

University of Dundee

Rethinking the concept of the human right to water

Ziganshina, Dinara

Published in:
Santa Clara Journal of International Law

Publication date:
2008

[Link to publication in Discovery Research Portal](#)

Citation for published version (APA):
Ziganshina, D. (2008). Rethinking the concept of the human right to water. *Santa Clara Journal of International Law*, 6(1), 113-128. <http://www.heinonline.org/HOL/Index?index=journals/scjil&collection=journals>

General rights

Copyright and moral rights for the publications made accessible in Discovery Research Portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from Discovery Research Portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain.
- You may freely distribute the URL identifying the publication in the public portal.

Take down policy

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

Rethinking the Concept of the Human Right to Water

Rethinking the Concept of the Human Right to Water

Ms. Dinara Ziganshina*

This paper analyzes the current status of the human right to water and suggests that the scope of the human right to water under the Committee on Economic, Social and Cultural Rights' General Comment No. 15 on Right to Water ("General Comment No. 15"),¹ should be reassessed and extended to strengthen this right and ensure its full and effective realization, especially in water-scarce countries. Section A presents a brief summary of the current status of the human right to water. Section B provides a detailed review of access to water for productive use in South Africa and Uzbekistan and points out a need to extend the scope of this right to meet basic livelihood needs, based on water-dependent activities. Section C offers some suggestions on integrating ecosystems water needs in the scope of the human right to water. Finally, conclusions are provided in Section D.

* Dinara Ziganshina is Legal Adviser to the Scientific Information Center of the Interstate Commission for Water Coordination in Central Asia. She is currently a student in the LLM Program in Environmental and Natural Resources Law at the University of Oregon School of Law, Eugene, Oregon. She will complete her studies in May 2008. Research for this article was supported in part by a grant from the Edmund S. Muskie Graduate Fellowship Program, a program of the Bureau of Educational and Cultural Affairs (ECA) of the United States Department of State. Neither ECA nor the administrating agency is responsible for the views expressed herein.

1. U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc. & Cultural Rights, *General Comment No. 15 (2002): The Right to Water (arts. 11, 12 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003) [hereinafter General Comment 15].

6 SANTA CLARA JOURNAL OF INTERNATIONAL LAW 1(2008)

I. Human Right to Water? Human Right to Water. . . Human Right to Water!

The human right to water exists without requiring any legal recognition, if one admits that water is vital to life and the only basis for human rights is being human. However, in order to ensure the full and effective realization of a human right to water and set up clear government obligations to meet basic water needs, this right must be explicitly recognized and clearly defined in both domestic and international legal systems.

There is a legal basis for the right to water at the national and international levels. Although this right has not been explicitly recognized as a separate fundamental right in either the International Covenant on Civil and Political Rights (“ICCPR”)² or in the International Covenant on Economic, Social and Cultural Rights (“ICESCR”),³ it is treated as an element of the rights accorded in these documents through recognition of other basic rights. These rights include the right to life, the right to adequate housing, the right to food, the right to health, the right to development, and the right to work.⁴ In addition to the implied recognition of a right to water in these major human rights instruments, there are several other legally binding documents, including the Convention on the Elimination of All Forms of Discrimination Against Women,⁵ the Convention on the Rights of the Child⁶ and the Protocol on Water and Health to the 1992 Convention on the

2. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 [hereinafter ICCPR].
3. International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, 6 I.L.M. 383 [hereinafter ICESCR].
4. See JOHN SCANLON ET AL., WATER AS A HUMAN RIGHT? (2004), available at <http://www.iucn.org/themes/law/pdfdocuments/EPLP51EN.pdf>.
5. Article 14(2) of the Convention on the Elimination of All Forms of Discrimination Against Women provides:

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

Convention on the Elimination of All Forms of Discrimination Against Women art. 14, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW] (emphasis added).
6. Article 24 of the Convention on the Rights of the Child provides:
 1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health...
 2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: ...

Rethinking the Concept of the Human Right to Water

Protection and Use of Transboundary Watercourses and International Lakes,⁷ which explicitly recognize a right to have access to drinking water. Additionally, a number of state constitutions have provisions acknowledging the right to water.⁸ However, a review of those documents does not give a clear and precise definition of the human right to water or the scope of such a right. The right comes in many different forms, including access to water and sanitation,⁹ and adequate nutritious foods and clean drinking water.¹⁰

The most complete definition of the human right to water, and its scope and normative content, is contained in General Comment No. 15.¹¹ This document is a non-binding¹² but authoritative interpretation of Articles 11¹³ and 12¹⁴ of the ICESCR, issued by the Committee on Economic, Social and Cultural Rights (“CESCR”) in 2002, and interprets the human right to water to be an economic and social right. Under General Comment No. 15

[T]he human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.¹⁵

c) to combat disease 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; . . .

