

PAP005661 - Water: a Resource in Europe, a Right in Latin America ?

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Short abstract: Access to water varies between Europe and Latin America. Whereas it is considered a well-distributed resource in Europe, many Latin American social movements are fighting against environmental violations related to water access. Notwithstanding the U.N. declaration on the human right to safe and clean water, Latin America's water background has become problematic due to complex stakeholder scenarios, competition for the resource caused by social inequities; a weakness of democratic performance, technical problems and short term policies, among other structural problems.

Despite these difficulties, progress has occurred. Unlike Europe where directives focus on water conservation and contamination, Latin American polities have begun to operationalize water as a human right. This paper aims to show some of these regional efforts, such as the Latin American Water Tribunal, the "disconnected" movements, and the referendums on progress to include the human right to water in the legislation of many Latin American states.

Extended abstract: Equitable access to water and distribution is quite different between Europe and Latin America. While water is treated as a basic resource with quite a good distribution system in Europe, many Latin American countries, and social movements inside them, are fighting against some violations of environmental codes and standards related to human well-being and access to water, particularly in poor areas. Besides the recent U.N. declaration on the human right to safe and clean water and sanitation¹, the Latin American regional water background has become problematic due to complex stakeholder scenarios and a general weakness of democratic performance. With few regional exceptions where there is abundant water, water management in Latin America has caused significant competition for the resource due to social inequities; technical problems with hydraulic design and networks; short term policy solutions; vertical decision-making regarding hydraulic infrastructure; economic problems because poor people lack the means to pay for water services; the execution of activities and projects that have a great impact in the quantity and quality of water (large mining industry for example) etc.

However, from this situation of inequity, progress has arisen. Unlike Europe where water is taken for granted and European directives focus on conservation and anti-contamination, Latin American polities have begun to operationalize water as a human right, even since before its recent declaration as a fundamental human right. Within this regional water context, five Latin American countries have included the human right to access clean and safe water in their national legislation (Ecuador, Panama, Uruguay, Venezuela and Bolivia in 2009) and some constitutional courts (in Colombia and Peru) have recognized water as a human right.² There are also

¹ On July 28, 2010, the United Nations General Assembly discussed and enshrined the essential human right to safe and clean drinking water and sanitation, voicing deep concern that almost 900 million people worldwide do not have access to clean water. This Assembly resolution received 122 votes in favor, zero against and 41 abstentions.

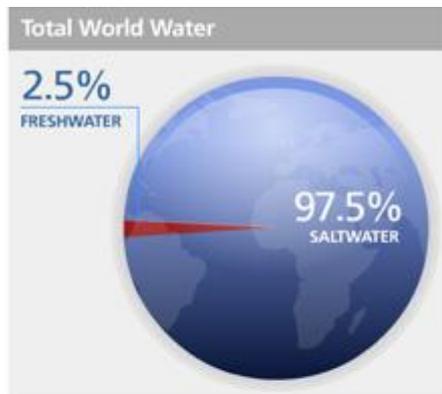
² **Colombia:** "*El derecho al agua, para el uso de las personas, en cuanto contribuye a la salud, a la salubridad pública, y, en últimas, a la vida, SI es un derecho fundamental y que, por el contrario, NO lo es cuando se destina a la explotación agropecuaria o a un terreno deshabitado. Sin agua no se puede vivir, luego lo lógico es que un acueducto construido para uso domiciliario del líquido debe tener preferencialmente tal destinación.*" (Corte Constitucional, Sentencia T-413/95).

"Sin agua no hay vida. Por ende, el servicio público de acueducto tiene como finalidad la satisfacción de necesidades vitales de las personas, lo que exige, naturalmente, el suministro de agua apta para el consumo humano pues no podrá

many Latin American social movements and multidisciplinary NGO's developing synergies to put water inequalities on the table of political and social discussions on human rights in Latin America. This paper aims to show some of these regional efforts such as the Latin American Water Tribunal, the "disconnected" movements, and the Latin American referendums on progress to include the human right to water in many of these countries' legislation. The paper argues that Latin America's increasing focus on the human right to water could provide a significant example for Europe where environmental ethics are largely separated from the regional human rights system.

Some statements on global water resources and regional inequalities

Different studies and global reports have shown that among those different elements, barely less than 1% is available for human use and for the maintenance of ecosystems. The following tables show the global availability of water meant for human consumption.



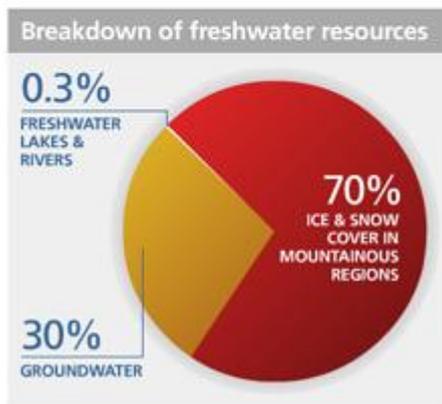
FRESHWATER RESOURCES

The total volume of water on Earth is approximately of 1,4 billions of km³. The volume of freshwater resources is about 35 millions of km³, which is about 2.5% of the total volume

Source: United Nations Environment Programme (UNEP)

Among those freshwater resources, about 24 millions km³ (that is: 70%) is as ice and snow covers in mountainous regions, the Antarctic and the arctic regions.

