is to impose the ideologies of the west on other cultures. I challenge that. To hold states accountable for their performance with relation to global human rights standards is not to impose the value system of any one part of the world on another, but to refer to universal values based on the distilled knowledge and wisdom of all our cultures.

Beginning with the Universal Declaration of Human Rights of 1948, the world community has adopted a series of global and regional texts. These include the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child. These instruments have been drafted and voluntarily adopted by states throughout the world. The Convention on the Rights of the Child, for instance, has now been ratified by all except two states - Somalia and the USA.

Human rights are not limited to freedom from torture and freedom of speech, but include all those rights essential for human survival, physical security, liberty and development in dignity. They include the right to a standard of living adequate for health and wellbeing, including food and housing, and the rights to education and healthcare.

You will recall that for a number of years the international community used the term “basic needs” to cover those essentials for human survival. However, the term fell out of favour, partly as a result of the fact that it failed to emphasise that individuals have an inherent *right* to access to the basic requirements of life. Further, there was a tendency to assume that all that was necessary was to ensure the needs were met at a basic or minimum level. Attaining minimum standards may be the urgent priority, but the aspiration and rights of individuals do not stop at access to mere survival rations or basic services. Human rights require not only the eradication of absolute poverty, but also the progressive realisation of a fuller enjoyment of human potential and the continuous improvement in the quality of life.

People are increasingly talking about a human rights approach to development, although some people in the development community remain concerned that to talk in terms of human rights will politicise their work, and lead to a risk of harming relationships with host governments. But I am not proposing that development agencies start condemning human rights violations - that is the role of human rights monitoring groups. Nor am I proposing the implementation of negative conditionalities linking development assistance to human rights performance - this too frequently punishes the poor for the sins of their government.

What I am suggesting is that human rights norms and principles can strengthen the work of development agencies by providing a context in which to analyse their work and evaluate progress. Human rights norms bring to development work additional tools for advocacy with governments, and guiding principles to shape a people-centred methodology. A human rights approach to development:

- Is positive rather than condemnatory and is about progress rather than blame, requiring us to move on from merely monitoring human *wrongs* to a pro-active promotion of human *rights*
- Is about *all* human rights, not just civil and political, but also giving greater priority to securing those economic, social and cultural rights that are the very basis for a healthy and dignified life
- Is about *all people*, about ensuring access to the resources of society for people living in poverty and social isolation, as well as the elite and powerful.

What is a human rights approach to development?

The human rights approach to development that I am advocating this evening, and which I

explore further in my book² is one that is simultaneously:

- a ***tool for analysis*** which focuses attention on the underlying inequalities and discrimination faced by people living in poverty and social isolation, which impede their development and deny them the opportunity to raise themselves out of poverty
- a ***foundation*** for a people-centred approach to development, based on a coherent framework of binding legal norms and accountability
- a ***process*** which is holistic, participatory, inclusive, and multi-sectoral, and
- an ***outcome*** - the empowerment of individuals to achieve their full potential, and the freedom to take up opportunities.

A tool for analysis:

Viewing the circumstances of poor people through the lens of human rights can provide insight into the causes of poverty by revealing the inequalities and discrimination that so frequently underlie deprivation, and identifying the powerlessness that prevents them from influencing change. A human rights approach to development forces us to look behind the lack of access to water and sanitation, and to ask why poor people are deprived. It widens the scope of analysis to include the impediments to human development, such a lack of land rights, access to education and paid work. It requires us to address the bonds of cultural and social tradition which impede the education and development of the girl child. It forces us to acknowledge the plethora of obstacles faced by poor people in participating in the democratic process - obstacles which deny them a political voice and the opportunity to influence laws and policies.

A Foundation for People-centred Development:

Furthermore, such an analysis helps identify the steps necessary to bridge the divide between the aspirations of the human rights instruments and the stark reality of people's lives. Internationally recognised norms and principles provide a coherent framework for development policies and programmes. I sometimes describe international human rights law as the alpha and the omega. Law is the starting point that provides the necessary foundation for the protection of the rights of individuals. It is also the reference of last resort - providing a basis for enforcement and redress in the case of abuse. Ultimately, states are accountable to the international community for their efforts to secure enjoyment of human rights.

However, between the Alpha and the Omega is a whole alphabet. It is opening ones eyes to this alphabet that provides us with a human rights approach to development. What does this mean in practice? It means taking all those steps, both at the national and international levels, that are necessary to protect, respect and ensure enjoyment of human rights by all people as a basis for human development. It clearly means the incorporation of human rights standards into national law. But this is not sufficient. Equally important is the adoption of policies and actions designed to ensure that everyone enjoys their rights - the right to an adequate standard of living as much as the right to physical security. It also requires the integration of human rights principles into public administration, and education in human rights and responsibilities. Further, it requires effort to overcome cultural and social practices that

² *A Human Rights Approach to Development*, published by Rights and Humanity, UK. A Discussion paper Commissioned by the Department for International Development of the UK Government in preparation for the Government White paper on International Development.

discriminate against women, minorities, or the impoverished. Finally, it requires the creation of just and equitable national and international societies that provide the environment in which everyone can enjoy their rights and live in dignity.