Convention on the Rights of the Child art. 24, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC] (emphasis added).

7. Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes art. 6, June 17, 1999, UN Doc. MP.WAT/2000/1 [hereinafter Protocol on Water and Health] (“In order to achieve the objective of this Protocol, the Parties shall pursue the aims of: (a) Access to drinking water for everyone; (b) Provision of sanitation for everyone....”).
8. See S. AFR. CONST. 1996, ch. II, § 27(1)(b); ECUADOR CONST. 1998, art. 23, ¶ 20; UGANDA CONST. 1995, art. XIV(ii).
9. Protocol on Water and Health, *supra* note 7, art. 6; CEDAW, *supra* note 5, art. 14(2).
10. CRC, *supra* note 6, art. 24.
11. General Comment 15, *supra* note 1.
12. EIBE H. RIEDEL, THE HUMAN RIGHT TO WATER 603 (2005) (“[T]he right to water is not just emerging new human right, but can be inferred from the text of the Covenant as such, as a binding legal obligation which member States have to respect, protect and fulfill.”).
13. ICESCR, *supra* note 3, art. 11(1) (“States parties to the Covenant recognize 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.”).
14. *Id.* art. 12(1) (“States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”).
15. General Comment 15, *supra* note 1, ¶ 2.

6 SANTA CLARA JOURNAL OF INTERNATIONAL LAW 1(2008)

The Comment notes that “[t]he right should also be seen in conjunction with other rights enshrined in the International Bill of Human Rights, foremost amongst them the right to life and human dignity,”¹⁶ that “water is necessary to produce food (right to adequate food) and ensure environmental hygiene (right to health),” and that water is necessary in “securing livelihoods (right to gain a living by work), and enjoying certain cultural practices (the right to take part in cultural life).”¹⁷

General Comment No. 15 set up a foundation for establishing a right to water, but further development is needed to extend and strengthen the scope and the protection of this right through legally binding instruments both at the national and international levels. First, the right to water under the ICESCR has less legal protection than under the ICCPR, because ICCPR rights are protected by an enforcement mechanism under the Optional Protocol while ICESCR rights are not.¹⁸ A legally binding document interpreting the right to water not only as an economic, social, and cultural right, but as a fundamental political and civil right would establish stronger obligations on states to fulfill, protect, and respect this right. Second, the concept of the human right to water should be extended to reassess the scope of basic water needs. In particular, access to water for food production, ecosystem needs, and responsibilities of non-state actors in these fields should be reconsidered.¹⁹ Eibe Riedel, a member of the CESCR, noted that the CESCR refused to pronounce these issues in General Comment No.15 because of “the continued unwillingness of States to submit to new control mechanisms, and [the] controversial scope of such [a] right.”²⁰ Third, in establishing and/or reassessing the right to water, one may learn from the experiences of the states that establish and implement this right, and may compare development both in domestic and international systems to determine what measures would contribute to the efficiency of the realization of the right to water.

The next section will use case studies from South Africa and Uzbekistan to discuss the need to extend the scope of the human right to water. The main idea proposed is to consider access to water as a basic need.

16. *Id.* at ¶ 3.

17. *Id.* at ¶ 6.

18. ICCPR, *supra* note 2, art. 2.

19. RIEDEL, *supra* note 12, at 603.

20. *Id.*

II. Rethinking the Concept of Human Right to Water: Access to Water for Livelihood Needs

The concept of the human right to water should be reassessed and extended in terms of the scope of basic water needs. Human rights are not only about people's survival and physiological needs, but also about the ability to live in dignity. According to Human Rights Education Associates, human rights are defined as the "basic standards without which people cannot li[v]e in dignity as human beings."²¹ Similarly, the preambles of the ICCPR and the ICESCR provide that "these rights derive from the inherent dignity of the human person."²² But the current scope of the human right to water does not adequately cover even basic survival needs. Therefore, I hypothesize that the human right to water should be the basis for states' obligations to supply water not only for drinking and sanitation, but also for the water-dependent livelihood needs of their residents.