Source: UNEP



About 30% of the global freshwater is stocked underground, such as groundwater (not very deep groundwater basins and basins deep up to 1,2 miles, dampness of the ground, marsh water and permafrost). This represents about 97% of all of the freshwater resources which are potentially available for human use.

Source: UNEP

Lakes and rivers hold approximately 105 000 km³ of freshwater (around 0.3% of global freshwater)

Source: UNEP

The atmosphere of the Earth contains approximately 13.000 km³ of water.

Source: World Water Assessment Programme (WWAP)

The total supply of usable freshwater for ecosystems and human beings is about of 200 000 km³ –less than 1% of all water resources.

Source: UNEP

*considerarse que el servicio se presta con el mero transporte del líquido, sin aplicarle ningún tipo de tratamiento cuando no reúne las condiciones físicas, químicas y bacteriológicas mínimas exigidas para su uso, sin que ponga en riesgo la salud y la vida de sus consumidores. Así entonces, según lo expuesto, **el agua potable constituye un derecho constitucional fundamental cuando está destinada para el consumo humano, pues es indispensable para la vida.**" (Corte Constitucional, Sentencia T- 410 de 2003).*

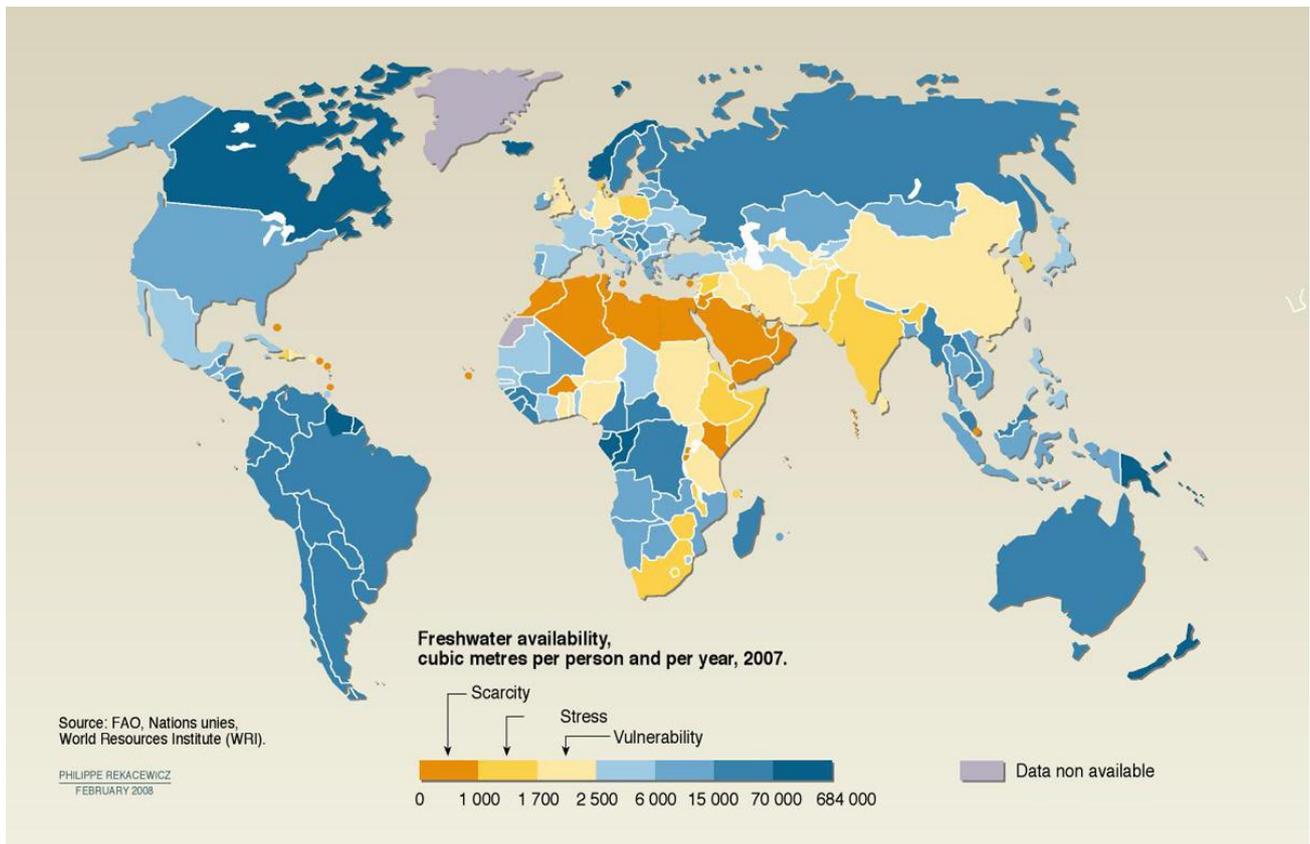
Perú: El agua potable como derecho constitucional no enumerado: 17. En el caso específico del derecho al agua potable, este Colegiado considera que aunque dicho atributo no se encuentra considerado a nivel positivo, existen no obstante una serie de razones que justifican su consideración o reconocimiento en calidad de **derecho fundamental**. (Tribunal Constitucional, Sentencia del 15 Noviembre 2007)

But what do these figures mean in terms of human needs? To fulfill our fundamental needs we all need to have access on a daily basis to a quantity of water ranging between 20 and 50 liters (free from dangerous pollutants).