At the World Summit for Social Development, Heads of State and Government committed themselves “to creating an economic, political, social, cultural and legal environment that will enable people to achieve social development.” This holistic approach to development is vital. Sectoral projects to support education, health, water and sanitation will not assist in eliminating poverty unless they ensure access by the poor. Improving the living conditions in a squatter settlement will not have the desired effect if the residents lack security of tenure and are evicted.

A Process:

Human rights legal standards reflect certain key principles including:

- equality and non-discrimination between men and women, majority and minority
- respect for human dignity and autonomy
- the requirement of enabling participation, and
- international solidarity to secure the universal enjoyment of human rights.

A human rights approach to development requires that these principles form the basis of the policies and actions of governments and development agencies alike. Such an approach prompts development co-operation based on partnerships with the intended beneficiaries. It emphasises empowerment and participation, and requires what Mrs. Mary Robinson, the High Commissioner for Human Rights has called "a listening approach" to human rights. It is one which brings women and men into equal partnership, and listens to the voices of the young, and of minorities, and of others too frequently ignored. It is one which promotes national and international systems based on economic justice, equity in the access to public resources, and social justice. It promotes mutual respect between peoples as a basis for peace, justice, conflict resolution, and sustainable human development.

An Outcome:

In a number of respects a human rights approach to development reflects some of the better methodologies utilised in development work. Development theory has long recognised that participation in the identification of priorities and in the planning, implementation and evaluation of projects help poor people to have a sense of ownership in the process and outcome of development. This in turn adds to the sustainability of the benefits after international support for the project has come to an end.

But the human rights approach is not simply about methodology. It calls for a more profound paradigm shift in the way we seek global equity. It prompts a re-examination of the role and responsibilities of states acting at the national and international levels, the balance between the public and private provision of basic services, models for achieving economic and social justice and human development, the impact of globalisation, and, indeed, in the way in which we view others.

The approach is not premised on governmental largesse, but on entitlements. In this way it

differs from the welfare model. The latter operates in an essentially comparative manner. Less fortunate people are compared with more fortunate individuals, and measures are taken to achieve a comparatively fairer outcome. This promotes the view that there are no absolute entitlements - only comparative entitlements. The shift in emphasis inherent in a human rights approach is particularly important for the self-esteem of poor people. The experience of using such an approach has shown that beneficiaries feel empowered by learning that they are entitled to their human rights.

Ensuring enjoyment by poor people of their human rights gives individuals the tools and opportunities to provide for themselves and their families, and to achieve their full potential. It is an approach to development which prompts a move from *handouts* to *empowerment*, from *charity* to *legal entitlements*. In this way poor people are dignified by being considered part of the solution, not just a problem.

In summary, Mr. Chairman, a human rights approach to development is one which:

- puts people first and promotes human-centred development
- stresses liberty, equality and empowerment
- recognises the inherent dignity of every human being without distinction
- recognises and promotes equality between women and men, between minority and majority
- promotes equal opportunities and choices for all so that everyone can develop their unique potential and have a chance to contribute to development and society
- promotes national and international systems based on economic equity, equitable access to public resources, and social justice
- promotes mutual respect between peoples as a basis for justice and conflict prevention and resolution.

Many grassroots organisations have long been using human rights to challenge the economic and social injustice they face, particularly indigenous peoples, women's groups, children's advocates, and the disability movement. It is an approach that is increasingly being adopted by UN agencies, bi-lateral donors, and development NGOs. It is an approach that is likely to be welcomed by Southern partners, many of whom have long been advocating for greater attention to be paid to economic, social and cultural rights, and to the implementation of the right to development.

2. Relevance of a human rights approach in the water and sanitation sectors

Let me now turn to the relevance of a human rights approach to work in the water and sanitation sectors. In my view it is important to distinguish two theoretical aspects:

- first, the application of a general human rights approach to work in the water and sanitation sectors
- second, the development and implementation of the *rights to water and sanitation*.

I shall deal with these two aspects separately.

Applying the human rights approach to work in the water and sanitation sectors

Part of the difficulty of new buzz phrases is that they can mean different things to different people. But for me, as I have explained, the human rights approach to development means something specific. It focuses on a people-centred approach to development by:

- providing a normative framework for state responsibility and accountability both in terms of their national laws and their national and international development policies
- providing an holistic approach which considers every aspect of individuals' lives and prompts insight into the causes of poverty by revealing the inequalities and inequities which are so often the foundation of disadvantage and lack of opportunities
- promoting an approach to development which is participatory, inclusive, and stresses equal rights of women and men, and
- strengthening empowerment by giving people self-respect by knowing that they are entitled to certain facilities and opportunities to assist themselves and their families out of poverty, rather than being forced to remain passive recipients of handouts.

Some of these points may sound familiar. In reading through WaterAid's literature I was struck by the fact that you are already applying a number of these principles in your project work. This is exemplified by, for example, your emphasis on women, on the participation of beneficiaries, and your partnerships with local organisations. However, adopting a human rights approach might widen your concerns. In undertaking human rights training for development agencies I am often asked what difference the adoption of such an approach will make in their programming work - what it is that this approach requires them to do which they were not doing before, and what they need to do differently.