Some international documents emphasize the importance of such provisions. For example, the 1997 UN Convention on the Law of the Non-Navigational Uses of International Watercourses provides that "[i]n the event of a conflict between uses of an international watercourse, it shall be resolved with reference to articles 5 to 7, with special regard being given to the requirements of vital human needs."²³ Statements of understanding pertaining to the texts of the draft Convention define this: "[i]n determining 'vital human needs', special attention is to be paid to providing sufficient water to sustain human life, including both drinking water and water required for production of food in order to prevent starvation."²⁴ This approach is supported by the Sub-Commission on the Promotion and Protection of Human Rights Guidelines,²⁵ which states that "in order to realize the right to adequate nutrition and the right to earn a living through work, marginalized or disadvantaged farmers and other vulnerable groups should be given priority in

21. Human Rights Education Associates, *First Steps - A Manual for Starting Human Rights Education*, http://www.hrea.org/erc/Library/First_Steps/part1_eng.html (last visited Apr. 3, 2008).

22. ICCPR, *supra* note 2, pmbl.; ICESCR, *supra* note 3, pmbl.

23. Convention on the Law of the Non-Navigational Uses of International Watercourses, G.A. Res. 51/229, art. 10, U.N. Doc. A/RES/51/229 (May 21, 1997).

24. U.N. Gen. Assembly (51st sess.: 1996-97), Sixth Comm., *Convention on the Law of the Non-Navigational Uses of International Watercourses: Report of the Sixth Committee*, ¶ 8, U.N. Doc. A/51/869 (Apr. 11, 1997).

25. ECOSOC, Comm. on Human Rights, Sub-Comm. on the Promotion and Prot. of Human Rights, *Economic, Social, and Cultural Rights: Realization of the Right to Drinking Water and Sanitation*, ¶ 4.3, U.N. Doc. E/CN.4/Sub.2/2005/25 (July 11, 2005) (prepared by El Hadji Guissé).

6 SANTA CLARA JOURNAL OF INTERNATIONAL LAW 1(2008)

access to water resources for their basic needs.”²⁶ In addition, General Comment No. 15 states that “taking note of the duty in Article 1(2) of the Covenant [ICESCR], which provides that a ‘people may not be deprived of its means of subsistence,’ state parties should ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples.”²⁷ However, these provisions have an advisory nature, rather than being directly included within the scope of the right.²⁸ The following case studies from South Africa and Uzbekistan illustrate that access to water is necessary to meet livelihood needs, should be seen as a basic water need, and therefore a human right to water.

A. South Africa Case Study

1. Legal framework

South Africa is one of the few countries that expressly recognizes a human right to water in its Constitution and has developed a national water policy, legislation, and strategies to put this right into practice. The South Africa’s 1996 Constitution provides that “[e]veryone has the right to have access to . . . (b) “. . . sufficient food and water.”²⁹ The 1998 South African National Water Act (“NWA”), which addresses water management issues, provides that water “reserves” must be made to meet the basic human needs and ecological sustainability needs before allocating water for other uses.³⁰ Basic human needs reserves are defined as:

the quantity and quality of water required (a) to satisfy basic human needs by securing a basic water supply . . . for people who are now or who will, in the reasonably near future, be relying upon; (ii) taking water from; or (iii) being supplied from, the relevant water resource³¹ The basic human needs reserve provides for the essential needs of individuals served by the water resource in question and includes water for drinking, for food preparation and for personal hygiene.³²

Finally, in 2001, South Africa adopted the Free Basic Water (“FBW”) policy, which was designed to improve access by guaranteeing each person a minimum

26. *Id.*

27. *General Comment 15, supra* note 1, ¶ 7.

28. *Id.*

29. S. AFR. CONST. 1996, ch. II, § 27(1)(b).

30. National Water Act 36 of 1998 (S. Afr.) [hereinafter National Water Act].

31. *Id.* ch.1 § 1.

32. *Id.* ch.3 pt.3.

Rethinking the Concept of the Human Right to Water

basic quantity of potable water.³³ The FBW policy entitles all people to a free lifeline supply of 6000 ls/6 kilolitres (kl) (1 kl=1000 l) of water per household per month or twenty-five liters per person per day (lpd).³⁴ However, the implementation process is not simple. South Africa faces various challenges to ensure the effectiveness and adequacy of the measures adopted to meet human basic needs.³⁵

2. Bushbuckridge district lessons: access to water for productive use³⁶

In 2001, the Association for Water and Rural Development (“AWARD”), one of the NGO’s in South Africa, undertook two surveys on productive uses of domestic water in the Bushbuckridge district in eastern South Africa.³⁷ The surveys studied different aspects of water supply and use in nineteen villages, all with populations over 26,700 people.³⁸ For analytical purposes, the villages were divided into “best case” villages, where supply conditions were good, and “worst case” villages where there were major problems in accessing the water supply.³⁹ In both cases the surveys found that productive uses of domestic water were substantial, with a wide range of water-dependent activities⁴⁰ that constituted an important part of the livelihoods of participating families.⁴¹

The figures in the two surveys are of particular interest. First, all economic activities using domestic water occur over and above basic needs (twenty-five lpd), and additional twenty-five to forty lpd are needed to support these economic activities.⁴² Second, income generated from these economic activities is around

33. Buyelwa Patience Sonjica, *Water Services: A Catalyst for Change in South Africa*, THE OPTIMIST, Winter 2005, available at www.dwaf.gov.za/Communications/Articles/sonjica/2005/Optimist23Feb05.doc.