Human beings' health is inextricably linked to a set of factors related to water: the safety of drinking water, the existence of appropriate sanitation systems, the decrease of death rates linked to water diseases, and the healthiness of freshwaters ecosystems.

The main question is then whether the actual availability of freshwater is enough to fulfill the needs of the global population... As many of us know (particularly in this congress) is that YES there is enough freshwater on earth for six billion people and for agricultural and industrial consumption. Besides, the World Health Organization has indicated that in 2025 we will barely use 40% of the global available water. However, the "old" bad news is that water is unequally shared, wasted, polluted and its management is handled in a non-sustainable way.

Map 1. The global availability of freshwater



Source: <http://www.unep.org/dewa/vitalwater/> (consulted 23.04.2010)

The global divide separating those who have access to water and to sanitation and those who are deprived of it show us the inequalities influencing on the wealth of countries and the well-being of their citizens. Although access to water and to sanitation has improved, one in five person in developing countries (about **1,1 billions individuals** in all) does not have access to drinking water and **2,6 billions people** –about half the population in developing countries- do not have access to an adapted **sanitation** device.

But we also want to note that millions of people are excluded from statistics. Since they are living in poor areas in unregistered settlements, they are simply not counted.

These scenarios are known as water scarcity or water stress and they are a phenomenon with both natural and human origins. In order to have a better understanding of these inequalities we can distinguish between elements of water management:

- **Natural and technical scientific elements** (quantity and quality of water; geology; physiography and topography; flora; fauna; water supply and demand)
- **Political and socio-economic components:** they are also often known as “water governance”, including the following elements: institutions, regulations, politics, public awareness, financial issues, cultural values, political reality etc.

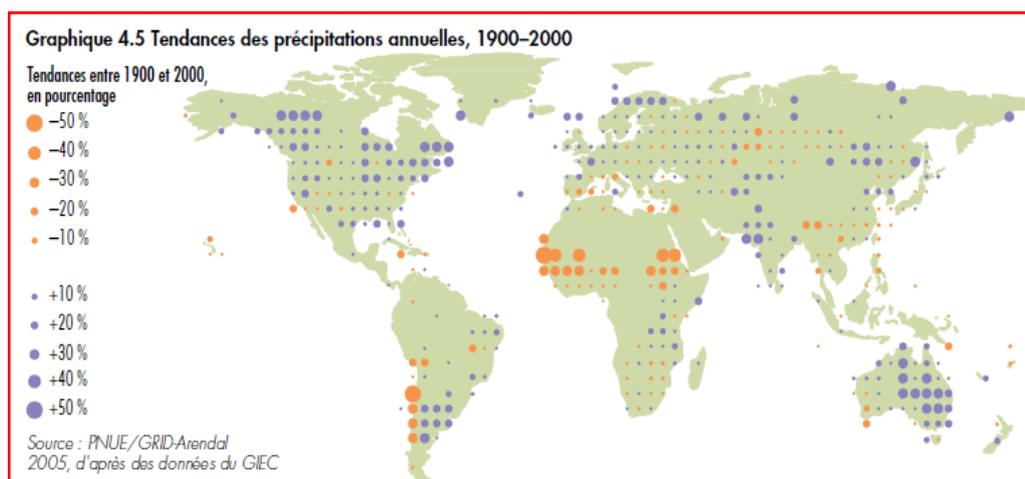
The distinction between those groups is that the former fundamentally defines and describes the quantity, quality and location of water resources, whereas the latter represents elements which fundamentally control or define the how and why human beings use their water resources.³

So is there a “natural” shortage of water?

On the one hand, the natural supply of this resource is very unequal in the different regions of the world and depending on the season and rainfalls.

It is more and more obvious that the configuration of rainfalls has been changed worldwide, as the result of atmospheric reactions to climate change. An important increase of rainfalls has been observed in the oriental parts of Northern and Southern America, Northern Europe and Northern and Central Asia (GIEC 2007). It is thought that the configuration of rainfalls is more and more influenced by the warming at grand scale of the oceans and of the continents; but the exact nature of this change is uncertain despite the improvement of our knowledge. Continental rainfalls worldwide have increased by approximately 2% since the beginning of the XXth century. Although this phenomenon is statistically important it is not uniform in space and time.⁴

Map 2. Annual rainfalls 1900-2000



Source : http://www.unep.org/geo/geo4/report/GEO-4_Report_Full_FR.pdf page 126

³ UNEP, Water security and ecosystem services: The critical connection. Nairobi, Kenya 2009. http://www.unep.org/Themes/Freshwater/PDF/The_critical_connection.pdf

⁴ PNUD, GEO 4 – L’environnement pour le développement. 2007. http://www.unep.org/geo/geo4/report/GEO-4_Report_Full_FR.pdf pag 125 -126

Also the natural allocation per continent is very variable. For instance, the American continent gathers approximately 47% of the global water, followed by Asia (32%), Europe (7%), Africa (9%) and Australia and Oceania (6%).