To take just a few examples, adopting a human rights approach to water and sanitation would force us to ask specific questions about access, such as which individuals within communities have disadvantaged or no access to those services which are provided? And, why do certain communities not have access to any services? Such an approach would identify the plight of people with disabilities unable to collect their own water or access public sanitation facilities. It would highlight the problems facing the elderly, particularly widowers and widows. It will also point to the fact that poor people who have lost their families, whether through conflict or natural disaster, are particularly vulnerable in urban areas where they may be unable to rely on the kind of community support more usual in rural areas.

Analysing the reasons for lack of access to services frequently shows up a lack of enjoyment of other rights, particularly a lack of land rights in urban areas. Many of the inhabitants of the poorest urban areas are regarded as illegal squatters, and thereby denied access to any of the public services provided to others with more secure tenure - water, sanitation, roads, electricity services all have a tendency to stop short of urban slums. Residents of squatter settlements are vulnerable to arbitrary evictions by governments seeking to "clean up" their cities. As the experience of the Orangi sanitation project in Pakistan has shown, tackling the question of land tenure can have a significant impact on access to basic services.

Ashok Nigam and Sadig Rasheed cite this example in a UNICEF paper³. Orangi is home to about 1 million working-class people. Whilst the rich in Karachi have long had modern sanitation, the inhabitants of the squatter settlements had only bucket latrines and open sewers. In the 1970s the municipal government made a major shift in policy by accepting that these settlements were here to stay. This was a key step because it enabled people to buy titles to their homesites, giving them a sense of permanency and the incentive to invest in improvements. After repeated requests to the municipal authorities failed to prompt action, the Orangi Pilot Project was set up to help residents develop a sanitation system themselves. Seventeen years later virtually every home in Orangi has a flush toilet connected to an underground sewage line. Health has improved, school attendance risen, and household income increased.

The human rights approach pays particular attention to the equality of rights between men and women, and so would strengthen the efforts to ensure gender-equity across the water and sanitation sectors. As the Dublin Principles of 1992 recognised:

“women play a central part in the provision, management and safeguarding of water. This pivotal role of women as providers and users of water and guardians of the living environment has seldom been reflected in institutional arrangements for the development and management of water resources”.⁴

Working towards gender equity is, of course, a priority of WaterAid and of other actors in the field. But it is not just in the development and implementation of water policies that women’s disadvantaged status has such disastrous consequences for their lives and those of their family. The holistic emphasis of the human rights approach draws attention to the impact that the inequalities women suffer in terms of land rights, inheritance and access to employment and credit all have on their ability to access water and sanitation. Their lack of education and frequent illiteracy often leaves them without adequate information on hygiene and other aspects of primary health care.

As the IRC the International Water and Sanitation Centre has stated:

“In almost all developing countries, women's rights to arable land are weaker than those of men. In many situations women are granted only use rights to land, and, therefore, it is important for land reform and registration programmes to make more effort to issue titles to the actual users of land. Inheritance law and land law, including land reform laws, amendments and legislative structure review must be encouraged to adopt a general principle of statutory equality between the genders. Improving women's legal literacy makes women better able to claim their rights on an individual or collective basis. Programmes aimed at increasing awareness and acceptance of women's rights must also try to increase female representation on bodies with decision making powers over land and water rights. Village women's groups establishing social support networks must be assisted so that women have a more secure position to fall back on, are less dependent on male relatives, and have a stronger bargaining position.”⁵

³ *Financing of Fresh Water for All - A Rights based Approach*, Ashok Nigam and Sadig Rasheed, Paper No. 2 prepared for the Department of Economic and Social Affairs in preparation of the Expert Group meeting on Strategic Approaches to Freshwater management, 27-30 January 1998, Harare, Zimbabwe.

⁴ Adopted by the International Conference on Water and the Environment, Dublin, 1992.

⁵ Water Supply and Sanitation Collaborative Council, Conclusions and Proposals for Future Action.

I understand that the Conference you are presently attending is examining a strategic framework for WaterAid's work over the medium term, and that one of the questions you are discussing is how water and sanitation projects fit within the wider poverty elimination agenda. I believe that water and sanitation make a vital contribution to poverty elimination. Although human rights and development theories have had different roots, over the last decade there has been a gradual convergence of analysis. The human rights community speaks of all rights as being indivisible. They are inter-related. A lack of water and sanitation clearly has an impact on the enjoyment of other human rights, such as the rights to education, health and work, which form such an essential basis for poverty elimination and human development.

Similarly, the Programme of Action adopted by the World Summit for Social Development, Copenhagen 1995, stated "Governments, in partnerships with all other development actors, in particular with people living in poverty and their organizations, should cooperate to meet the basic human needs of all, including people living in poverty and vulnerable groups, by ...creating public awareness that the satisfaction of basic human needs is an essential element of poverty reduction; these needs are closely interrelated and comprise nutrition, health, water and sanitation, education, employment, housing and participation in cultural and social life".⁶

This inter-relatedness has also been recognised by the water sector, as well as the need to set clear objectives and establish key indicators to measure the outcome of basic services. The human rights community is also struggling with the development of standards and indicators, and a joint approach between the water sector and human rights community could considerably strengthen the outcome.