34. See Julie A. Smith & Maryann Green, *Free Basic Water in Msundzi, KwaZulu-Natal: Is It Making a Difference to the Lives of Low-Income Households?* 7 WATER POL’Y 443 (2005).

35. See *id.*

36. John Soussan et al., *Allocating Water for Home-Based Productive Activities in Bushbuckridge, South Africa*, in WATER AND POVERTY- THE REALITIES 139 (2004), available at http://www.adb.org/Documents/Books/WaterforAllSeries/WaterPoverty_Realities/AllocatingWater.pdf.

37. *Id.* at 149.

38. *Id.* at 143.

39. *Id.*

40. The main water-dependent productive activities found in the survey were vegetable gardens (the most common use), fruit trees, beer brewing, brick making, hairdressing, livestock (cattle and goats) and ice-block making. *Id.* at 144.

41. *Id.* at 144.

42. *Id.* at 145.

6 SANTA CLARA JOURNAL OF INTERNATIONAL LAW 1(2008)

ten percent of the average household income in the Bushbuckridge area.⁴³ In the “best case” villages, where water supplies are not a constraint to these livelihood activities, the income derived from productive uses of domestic water are considerably greater than this average figure.⁴⁴ This illustrates that if poor people have access to enough water, they are likely to get access to significant livelihood assets.

These findings demonstrate that enhancing the supply of domestic water in this region is not so much about health and hygiene as it is about reducing poverty and creating livelihood opportunities. Therefore, adequate and sustainable allocation of water for these livelihood activities should be seen as a basic need.

B. Uzbekistan Case Study

1. Legal framework

There is no explicit recognition of the human right to water in the national legislation of the Republic of Uzbekistan; however, meeting population needs for drinking and domestic water is a high priority in water supply legislation.⁴⁵ The national constitution provides that “[t]he people of Uzbekistan, solemnly declare[e] their adherence to human rights . . . aspir[e] to life in dignity for the citizens. . . .”⁴⁶ The 1993 Law on Water and Water Use states that water for drinking and other domestic needs takes priority over other uses.⁴⁷ In limiting water usage rights, the aggravation or restriction of water use conditions for drinking and domestic use is disallowed.⁴⁸ Since 1990, a National Program on the provision of the rural population with drinking water has been implemented in the country.⁴⁹ Additionally, Uzbekistan is party to the ICCPR and the ICECSR.⁵⁰

43. Soussan et al., *supra* note 36, at 147.

44. *Id.*

45. The Law on Water and Water Use (1993) (Uzb.) [hereinafter Law on Water], *available in Russian at* http://www.bir.uz/law/obj113472_3580/obj1135138247/obj113585_8760/obj11_3_5930469.html.

46. UZB. CONST., pmbl., *available at* <http://www.umId.uz/MaIn/UzbekIstan/Constitution/constitution.html>.

47. Law on Water, *supra* note 45, art. 25.

48. *Id.* art. 34.

49. Постановление Кабинета Министров от 1 июня 1999 г. п. 278 "О мерах по дальнейшему улучшению обеспечения сельских населенных пунктов питьевой водой и природным газом", Постановление Кабинета Министров Республики Узбекистан 17 сентября 2003 г. п. 405. "О дополнительных мерах по дальнейшему улучшению обеспечения сельских населенных пунктов питьевой водой и природным газом" [Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated June 1,

Rethinking the Concept of the Human Right to Water

Although providing people with an adequate supply of drinking water is a priority for Uzbekistan, the population, especially the rural poor, still has restricted access to safe drinking water. According to Family Budget Survey data,⁵¹ 71.9% of the poor urban population and 86.8% of the non-poor urban population have access to a water supply system, while only 22.1% of the poor rural population and 25% of the non-poor rural population have access to a water supply system.⁵² Low-income households are the most vulnerable since they have less access to water sources other than public services.⁵³

Another important issue that could exacerbate the problem of limited access to water is climate change. According to a recent UNDP report, some assessments based on different climate scenarios forecast that the Syrdarya and Amudarya river basins⁵⁴ may see a reduction in water volume of thirty and forty percent, respectively.⁵⁵ Other forecasts suggest that such a substantial reduction in volume is unlikely.⁵⁶ However, in all the models the demand for water grows faster than the supply. The expected growth in economic activity will cause increasing pressure on river runoff, global climate, and moisture circulation, causing problems associated with water deficiency in the arid and semi-arid regions of Central Asia to become increasingly critical.⁵⁷