On the other hand, according to a recent study by the United Nations Environment Programme 85% of the world population is living in the driest hemisphere of the Earth. Around 1.2 billion people (almost one fifth of the world population) is living in arid and semi-arid regions of the globe (physical scarcity) and very few have access to renewable water resources. This scenario already affects each continent, and besides 500 million people are currently getting closer to that situation. According to the Global Annual Report on Water Development in 2050 at least one out of four people will probably live in a country affected by a chronic lack or recurrent shortage of freshwater.

Global environmental ethics: beyond the preservation of hydric resources

Despite pointing out that there is no global water scarcity as such, an increasing number of regions are suffering from a chronic lack of water. About 1.6 billion people, that is almost on fourth of the world population is facing the economical lack of water (where the countries do not have the necessary infrastructures to take water from rivers and aquifers).

Even if now there is enough freshwater in the world and a stunning hydro engineering technology (as it will be the case in a near future) each year millions of people (most of them being children) are dying because of diseases linked to inadequate water provision, sanitation and hygiene. According to the World Health Organization, about 3.900 children are dying each day because of unclean water or bad hygiene. Water-borne diseases or diseases transmitted by human dejections are globally the second cause of infant mortality, after respiratory diseases. Water scarcity, the bad quality of water and inadequate sanitation also have a negative impact on food safety, the choice of livelihood and the possibilities of training for poor families throughout the world.

In the developing world, the struggle to have access to water is always depleting the human, financial and physical resources of poor families and this independently from the fact that their country –or town- is suffering from water scarcity.⁵

When it comes to water supply, sub-Saharan Africa has by far the weakest cover rates (55%), although most of the people without access to healthy water live in Southern Asia. As far as sanitation is concerned, the distribution of this lack is more homogenous. Southern Asia's cover is practically as weak as the one in sub-Saharan Africa: two out of three people do not have access to sanitation in a region.

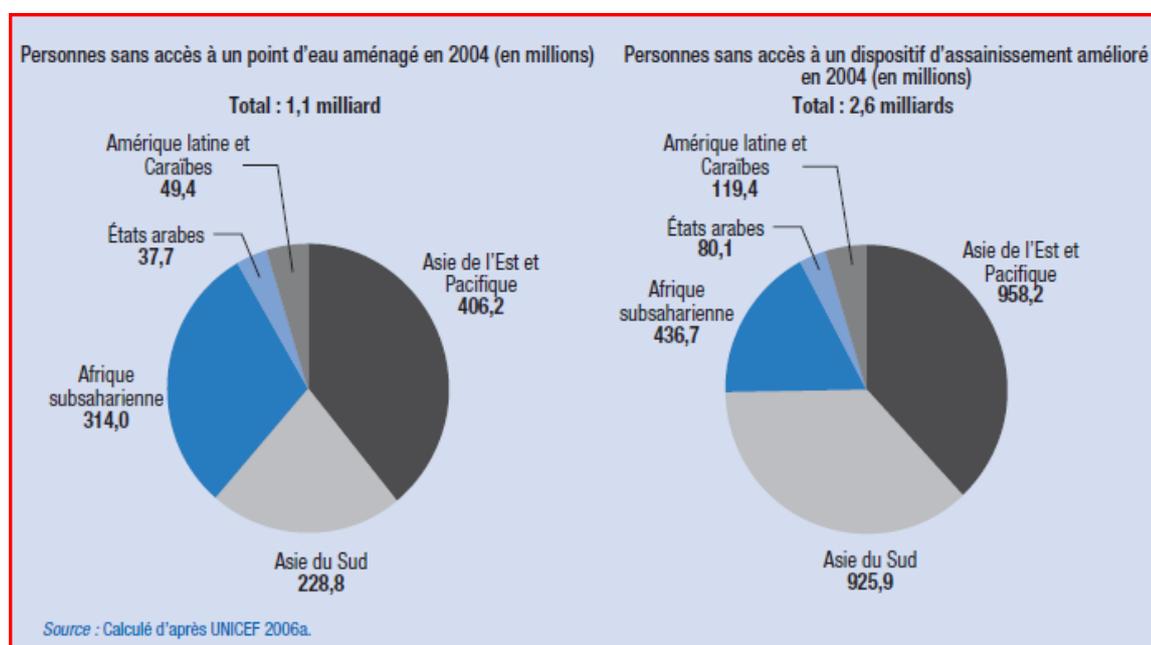
Inequalities in terms of water supply are also found at price level: the price is inversely proportional to the ability to pay. Some of the poorest individuals living in slums have to pay the highest prices in the world. In Djakarta, Lima, Manila and Nairobi, households in slums and areas of low-income housing generally pay their water 5 to 10 times more than the people with high incomes living in those very same towns. Not only

⁵ http://hdr.undp.org/en/media/HDR_2006_FR_Chapter1.pdf

do the poor urban areas of those developing countries pay a water more expensive than the high-income residents of their town, but they also pay more than the inhabitants of wealthy countries.⁶