As Gosh and Rasheed have identified, there is an emerging international consensus on the issues of water management including agreement that:

- Water is key to development
- Water is a key social and economic resource for any nation
- The right to water must be protected for equity as well as sustainable development
- Water is key to improved health, improved nutrition and quality of life
- The private – public partnership is essential for development of the water resources
- Community based management is essential to conserve, properly utilise and develop water resources
- Sustainable water resource development is possible only through an integrated approach to soil, water, forest and livestock.⁷

This final point of sustainability is also important in the context of protecting the rights of future generations to sustainability of the world's water resources and to inherit a clean and healthy environment.

⁶ Declaration and Programme of Action by the World Summit for Social Development, Copenhagen, march 1995, Chapter 1, Para 35 (b), A/CONF.166/9.

⁷ *Integrated Water Resource Management: A Rights-based Community Approach Towards Sustainable Development* by Gourisanka Ghosh and Sadig Rasheed, Paper No 7 prepared for the Department of Economic and Social Affairs in preparation of the Expert Group meeting on Strategic Approaches to Freshwater management, 27-30 January 1998, Harare, Zimbabwe.

Finally, it is increasingly being recognised that water and sanitation management requires effective government at the national and local levels. Issues of good governance - which are traditionally perceived as part of the human rights agenda - are therefore particularly pertinent to the water sector. These include the necessity for transparency, the elimination of corruption, and a strengthening of democratic participation at all levels of national and municipal government.

In considering the issue of the value added by a human rights approach, let me return to my example of the well in the African village. A human rights approach to that project would have required an analysis of the land ownership and a consideration of the water rights of the landlord and the villagers. The landlord could have been brought into the project planning from the beginning so that any investment made in building the well could have been matched by agreement to fix a realistic price for the water. Since the presence of the well increased the value of his land, it might even have been possible to persuade the landlord to pay for the project or to have provided a financial contribution.

What is clear is that applying a human rights approach to water requires a thorough review of the relevant legal frameworks relating to the access to water. A review is also required of the regulatory frameworks which are in place, or need to be introduced, to ensure that poor people have access to affordable water of adequate quality.

The rights to water and sanitation

Although the International Covenant on Economic, Social and Cultural Rights (1966) in Article 11 recognises “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions” it does not specifically mention the right to water *per se*. Nevertheless, water is always regarded as being a part of the right to an adequate standard of living, and of the right to health, protected by Article 12 of the same Covenant, and. The right to sanitation is, however, implied in the list of state action required to ensure enjoyment of the right to health. Article 12 (2) sets out some of the steps to be taken by states to ensure realisation of this right including those necessary for “the improvement of all aspects of environmental and industrial hygiene”, and for “the prevention, treatment and control of epidemic, endemic, occupational and other diseases”.

The right to water is specifically recognised in the Convention on the Rights of the Child. Article 24, which protect the right to health commits states to taking appropriate measures to “combat diseases and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution”.

It goes on to oblige states to “ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of ... [among other things] ... hygiene and environmental sanitation”.⁸ Therefore, all three aspects of WaterAid’s work, access to water, sanitation and hygiene education, are recognised in human rights law.

⁸ Convention on the Rights of the Child, Article 24 (2) (c).

The right to water has also been confirmed in numerous international meetings. As early as 1977, the Mar del Plata Action Plan stated that “[a]ll people have a right to have access to drinking water”.⁹ The New Delhi Declaration of 1990¹⁰ endorsed the principle of “some for all rather than more for some”, which reflects the fundamental human rights principle of universality.

Similarly, the right to water is being increasingly relied upon as a policy imperative of water organisations and consortia, and forms the foundation principle of the World Water Vision for the 21st Century, presently being prepared for the Ministerial Conference on Water in the Hague in March 2000.

Theorists and policy-makers alike are increasingly basing their advocacy on the right to water and sanitation. Gosh and Rasheed have argued that “exploitation or use, of water must include the right of individuals and communities to this precious resource. Beyond the purely economic value of water resources to a nation’s development, the long-term “interest” of the nation and all its people must also be considered.”¹¹

In the paper by Nigam and Rasheed that I cited previously, the authors assert their optimism that fresh water for all is achievable early in the next millennium if a rights based approach is adopted by governments with the necessary political will and the mobilisation and allocation of adequate financial resources.¹²

Eric Gutierrez considers the concept of water security in his briefing paper for this conference. He writes: “A comprehensive definition goes beyond *availability* to issues of *access*. Access involves issues that range from a discussion of fundamental individual rights to national sovereignty rights over water. It also involves equity and affordability, and the role of states and markets in water’s allocation, pricing, distribution and regulation. Water security also implies social and political decision-making on *use* – the priority to be accorded on often competing household, agricultural or industrial uses of the resource.”¹³

There is little doubt that a right to water and sanitation exists in international law. Yet despite this recognition, the problem of access to water is getting worse. The UN has recognised that water security is now the second major resource problem facing humanity, next to the problem of the population expansion.