In this regard, I hypothesize that the human right to water should be clearly integrated into the domestic legal system of Uzbekistan with a particular focus on providing guaranteed access to water for the poor rural population. The Fergana valley case study, discussed below, illustrates the important basic need for water not only for drinking and domestic use, but also for subsistence farming.⁵⁸ In

1999 No 278 On measures for further improvement of water and natural gas supply to rural areas, The Resolution of the Cabinet of Ministers of the Republic of Uzbekistan (September 17, 2003 No 405) On additional measures for further improvement of water and natural gas supply to rural areas].

50. U.N. High Comm'r On Human Rights [UNHCHR], *Status of Ratifications of the Principal International Human Rights Treaties* (June 9, 2004), available at <http://www.unhcr.ch/pdf/report.pdf>.

51. Welfare Improvement Strategy (2007) (Uzb.) [hereinafter Welfare Improvement Strategy].

52. *Id.* at 37.

53. *Id.* at 53.

54. Syrdarya and Amudarya are the main sources of water for Uzbekistan. See CA Water Info, *Water Resources of the Aral Sea Basin*, http://cawater-info.net/arak/water_e.htm.

55. U.N. DEV. PROGRAMME ENERGY & ENV'T UNIT UZB., WATER - CRITICAL RESOURCE FOR UZBEKISTAN'S FUTURE 15 (2007) [hereinafter WATER - CRITICAL RESOURCE], available at www.undp.uz/en/publications/publication.php?id=70.

56. *Id.*

57. *Id.*

58. Other types of productive use of water are not considered in this case study. GLOBAL WATER P'SHIP, CENT. ASIA & CAUCASUS, GENDER ASPECTS OF INTEGRATED WATER

6 SANTA CLARA JOURNAL OF INTERNATIONAL LAW 1(2008)

addition, an integrated approach to the human right to water that would take into account drinking water and irrigation water needs is suggested.

2. Fergana valley lessons: access to water for productive use

In 2004, the Scientific Information Center of Interstate Commission for Water Coordination (SIC ICWC) in Central Asia and the Global Water Partnership in Central Asia and Caucasus (GWP CACENA) undertook the first regional survey on Gender Aspects in Access to and Management of Water (“Gender and Water Survey”).⁵⁹ The Kokand Branch of Business Women Association “Tadbirkor Ael” survey was engaged to undertake the survey in the Kuva district, in the Fergana region of Uzbekistan⁶⁰ using a Participatory Rural Appraisal (“PRA”) methodology to reveal differences, if any, in needs, roles, opportunities, benefits, and constraints of women and men in water use and management at the community level.⁶¹

a. Access to water for livelihood activities

The Gender and Water Survey found that 34% of household income was generated from private plots/gardens (including subsistence crops);⁶² 26% was generated from formal employment; 16% from secondary employment (mainly seasonal work); 13% from welfare payments (pensions, stipends, etc) and 11% from relatives’ assistance.⁶³ Thus, more than one-third of households’ income came from private plots and gardens. In addition, in Uzbekistan, about 97% of families in rural areas own private plots which can be used for farming agricultural products or carrying out small entrepreneurship activities.⁶⁴ However, it seems

RESOURCES MANAGEMENT: THE REPORT ON GENDER SURVEYS IN REPRESENTATIVE HOUSEHOLDS IN REPUBLICS OF AZERBAIJAN, ARMENIA, GEORGIA, KAZAKHSTAN, KYRGYZSTAN, TAJIKISTAN, TURKMENISTAN AND UZBEKISTAN (2005), available at http://www.gender.cawater-info.net/publications/pdf/gender_iwrm_eng.pdf.

59. *Id.*

60. The Fergana valley is anciently irrigated and densely populated area. Irrigated lands are vital to the livelihood and employment of rural population of the region. Kuva district is located in south-east part of Fergana valley, population growth rate is 1- 1,1%, and 62.58% of total population are women. *Id.*

61. Report on Study of Representative Households in Kuva Rayon of Fergana Oblast, Republic of Uzbekistan, Gender Aspects in Water Management, GWP CACENA & SIC ICWC (2004) (unpublished report, on file with author).

62. There is no private property for lands in Uzbekistan. 'Private plots' in this paper mean land plots allocated in the form of lifetime ownership with right of inheritance.