In urban areas, one of the critical factors explaining this phenomenon is the distance between the water consumer and the service supply. Authoritative water suppliers are in general those who offer the lowest possible price for water. Households owning a tap have a direct access to the water network. But the poor households who are not connected have to buy water from utilities by going through intermediaries who make the price go higher during the water transit. A connection to the network would allow a decrease of the water unit price; but there are 2 obstacles to this solution being adopted: high investment costs and the fact that people from those areas of informal settlements are banned from the linking without formal property rights.⁷

Figure 1. People with no access to drinking water and sanitation 2004

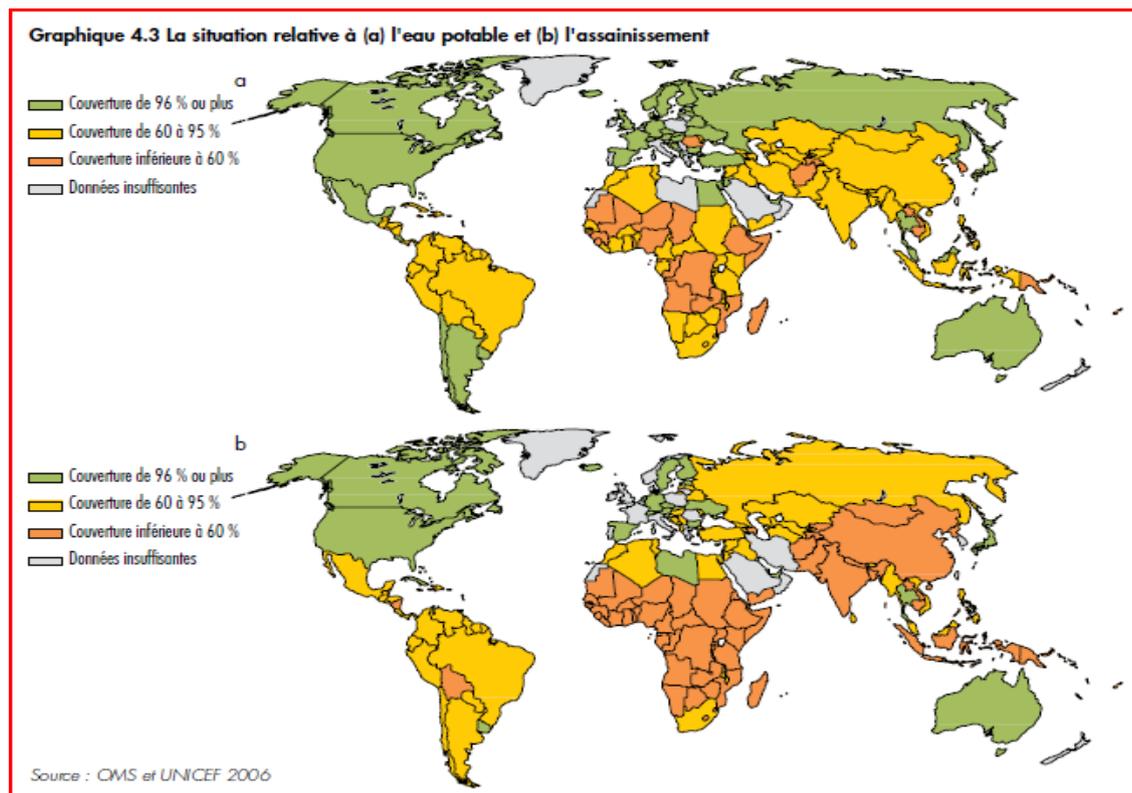


Source : http://hdr.undp.org/en/media/HDR_2006_FR_Chapter1.pdf page 33, 34

⁶ http://hdr.undp.org/en/media/HDR_2006_FR_Chapter1.pdf

⁷ http://hdr.undp.org/en/media/HDR_2006_FR_Chapter1.pdf

Map 3. Drinking water and sanitation 2006



Source : http://www.unep.org/geo/geo4/report/GEO-4_Report_Full_FR.pdf page 120

Unbalances in the distribution –socio-economic and political factors

The “lack of access to drinking water” actually refers to deep poverty and means that people are living more than 0.6 mile away from the nearest healthy water spring and that they are collecting water from the drainage channels, trenches or streams likely to be infected with pathogenic germs and bacteria able to lead to serious or deadly illnesses.⁸

The phenomenon of poverty overlaps one of lack of access to drinking water and to sanitation. About one third of the people without access to a drinking water spring is living with less than \$1 per day.⁹

660 million people without access to water have a limited ability to pay –at best- only more than a shoestring to get linked to the water network. Among those people, about 385 million are below the absolute poverty line of 1 USD per day. More than half of the people without access, that is 1.1 billion people, are among the inferior 40% slice of income distribution.¹⁰

⁸ hdr.undp.org/en/media/HDR_2006_FR_Chapter1.pdf

⁹ hdr.undp.org/en/media/HDR_2006_FR_Chapter1.pdf

¹⁰ hdr.undp.org/en/media/HDR_2006_FR_Chapter1.pdf

It is possible that some individuals are lacking of water because they are poor, whereas some others are poor because they lack of water. However statistics strongly suggest a reciprocal relationship between poverty in terms of income and the lack of access to water.¹¹