The United Nations Commission on Human Rights has recently appointed a Special Rapporteur to consider the right of everyone to access to drinking water supply and sanitation services. In his first report, Mr. El Hadji Guissé, stresses the necessity of identifying obstacles to the right of access to drinking water and sanitation. Recognising the impact of external factors he suggests that obstacles which impede the realisation of the right and which need to be addressed include:

⁹ United Nations Water Conference held at Mar del Plata (Argentina), 7 - 18 March 1977.

¹⁰ The New Delhi Statement adopted at the Global Consultation on Safe Water and Sanitation for the 1990s, held in New Delhi 10 - 14 September 1990.

¹¹ *Integrated Water Resource Management: A Rights-based Community Approach Towards Sustainable Development*, cited footnote 7..

¹² *Financing of Fresh Water for All - A Rights based Approach*, Ashok Nigam and Sadig Rasheed, cited footnote 3.

¹³ *Boiling Point: Issues and Problems in Water Security and Sanitation*, Eric Gutierrez, WaterAid, August 1999, citing *Mega-Slums: The Coming Sanitary Crisis*, Maggie Black, WaterAid, London, 1994..

- The bad management of fresh water
- The lack of planning and the unequal distribution of drinking water and sanitation services
- The problem of external debt
- Structural adjustment programmes
- The privatisation of state enterprises
- The regular increase in the cost of drinking water supplies.¹⁴

Implications of the recognition of access to water and sanitation as human rights

It is not possible this evening to present a thorough analysis of the implications of recognising water and sanitation as human rights. But I should like to mention three inter-related issues that I believe are particularly pertinent for governments, those working in the water and sanitation sectors, and NGOs such as WaterAid providing support for services. These are:

- the question whether the state should be the provider of these services, or act as a facilitator
- the implications of these rights for cost recovery, and
- questions of accountability.

State as Provider or Facilitator

During the water decade of 1981-90, governments were primarily seen as being the provider of basic services such as water and sanitation, although the participation of communities in decision-making was encouraged. But, as Alan Nicol points out in his paper, by the time of the Dublin Conference of 1992, it was recognised that state provision was unsustainable and too expensive.¹⁵

Current thinking in development circles is that the state should be the facilitator and the regulator rather than the sole provider. The role of individuals, as well as of the private sector, has been recognised as important. Indeed, it is considered an advantage to encourage individuals to take responsibility for their own development. Does the introduction of a human rights approach change this analysis? Since states have the primary responsibility to ensure realisation of human rights, does recognition of access to water and sanitation as human rights put the onus back on the government to be the sole provider? Does a human rights approach, reduce the role of the individual in contributing to his or her own development? A related issue is the cost implications of recognising access to water and sanitation as human rights. Does a right to water mean individuals are entitled to receive it free of charge? In my view, the answer to these questions is negative. Far from restricting the role of the individual, a human rights approach is premised on ensuring greater opportunities for self-help.

¹⁴ *The right of access of everyone to drinking water supply and sanitation services*, working paper by Mr. El Hadji Guissé, Special Rapporteur, Sub-Commission on Prevention of Discrimination and Protection of Minorities, fiftieth session, E/CN.4/Sub.2/1998/7.

¹⁵ *A Poverty-Reduction Approach to Water, Sanitation and Hygiene Programme*, Alan Nicol, ODI, July, 1999.

The wording of the International Covenant on Economic, Social and Cultural Rights sets out the basis of state responsibility. The articles are mostly written in two parts. The first confirms that states recognise the particular right; whilst the second outlines the steps to be taken by States Parties to achieve the realisation of the right. For instance, Article 12 includes among the steps to be taken by states to achieve the full realization of the right to health “[t]he improvement of all aspects of environmental and industrial hygiene”, but leaves it open how these improvements are to be made, whether, for instance, through the public provision of sanitation, private provision or a public/private mix.¹⁶

The state obligation wording in Article 11, recognising the right to an adequate standard of living, is even less precise. It provides: “The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.” In fact there are only a couple of articles which imply state provision. By Article 13 States Parties recognise that, with a view to achieving the full realization of the right to education, primary education shall be compulsory and available free to all.¹⁷ Unusually, Article 9 comprises only one sentence: “The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.” No explicit mention is made of state provision, and whilst this may be desirable, in many societies the primary social safety nets supporting people in need are provided by the family, community or religious group.

The Covenant does not therefore require that the state is the sole provider of public services. Rather it requires states to take the necessary steps towards the progressive achievement of the right of everyone to an adequate standard of living including access to water and sanitation.

Issues such as these were debated in South Africa in 1995, during the drafting of the new South African Constitution. Concerns were raised that the introduction of economic and social rights into the Bill of Rights contained in the Constitution, might lead the country into bankruptcy. It was considered essential that the rights that were protected by the Constitution should have the full backing of South African law and be enforceable by individuals. Did an inclusion of these rights require the Government to provide basic services to everyone? Did the recognition of water as a right give every person lacking adequate access to clean water the legal grounds to bring a suit against the Government?