63. *Id.*

64. Welfare Improvement Strategy, *supra* note 52.

Rethinking the Concept of the Human Right to Water

clear that growth and sustainability of plot-based economic activities would depend on a guaranteed and sustainable water supply.

b. The interrelation between drinking and irrigation water supply

In the area surveyed (as well as in many other rural areas) water for municipal and drinking needs is drawn directly from rivers and irrigation canals.⁶⁵ Most villages use water from *aryks* (irrigation ditches), and only few villages can use the water system regularly.⁶⁶ The water supply depends on seasons: in the autumn and winter period electricity is often disconnected, and drainage wells do not work.⁶⁷ Access to water from canals depends on seasons as well.⁶⁸ Thus, South Fergana Canal, the main water source for a number of villages, has no water from October until March (non-vegetation period), and during the rest of the year its water is very turbid.⁶⁹ Residents use melted ice or rain water by accumulating it in special reservoirs. Some households have water tanks.⁷⁰ However, only wealthy residents who can pay for alternative water delivery can afford the installation of these tanks in their homes.⁷¹ Most of the population stores water in chums, buckets, or other similar containers.⁷² This system of water delivery and storage does not meet sanitation standards and threatens the health of the population, especially women and children.⁷³

These findings illustrate how the drinking water supply cannot be easily separated from the irrigation water supply and how the lack of coordination between different water use sectors has led to a failure to meet water needs. I hypothesize that in order to ensure sustainable access to drinking water, especially in rural areas, integrated management of water resources should be widely accepted. The particular importance of this is that there is a need to increase the efficiency of irrigation. Additionally, an integrated approach to the concept of the human right to water is required, meaning that the human right to water should not be considered in isolation from other water uses.

65. GLOBAL WATER P'SHIP CENT. ASIA & CAUCASUS, *supra* note 58, at 127.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. GLOBAL WATER P'SHIP CENT. ASIA & CAUCASUS, *supra* note 58, at 128.

71. *Id.*

72. *Id.*

73. *Id.*

6 SANTA CLARA JOURNAL OF INTERNATIONAL LAW 1(2008)

c. The essential role of irrigated agriculture for livelihood

In arid countries such as Uzbekistan, the livelihood of poor rural populations depends on irrigation water. Access to water in Uzbekistan is not only the basis of economic development, but also generates income for the bulk of the population. Irrigated agriculture accounts for 25% of the country's GDP and 60% of exports.⁷⁴ Almost two thirds (64%) of the overall population lives in rural areas, and around 70% of the poor population lives in rural areas.⁷⁵ Irrigated agriculture provides direct employment to millions of poor farmers and rural residents where other opportunities for work are lacking and indirect opportunities to produce food for their own consumption. Various studies conducted in the rural areas have shown that the percentage of the population living in poverty is clearly related to the unreliable supply of water for irrigation and land degradation (i.e. soil salinity and water logging).⁷⁶

Understanding the socio-economic dimension of irrigation in arid countries, a practice completely different from the western notion of farming, is essential in addressing the issue of water use for food production. Scientist Peter Gleick suggests that

“[a]n important distinction can be made between water for food and the much smaller amount of water required to support the health and well-being of individuals. In particular, the food necessary to meet the rights described in Article 25 [of UDHR]⁷⁷ can be produced in distant locations and moved to the point of demand. It can thus be argued that the provision of adequate food to satisfy Article 25 does not require local provision of water.”⁷⁸

This approach, known as “virtual water” and proposed by Tony Allan,⁷⁹ is aimed at addressing water scarcity issues. However, this approach creates a great deal of disagreement in agricultural countries where the bulk of the population live

74. Asian Dev. Bank, ЖЕЩИНЫ В РЕСПУБЛИКЕ УЗБЕКИСТАН [*Women in Uzbekistan*], (2001) available at www.adb.org/Documents/Translations/Russian/Women_Uzbekistan_RU.pdf.

75. ASIAN DEV. BANK, COUNTRY GENDER ASSESSMENT: UZBEKISTAN 1, 14 (2005) available at <http://adb.org/Documents/Reports/Country-Gender-Assessments/cga-uzbekistan.pdf>.

76. WATER - CRITICAL RESOURCE, *supra* note 55.

77. Universal Declaration of Human Rights, G.A. Res. 217A, art. 25, U.N. GAOR, 3rd Sess. 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948) (“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing. . .”).

78. Peter Gleick, *The Human Right to Water*, 1 WATER POL'Y 487, 491 (1998).

79. Tony Allan, *Watersheds and Problemsheds: Explaining the Absence of Armed Conflict Over Water in the Middle East*, 2 MIDDLE EAST REV. INT'L AFF. J. 49 (1998), available at <http://meria.idc.ac.il/journal/1998/issue1/jv2n1a7.html>.