The two most stressed regions

Africa: in 2000 about 62% of African people had access to a quality water source. Yet in rural areas, African people still spend a lot of time going to fetch water; and 28% of the world population who does not have access to quality water source is living in Africa. The supply is better in urban areas and 85% of townspeople have access to quality water. In the countryside, this average is of 47%. The total African population with these sanitation means was of 60% in 2000. There again townspeople are better-off, since 84% of them have improved sanitation means, against an average of 45% in rural areas (WHO, UNICEF, 2000)¹²

Asia and the Pacific region: among the world population who has no access to improved sanitation means or to quality water supply, the largest proportion is living in Asia (WHO and UNICEF, see map above). In South West Pacific water supply and sanitation look quite good since 93% of the population has good sanitation devices and 88% have a good water supply (WHO and UNICEF, 2000) but those figures are under the influence of Australia, whose population is considerable and well served. It is considered that only 48% of Asia's population has proper sanitation devices (WHO and UNICEF, 2000), which is the lowest figure of all the world's regions. But the situation is even worst in rural areas where only 31% of the population has improved sanitation devices, against 78% in urban areas.¹³

It is impossible to talk about sustainable development without considering water supply and sanitation services. Moreover, water challenges will increase significantly in the years to come. Not only because the urban population will keep on increasing and that increased incomes will lead to higher demand, consumption and waste of water; but also because the management behind this resource and political facts about water decisions setting up processes worldwide still show centralization, tendencies to privatization¹⁴, the lack of public information and very few (almost no) spaces for social participation.

The projections of the 3rd Global Report of the United Nations about the enhancing of water resources in 2009 show that in 2030 47% of the world population will live in regions affected by the hydric stress

¹¹ hdr.undp.org/en/media/HDR_2006_FR_Chapter1.pdf

¹² <http://www.unep.org/geo/geo3/french/280.htm>

¹³ <http://www.unep.org/geo/geo3/french/284.htm>

¹⁴ Water privatization is the main obstacle to the respect of the right to water. The privatization of water services and of sanitation is the most recognized form of privatization of this natural resource. Miloon Kothari, UN Special Rapporteur on the Rights to Adequate Housing as an element of right to a decent standard of living, precised that the negative impacts of water privatization on poor people and their right to an adequate housing (E/CN.4/2002/59, sect. II.B). There are three lessons to be learned from this report and from other studies on this matter:

- a) the importance given by private exploiters to the making of benefits and to the amortization of expenses often leads to the increase of the price paid by users and to job cuts;
- b) the privatization itself does not improve the access to basic services for poor people, on the contrary, and
- c) Privatization can lead to a slackening of the local control over public resources as well as the heritage of humanity. In all, globalization has encouraged a privatization of human rights such as the right to water, which has often resulted in the violation of the poor people's rights

phenomenon, and that 5 billion of people -67% of the world population- could not be yet connected to public sanitation networks in 2030. So we do not really need future and apocalyptic “wars of water” or the negative impacts of climate change to start worrying about this issue. As the statistics have shown, the scarcity and the lack of water are among the main issues to be dealt with by numerous world societies and politicians in the XXIst century. Water and sanitation are now on top of the global programme, for example the Millennium Development Goals (MDG) or the recent Copenhagen Summit.

The political elements behind water

About the last point we want to say that “globally there is more than enough water to cover for human needs in terms of consumption, agriculture and industry.” However, this fact does not affect the current negative overview mentioned above. So if a lot of the regions are facing scarcity and a lack of water (also called “the water crisis”) this fact is linked not only to the physical access to water resources or to the techniques to lead and supply the service, but mostly to the political management behind the access to freshwater.

How are water politics working?

Governments are called upon to manage water supplies for all the activities (urban or domestic areas, rural, agricultural, industrial, recreational etc.). We have already explained that in some cases, depending on hydro-geographical conditions, some regions have more problems than others when it comes to the access to water resources. In every case, an appropriate technology is needed but the political power has become key to the securing of investments, the execution of works and the distribution of water. There is a **political importance** linked to resources supply and also a **vulnerability** –political as well as social- of those asking for the resources but not getting them. Competences and decisions related to water distribution bear an aspect not very diffused and experience little public participation, but they are fundamental for the sociopolitical analysis of this natural resource.¹⁵

Water exists naturally but it does not get distributed by itself. It has to go through technical and administrative processes such as storage (dams), the building of networks or of irrigation channels, decisions on distribution/allocation, the decision of the cost, the processing of wastewater, the maintenance of the hydraulic facilities etc. But what are the politics behind the access to water? The access to hydric resources is measured by **politics, which can be defined as: who gets what, when and how** (Harold Laswell). Politics is developing within a virtual space called “political system”. This is the space where you compete with others over the use of resources, where demands are inserted and preferences are defined (Hinich and Munger). Everywhere in the world we are governed by political systems, and water management is no exception.