In order to air these debates fully the South African Constitutional Assembly held a public hearing on economic and social rights in Cape Town on 1st August, 1995. I was invited by the Constitutional Assembly to present the case for inclusion of economic and social rights in the Constitution setting out the international understanding of these rights and the associated state obligations. I argued that States are not obliged to provide everyone with free food, water, clothing and housing, rather to provide the legal, economic and social environment in which individuals might have the opportunity to meet their own needs and that of their families. In this, protection from discrimination and from such actions as arbitrary eviction

¹⁶ International Covenant on Economic, Social and Cultural Rights, Article 12 (2) (b).

¹⁷ *Ibid.* Article 13 (2) (a).

from squatter settlements is critical.¹⁸ This viewpoint was endorsed by a representative from a squatter organisation. He confirmed that squatters were not demanding free housing. They were demanding an end to the obstacles that denied them equal access to housing and land ownership.

Once this was appreciated, the way was open to include economic and social rights in the Constitution. The wording adopted is interesting as it illustrates the relationship between the human rights of individuals and the obligations of states. For instance, the right to water is expressed in the following manner: “Everyone has the right to have access to ... sufficient food and water.” The obligations clause requires the state “to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.”¹⁹

Similar wording is used with respect to the right to housing, with the important addition of the statement: “No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.”²⁰

But to say that states are not obliged by human rights law to be the sole provider or to provide free water and sanitation to everyone is far from saying that states bear no responsibility. It is clear that states are under an obligation to provide the legal and other environments which ensure to all access to clean water and adequate sanitation. This takes us into the role of the state as regulator. Although this has not yet been clarified in international human rights jurisprudence, I interpret this role to include the need to ensure access to the poor as well as to regulate standards.

A government is not in breach of its international obligations simply as a result of the existence of people living in abject poverty. It is a failure by states to take the necessary steps towards remedying the position that places them in breach of their international obligations. Recognising that states may not be able to ensure instant realisation of all economic, social and cultural rights, the International Covenant on these rights speaks of progressive realisation. However, it obliges states to undertake steps “including particularly the adoption of legislative measures”.²¹ In my view, this requires a review of the impact of legislation on ensuring access to water and sanitation, an analysis of the obstacles to enjoyment, identification of those sectors and individuals not fully enjoying these rights, and the development and implementation of strategies to ensure enjoyment by everyone of their rights of access to adequate water and sanitation. Furthermore, as we have seen, the state has the obligation to protect the public health, including through sanitation and hygiene programmes. Inaction is therefore not an option.

The International Covenant on Economic, Social and Cultural Rights requires steps to take steps towards the progressive achievement of the rights “to the maximum of its available resources”²². Ensuring to all access to education, housing, clean water, health services and so

¹⁸ *Integrating Economic and Social Rights into the Bill of Rights Contained in the South African Constitution*, Address by Julia Häusermann to the Constitutional Assembly of the South African Parliament, Cape Town, 1st August, 1995.

¹⁹ South African Constitution, Article 27 (1) (b), and Article 27 (2) respectively.

²⁰ South African Constitution, Article 26 (3).

²¹ International Covenant on Economic, Social and Cultural Rights, Article 2 (1).

²² International Covenant on Economic, Social and Cultural rights, Article 2 (1).

forth, is likely to require an increase in budgetary allocations for these essential services. Unfortunately, in a number of countries the percentage of the national budget expended on such services is falling, whilst that set aside for military expenditure and other perceived priorities is increasing. A state which spends a disproportionate amount of its budget on armaments, for example, at the cost of social development, is in breach of its international legal obligations to take steps towards the realisation of economic, social and cultural rights, to the maximum of available resources. Further, the distribution of public resources which are allocated to the water and sanitation sectors also need to be reviewed. A government which utilises its water budget solely or primarily for securing access to water and sanitation for urban elites, could be considered in violation of its obligations to ensure universal enjoyment of human rights, including by people in remote rural areas and urban slums.

As we have seen, in urban areas the enjoyment by poor people living in squatter settlements of their rights to water and sanitation are often complicated by the lack of legal title. There have been a number of situations in which governments have undertaken slum clearance programmes over the last decade involving forced evictions without resettlement. It is now generally agreed that a state violates the right to housing if it arbitrarily evicts people from their homes.²³

Similarly, if a state fails to implement strategies to secure the rights of the poor and vulnerable, or to do so speedily enough, it is also failing in its duties. The UN Committee on Economic, Social and Cultural Rights, which is responsible for monitoring state compliance with the obligations under the International Covenant on Economic, Social and Cultural Rights, has concluded that violations of state obligations also occur when a state fails to take the necessary action to ensure at least minimum essential levels of each of the rights. For example:

“...a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, violating the Covenant.”²⁴

Implications of the Rights to Water and Sanitation on Recoverable Costs

Water has traditionally been recognised as a public good, the management of which falls within the remit of governments. But the notoriously wasteful use of water has prompted new approaches to sustainability. The four principles adopted by the Dublin Conference of 1992, include recognition of water as an economic good, for which a charge could be legitimately made. By then it had been recognised that external factors, such as the debt burden and the impact of structural adjustment policies, were severely limiting the ability of developing states to bear the price of the provision of water services. It was necessary to look at other sources of funds, including the private sector, and to develop methods of cost recovery, including making water a tradable commodity. The experience of the Demand Responsive Approach adopted by the UNDP/World Bank Water and Sanitation Programme, for example, has shown the importance of striking a balance between the economic value of water to users, the cost of providing services to users, and the prices charged for these services.