Rethinking the Concept of the Human Right to Water

in rural areas and a lack of local provision of water would leave millions of people destitute. Therefore, a careful look at “virtual water” is necessary.

General Comment No. 15 “notes the importance of ensuring sustainable access to water resources for agriculture to realize the right to adequate food.”⁸⁰ However, it seems that this language neglects other social dimensions of agriculture, especially prevalent in the arid countries, that relate to the right to food the right to one’s own means of subsistence,⁸¹ the right to gain living by work,⁸² and the right to development.⁸³

III. Rethinking the Concept of Human Right to Water: Ecosystems Needs

There has been increasing recognition of close interrelation between protection of human rights and the environment. However, there is still a need for a clear legal link between these two fields. I hypothesize that the human right to water, founded on the basic needs of both humans and ecosystems, might be one such link that could be integrated into national and international instruments to protect both human rights and the environment.

Some scientists suggest that the right to water is an element of the right to healthy environment.⁸⁴ Therefore, a state is obligated to protect the right to water through appropriate and sufficient use of natural resources.⁸⁵ In this regard, Salman argues that an environment-oriented approach to the human right to water contains inherent conflict that is unresolved in considering human needs against

80. General Comment 15, *supra* note 1, ¶ 7 (citing ECOSOC, Comm. on Econ., Soc. & Cultural Rights, *The Right to Adequate Food (Art. 11): General Comment 12 (20th session, 1999)*, U.N. Doc. E/C.12/1999/5 (May 12, 1999)).
81. ICCPR, *supra* note 2, art. 1(2) (“In no case may a people be deprived of its *own means of subsistence*.”) (emphasis added).
82. ICESCR, *supra* note 3, art. 1(2) (“The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to *gain his living by work* which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”) (emphasis added).
83. World Conference on Human Rights, June 14-25, 1993, *Vienna Declaration and Programme of Action*, ¶ 1(10), U.N. Doc. A/CONF.157/23 (July 12, 1993) (the right to development is a “universal and inalienable right and an integral part of fundamental human rights”); *see also* Declaration of the Right to Development, G.A. Res. 41/128, U.N. Doc. A/RES/41/128 (Dec. 4, 1986).
84. SCANLON ET AL., *supra* note 4; Хурия Тази Садек, OPTIMIST, <http://www.optimistmag.ru/rus/issue/index.php?id=112> (last visited Apr. 8, 2008).
85. SALMAN M.A. SALMAN & SIOBHAN MCINERNEY-LANKFORD, *THE HUMAN RIGHT TO WATER: LEGAL AND POLICY DIMENSIONS* 58 (2004).

6 SANTA CLARA JOURNAL OF INTERNATIONAL LAW 1(2008)

nature needs.⁸⁶ Perhaps, the conflict would be reconciled if one were to look at the needs of both human ecosystems as “common needs.”

Recent studies demonstrate that environmental water requirements for ecosystem functioning and services have a very clear social and economic content.⁸⁷ For example, “maintenance of certain flows in rivers may be directly associated with river fisheries, which sustain food security and livelihood of millions of poor people in developing countries.”⁸⁸ In addition, as V.U. Smakhtin notes, now “the emphasis is gradually shifting from ‘a river is also a water user’ type of attitude to the ‘water in a river is a resource for multiple uses and has to have an untouchable reserve.’”⁸⁹

This principle is integrated in South African national water policy.⁹⁰ The 1996 NWA contains provisions on the “reserve,” which consists of two parts: the “basic human needs reserve” that was discussed above,⁹¹ and the “ecological reserve.”⁹² “The ecological reserve relates to the water required to protect the aquatic ecosystems of the water resource.”⁹³ “Reserve” also means “the quantity and quality of water required . . . (b) to protect aquatic ecosystems in order to secure ecologically sustainable development and use of the relevant water resource.”⁹⁴ Perhaps, a “common reserve” both for human basic human needs and environmental needs could reconcile the contradictory nature of an environment-oriented human right to water.

A study undertaken by the Heinrich Böll Foundation in the Middle East argues in favor of this approach as well.⁹⁵ The study analyzed the human right of water in selected Arab countries of the Middle East (Egypt, Palestine, Jordan, and Lebanon) to gauge the level of knowledge and commitment to the UN concept set out in General Comment No. 15, and to identify the main areas of concern in each

86. *Id.*

87. See for example, V. U. Smakhtin., 2002. *Environmental Water Needs and Impacts of Irrigated Agriculture in River Basins: A Framework for a New Research Program*. Working Paper 42. Colombo, Sri Lanka: (Int’ernational Water Mgmt.anagement Institute, Working Paper No. 42, 2002).