But what does it mean that we only have to ask for water to get it? Do all of those who need water get it? It is very important to distinguish between a **need** and a **demand**. What is it in the case of water? In the figures mentioned above, it was seen that there are millions of people without an adequate access to water, that is,

¹⁵ Carmen Maganda

they need this resource even though they do not have the economic capacity to change this need into a demand or to compete on the preferences market. This means that those people do not have direct representation in the political system of water management. In the distribution of resources the ones who will be preferred are those with a higher economic capacity and who can negotiate enough to have their demands preferred. Generally the agrarian sector and the agro-exportation, the industry, the urban and recreational sectors get the preference in water supply, to the detriment of fringe regions or of populations with an informal economy.

The access to water then becomes a market tool. The sector which has demands has also the ability to purchase and its representatives can handle and secure water supply. In my work of investigation, through case studies, I have confirmed that those getting the more water are those who manage the more. Those who can insert their priorities into the political system of water management get the preferences in the service (they have the priority in the supply). Hydric stress and the lack of this resource are directly linked to this system of competition and preferences, where a few parts of the population are considered to be of a less important priority than others.

This approach allows us to understand that water management is not a democratic topic because:

- 1) The sectors which need water do not all have a representation in the decision-making sphere
- 2) The sectors are not all informed about the water distribution process and
- 3) A few impact areas (for instance the groundwater of the international river basins) are not taken into account

So can water be considered as a market tool or as a human right? I am now inviting you to do some thinking from a human rights perspective.

Rights and responsibilities on water resources

Human rights can be described as a global agreement on the norms and measures necessary to create a world with more equity for every human being, in which everyone can live and develop in accordance to his rights and dignity.

Because water is essential to life it is essentially considered to be linked to human nature itself, indispensable to every human being. "Water is essential to have a decent living. It is a precondition to the realization of the other human rights."

Yet in the international political arena it is discussed whether water should be considered a **need** or a **right**. The difference is capital because the recognition of water as a right will bring to the States the juridical responsibilities to supply this resource for every person and to open channels of social participation, where the community will be responsible for the creation and/or the supervision of the conditions around the distribution of water.

Does the right to water exist?

The starting point and the unifying principle of a public action in the field of water and of sanitation is the acknowledgement of the fact that water is a fundamental human right.¹⁶

Jurists are debating over the question to know whether the right to water is an independent right or a right derived from other existing protected rights. Even if it is a significant law question at the doctrine level, the question to know whether the right to water is an independent right or a right derived from other rights of the person does not make a lot of factual difference to the impacts of the recognition of the right to water.¹⁷

But beyond the juridical debate it would be difficult to deny that water is essential to life and that it constitutes a fundamental human need. Without access to drinking water, numerous other rights of the person, such as the right to life and the right to food, would become theoretical.

The scope of the right to water has been defined as the right to drinking water –water meant for human alimentation which is essential to life or health support. This interpretation of the right to water does not exceed the fundamental human needs (i.e. other uses) but a broader interpretation could be the subject of an examination from a perspective of the rights of the person.¹⁸

The explicit recognition of a right to water as a human right has been declared in three effective global conventions, that is:

- The Convention on the Elimination of All Forms of Discrimination against Women (1980)
- The Convention on the Rights of the Child (1989) and
- The Convention on the Rights of Persons with Disabilities (Art. 28(2)(a))

As well as in a regional treaty: the African Charter on the Rights and Welfare of the Child (1990).

On the one hand the Protocol to the African Charter of the rights of humans and people related to the rights of women establishes that **States** must take the necessary measure to ensure that women have access to drinking water. The Geneva Conventions (1949, 1977) ensure the protection of civilians during wartime.¹⁹

The Protocol on water and health to the 1992 Convention on the protection and use of transboundary watercourses and international lakes establishes in Article 6(1) that the Parties shall pursue the following aims:

- a) The access to drinking water for everyone ; b) the provision of sanitation for everyone

¹⁶ http://hdr.undp.org/en/media/HDR_2006_FR_Chapter1.pdf

¹⁷ Association canadienne pour les Nations Unies, Un droit humain à l'eau. Rapport sommaire du Séminaire. Ottawa, 29 et 30 mars 2007. http://www.unac.org/fr/library/unacresearch/2007RightToWater_f.pdf

¹⁸ Association canadienne pour les Nations Unies, Un droit humain à l'eau. Rapport sommaire du Séminaire. Ottawa, 29 et 30 mars 2007. http://www.unac.org/fr/library/unacresearch/2007RightToWater_f.pdf

¹⁹ L'accès à l'eau potable : un droit inaliénable confronté à la question du financement. 29 juillet 2009 Par Fabien Dupuis, diplômé de l'IPRIS, doctorant spécialisé sur la géopolitique de l'eau <http://www.affaires-strategiques.info/spip.php?article1727> The access to drinking water: an inalienable right facing the issue of funding. July 29th 2009, by Fabien Dupuis, IPRIS graduate, PhD student, specialist of the water geopolitics

in the framework of integrated systems of water management aimed at ensuring a sustainable use of water resources, a quality water in the environment which does not endanger man's health and the preservation of aquatic ecosystems.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as the whole of the other treaties on the rights of the person are unclear about the juridical basis of the human right to water. Yet the right to water is **underlying** in other protected rights of the person, such as the "right of everyone to the enjoyment of the highest attainable standard of physical and mental health" in accordance with Article 12(1) of the Covenant; the right to an **adequate standard of living** and the right to **life**.