²³ See The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, adopted by an expert meeting in Maastricht, 22 - 26 January, 1997.

²⁴ Quoted in the Maastricht Guidelines.

As Belinda Calaguas writes: “The thinking behind treating water as an economic good was to reduce the wasteful and inefficient use of water by all sectors: industrial, agricultural, domestic. Pricing water to reflect the true costs of supply, conservation, sewage and treatment of wastewater would force the different sectors to reduce their consumption of the product, and encourage efficient use (especially in agriculture, where it is estimated that 40 per cent of water used does not go into crop production). However, the story is different when it comes to the urban and rural poor who do not enjoy access to water.”²⁵ She goes on to point out that the “poor in urban and peri-urban areas, on average pay up to five times more than middle and high income households connected to the municipal water system”.²⁶

The human rights imperative of ensuring universal access and equity prompts a re-examination of current approaches in order to ensure that they adequately deal with such issues as access by the poor, affordability and the equitable distribution of cost recovery. As water gets scarcer it will cost more, and since the poor pay more anyway they will bear the disproportionate burden of the increasing scarcity of water. Alan Nicol writes: “equity is a central concept in poverty-reduction and is at the heart of current global concerns about the increasing poverty gap. Equity in water and sanitation means a number of interrelated themes: in decision making, in social access to the resources, and in financial cost to consumers (the poor paying 5 - 10% of their income against a lower proportion amongst the better off is clearly an inequitable situation).”²⁷

A further area in which the human rights approach would strengthen the response is in regard to sanitation. It may be possible to regard water as “economic good” for which householders are prepared to pay on the basis of a perceived benefit, but the same cannot be assumed with respect to sanitation. Whilst sanitation undoubtedly provides benefits to householders, there is also a clear public health need for sanitation. Ensuring the public health falls squarely within the responsibility of states, raising issues of the legal obligations of states with respect to the provision of sanitation facilities. Further consideration needs to be given to this issue, particularly in the light of the trend towards privatisation.

The Dublin Principles, endorsed at the International Conference on Environment and Development,²⁸ contain principles which reflect a human rights approach - such as holistic management, a participatory approach, and the involvement of women as key players. These are to be welcomed. It is the concept of water as an economic good that has led to debate. A number of interlinked difficulties emerge including the determination of the “true cost” of water, the issue of government subsidies, and of accessibility of the poor. As Gutierrez writes in his briefing paper “some are also worried about the consequences of the economic approach. UNICEF²⁹, for instance, is concerned that privatisation and tradable property rights may mean that access to water will not anymore be regarded as a right, but merely as a function of economic markets. Markets of course, generally operate on the cold iron logic of

²⁵ *A Human-rights Approach to Water, Sanitation and Hygiene Programmes*, Belinda U Calaguas, WaterAid, July 1999.

²⁶ Citing as her source *Information Collected by the World Commission on Water for the 21st Century*, Ismael Serageldin, 1999.

²⁷ *A Poverty-Reductin Approach to Water, Sanitation and Hygiene Programmes*, Alan Nicol, ODI, July 1999.

²⁸ Rio de Janeiro, 1992.

²⁹ *Groundwater: The Invisible and Endangered Resource*, pamphlet, UNICEF, Geneva, 1998.

profit. This may be both bad and good, depending on the situation or whose point of view is being taken.”³⁰

The difficulty is, of course, that whilst privatisation and a reliance on the market might lead to some greater efficiency in the use of water and contribute to sustainability, from a human rights perspective a reliance on market forces raises several critical concerns:

- the market is notoriously bad at delivering equity between rich and poor, between men and women, between majority and minority, between industrialised countries and developing countries
- it is not sufficient for ensuring access to essential services by the poor
- it is unable to deal with between competing claims and questions of resource allocation between domestic use, agriculture, and industry
- it does not provide a sufficient basis for ensuring sanitation, public health and environmental protection, or for ensuring sustainability and a protection of the rights of future generations
- nor is it able to adjudicate in conflicts between different users - upstream versus downstream, or cross border disputes.

These issues can only be dealt with by governments acting at the national and international levels, which takes us back to the role of the state as facilitator and regulator. It also raises issues of national and global governance. In my view, a human rights approach with its emphasis on equity provides a coherent framework for state regulation to ensure affordable access for the poor, and to temper the inequalities inherent in the market place

Accountability

Finally, human rights are associated with accountability. To date, not much progress has been made on the human rights accountability of governments with respect to the right to water and sanitation, although I understand that the Bangladeshi government and UNICEF are currently being sued over arsenic contamination in wells in Bangladesh. We need to be much clearer about the minimum standard of acceptability for water and sanitation, and to develop consensus in this regard. In my view, this requires a joint approach between the water sector and the human rights community.