88. *Id.* at 3.

89. *Id.*

90. National Water Act, *supra* note 31.

91. Smith & Green, *supra* note 34, at 443, and accompanying text.

92. National Water Act, *supra* note 30, ¶ 15.

93. *Id.*

94. *Id.* at ¶ 1(1)(xviii)(b).

95. KAREN ASSAF ET AL., WATER AS A HUMAN RIGHT: THE UNDERSTANDING OF WATER IN ARAB COUNTRIES OF THE MIDDLE EAST – A FOUR COUNTRY ANALYSIS, 11 (2004), available at http://www.boell.de/downloads/global/GIP11_Water_Right.pdf.

Rethinking the Concept of the Human Right to Water

country regarding water as a human right. One of the findings states that “[a]s expected for a human rights approach, the UN concept for water as a human right is characterized as a sole people-centered approach to development, not recognizing the ‘water rights’ of environment in an equal manner.”⁹⁶

In a draft of Fundamental Principles for a Framework Convention on the Right to Water prepared by Green Cross International, the term “right to water” encompasses the fundamental right of access to “water for life” and “productive water,” and the term “water for life” includes “a sufficient water flow needed to maintain the regime and health of rivers, streams and aquatic ecosystems.”⁹⁷ Certainly, whether all “productive water” should be included within the scope of right to water is debatable. However, from my point of view, the possibility of considering both ecosystems’ needs and human needs as “basic needs” is worth more careful consideration.

This approach might also add new impetus to the realization of the rights of future generations. General Comment No. 15 provides that “[t]he manner of the realization of the right to water must also be sustainable ensuring that the right can be realized for present and future generations,”⁹⁸ but there is no clear provision to ensure that the rights of future generations are met.⁹⁹

IV. Conclusions

Current challenges such as climate change, population growth, globalization, and privatization of water infrastructure increase uncertainty and sensitivity of the human right to water issue.¹⁰⁰ This is why, in a human rights system, people must

96. *Id.* at 237.

97. In 2005, Green Cross International launched a global campaign for the Right to Water in order to raise public awareness concerning the current water crisis and to urge national governments to negotiate and adopt an International Convention on the Right to Water. Green Cross International, *Fundamental Principles for a Framework Convention on the Right to Water* (2005), available at <http://www.watertreaty.org/convention>.

98. General Comment 15, *supra* note 1, ¶ 11.

99. *See* General Comment 15, *supra* note 1.

100. This paper does not discuss privatization of water infrastructure and its impact on human rights; however, this issue is among the main current challenges which should be taken into account in developing the human right to water concept. For discussion of this topic *see* PETER H. GLEICK ET AL., *THE NEW ECONOMY OF WATER: THE RISKS AND BENEFITS OF GLOBALIZATION AND PRIVATIZATION OF FRESH WATER* (2002), available at http://www.pacinst.org/reports/new_economy_of_water/new_economy_overview.htm; GARY WOLFF & ERIC HALLSTEIN, *BEYOND PRIVATIZATION: RESTRUCTURING WATER SYSTEMS TO IMPROVE PERFORMANCE* (2005), available at http://www.pacinst.org/reports/beyondprivatization/Beyond_Privatization.pdf; Jim Shultz, *Economic Globalization vs.*

6 SANTA CLARA JOURNAL OF INTERNATIONAL LAW 1(2008)

have remedies available to allow them to assert their needs when those needs are not being met.

Explicit recognition of a human right to water as a separate right would clearly define a state's obligation to ensure that water supply is sufficient at least to meet basic needs. A human right to water would play an important role in the improvement of resource management, and in raising water productivity. This would occur because recognizing a human right to water would require states to reassess water policies, undertake water conservation measures, and even control climate changes that cause water scarcity and threaten water supplies availability, in order to meet the basic water needs of its population

Today, the world remains divided between those for whom access to water means simply turning on a faucet at any time to meet his or her everyday needs, and those for whom access to water is a constant challenge. We should keep this difference firmly in our minds if we want to ensure that every single person around the world has sufficient water to meet his or her basic needs. In conclusion, I would like to recount the well-known lines of Eleanor Roosevelt, former Chair of the United Nations Commission on Human Rights, on the importance of universal human rights standards:

“Where, after all, do universal rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world.”¹⁰¹

Human Rights: Lessons From The Bolivian Water Revolt (Apr. 30, 2003), <http://www.indiaresource.org/issues/water/2003/lessonsfrombolivia.html>.

101. Eleanor Roosevelt, Address at the United Nations on the 10th Anniversary of the UDHR: In Our Hands (1958), available at www1.umn.edu/humanrts/edumat/hreduseries/hrhandbook/intro.html.