The reports of the Special Rapporteur on access to water and sanitation might be of some assistance in this regard. Standards will need to deal with accessibility, affordability and quality. Associated with this is the need to develop consensus on indicators to measure enjoyment of the rights to water and sanitation. It is necessary to clarify the steps which a government must or should take to ensure access for all, and to determine in what circumstances a government has failed in its duty to create the legal, social, cultural, political and economic environment in which everyone can enjoy their rights to water and sanitation. It is only by reading human rights obligations in the light of the consensus reached, and the political commitments made, at international conferences that the obligations of states can be clarified.

³⁰ *Boiling Point: Issues and Problems in Water Security and Sanitation*, Eric Gutierrez, WaterAid, August 1999.

We also need to consider the accountability of other actors involved in water and sanitation. The Sphere project - a collaborative effort between a wide range of NGOs involved in disaster emergency work has considered the accountability of NGOs to the beneficiaries of emergency relief work. The project has led to the joint adoption by the partners of a Humanitarian Charter and Minimum Standards in Disaster Response. The minimum standards are set in the context of human rights law, refugee law and international humanitarian law which protects victims of conflict. The minimum standards cover a range of issues in the water, sanitation and hygiene education areas, and provide a helpful model for the wider adoption of standards and indicators.

But we should not wait for a global consensus on minimum standards before advocating for government regulation to protect the quality, affordability and accessibility of water and sanitation.

Value Added of Using the Right to Water and Sanitation as a Basis for Advocacy

In her briefing paper³¹, Belinda Calaguas set out some good arguments for utilising the right to water as a basis for advocacy work:

- “To pave the way for translating this right into specific national and international legal obligations and responsibilities
- To make the state of water management all over the world a focus of attention
- To cause the identification of minimum water requirements and allocations for all individuals, communities and nations, which will in turn help to focus attention on resolutions of international watershed disputes and conflicts over the use of shared water
- To help set priorities for water policy so that to satisfy the right to water, meeting the basic water requirement for all humans, would take precedence over other water management and investment decisions (Gleick 1999)
- To catalyse international agreement on the issue
- To emphasise governments’ obligations to ensure access as well as their obligations to provide international and national support towards efforts to give and protect access to clean water (Jolly 1998, quoted in Gleick, op.cit)”.

I fully endorse these reasons and emphasise the importance of strengthening advocacy efforts by stressing state obligations associated with the rights to water and sanitation, both at the national and the international levels. As I argue in my book, there is a strong case to be made for holding richer countries accountable for the legal obligation to co-operate at the international level to ensure the universal realisation of human rights.³² It is essential that far attention is given to ensuring enjoyment of the right of everyone to access to water and sanitation, and that a far higher proportion of national and international resources are put to this effect. In our common attempts to create the political will to make this a reality, a

³¹ *A Human-rights Approach to Water, Sanitation and Hygiene Programmes*, Belinda U Calaguas, WaterAid, July 1999.

³² *A Human rights Approach to Development*, Julia Häusermann, Rights and Humanity, 1998

partnership between the human rights community and the water sector would provide a firm foundation for renewed commitment and action.

Conclusion and Recommendations

In conclusion, Mr. Chairman, adoption of the human rights approach to development with its emphasis on social sector investment and a pro-poor priority is likely in the longer term to lead to more sustainable development - both human and economic and to contribute to the prevention of conflict. A human rights approach to water and sanitation provides the legal framework and ethical and moral imperative of ensuring universal access and equity. Ensuring enjoyment of human rights is not optional; governments are under a legal obligation to take action to ensure that every man, woman and child has access to the requirements of life in accordance with their human rights and dignity. This obligation can be used in advocacy to strengthen the political will and resource allocation necessary.

International human rights law also provides the framework for considering the accountability of states for the impact of their policies and actions, and those of the international bodies and groupings they have created - including the international financial institutions, the World Trade Organisation, the OECD and G7. It therefore prompts action to address the social impacts of structural adjustment programmes, economic globalisation, and the debt burden. Furthermore, the obligation of all states to ensure universal enjoyment of human rights provides the basis for international solidarity, such as that promoted in the 20/20 initiative promoted at the World Summit for Social Development. National and international solidarity are critical. As a Fulani proverb from Africa reminds us: "Men are like two dirty hands. One of them can only be washed by the other."

With your permission, perhaps I might end with two tentative proposals for the consideration of this conference. The first is that WaterAid strengthen its advocacy efforts by using a human rights approach, and adopt the approach outlined this evening in your projects. The second, is that you consider expanding your work to reflect a concern for the underlying inequalities and the legal, policy and social discrimination which impede access to water and sanitation, particularly for women. As the Pakistan Orangi project so clearly indicates, negotiating secure land tenure for residents of squatter settlements can do much to promote self-help sanitation projects.

Mr. Chairman, I congratulate WaterAid for taking this initiative to explore the implications of a human rights approach for its work. I am honoured to have been invited to address you this evening on this important topic, and thank the organisers for inviting me to speak.

My final point is to confirm that Rights and Humanity is willing to work with WaterAid on the areas of joint concern that I have identified, in research and analysis, and perhaps also at the national level, calling on our own local partners in countries in which WaterAid works to develop a joint approach to governments to advocate for the realisation of the rights to water and sanitation for all.

Thank you.