The list at Article 11 of the Covenant, about **the right of everyone to an adequate standard of living** – including "adequate food, clothing and housing, and [a] continuous improvement of living conditions" - did not aimed for sufficiency.²⁰

In its General Comment (GC) n°15 (2002) the Committee on Economic, Social and Cultural Rights of the United Nations has interpreted the right to water. This General Comment lists a number of recommendations to set up the right of access to water in sufficient quantity and quality.

It is specified that « the right to water consists of:

- Availability: the available quantity of water must sufficient (the GC 15 is based on the directives of the World Health Organization of 20 liters per capita and per day) and the supply must be continuous;
- Water Accessibility, according to the four following dimensions:
 - Physical accessibility (within safe physical reach ; sufficient, safe and acceptable water accessible via facilities and services – with a sufficient number of water facilities to avoid unreasonable waiting and accessible within or in the immediate vicinity of each household);
 - Economic accessibility (affordable for all);
 - Non-discrimination (its use must not lead to discrimination and the few most vulnerable groups must be the subject of a « special care » in this regard; fair distribution of the water services and of the water supply system);
 - Information accessibility (people must be able to "seek, receive and impart information concerning water issues")
- Quality: water must be safe and acceptable
- For the personal and domestic use of each (drinking, personal sanitation, washing of clothes, food preparation as well as personal and household hygiene²¹)

The Covenant also plans the **progressive realization** of a right to safe water by imposing to States parties different obligations which are of immediate effect. The main obligation of States is to take concrete measures aimed progressively at the full realization of this right by using **the maximum of their available resources**, be they human, administrative, legislative or financial.

²⁰ Association canadienne pour les Nations Unies, Un droit humain à l'eau. Rapport sommaire du Séminaire. Ottawa, 29 et 30 mars 2007. http://www.unac.org/fr/library/unacresearch/2007RightToWater_f.pdf

²¹ The access to drinking water: an inalienable right faced by the issue of funding. July 29th, 2009, by Fabian Dupuis, graduate of the IPRIS, PhD student, specialist in water's geopolitics, <http://www.affaires-strategiques.info/spip.php?article1727>

Who is taking part (Actors) and their responsibilities

Governments

The GC 15 establishes the tripartite responsibility to

- a) **Respect**: a State respects this right by refraining from interfering with the enjoyment of this right
- b) **Protect**: it protects this right by preventing third parties from interfering with the enjoyment of this right, also by adopting the necessary and effective legislative measures to restrain third parties' abuses of water resources and to monitor their respect of the right to water, and
- c) **Fulfill**: a State fulfils the right by adopting positive measure aimed at ensure the realization of the right. The obligation to fulfill is divided into two categories: facilitate and provide. To ensure an affordable water supply States must "adopt the necessary measures, inter alia:

- Use of a range of appropriate low-cost techniques and technologies;
- Appropriate pricing policies such as free or low-cost water supply and
- Pay income supplements"²²

Some national constitutions explicitly recognize the right to water, particularly in Africa: Gambia, Uganda, Zambia, South Africa and Ethiopia recognize the right to water.²³

But also in Latin America: Guatemala, Panama and Venezuela, Uruguay, Equator and Bolivia.

The international institutions: the OC 15 puts the emphasis notably on **international institutions**. The United Nations, the International Labor Organization, the WHO, the IMF, the World Bank and NGOs have to cooperate with States by building on their respective abilities to facilitate the realization and ensure the protection and promotion of the right to water.

The international community as a whole: according to the *Global Report on Human Development 2006*, to satisfy the MDG7:

- The budget of the international aid in this sector has to double
- A global modus operandi must be elaborated so that water is a priority in the development programme²⁴

Non-state actors

Even if human rights are generally linked to the State's obligations every actor of a society has to take part to the process of realization of the right to water: individuals, communities, civil societies and NGOs, private sector and international organizations. They should at least respect the right to water, and if we want to

²² Association canadienne pour les Nations Unies, Un droit humain à l'eau. Rapport sommaire du Séminaire. Ottawa, 29 et 30 mars 2007. http://www.unac.org/fr/library/unacresearch/2007RightToWater_f.pdf

²³ The Center for Economic and Social Rights, 'The Right to Access to Water: Relevant Constitutional Provisions.' <<http://www.cesr.org/node/view/72>> accessed 06 December 2008.

²⁴ Association canadienne pour les Nations Unies, Un droit humain à l'eau. Rapport sommaire du Séminaire. Ottawa, 29 et 30 mars 2007. http://www.unac.org/fr/library/unacresearch/2007RightToWater_f.pdf

secure this right for all their contribution to ensure quality, quantity, availability and affordability of water is essential.²⁵

Global panorama of the defense of the right to water

The international community is now making efforts to suppress the inequalities in water distribution and to realize the right to water. There are a few initiatives that can be mentioned:

The United Nation water Conference (1977) has adopted the Mar Del Plata action plan: “all people, whatever their stage of development and their social and economical conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs.”

(2000) One of the most important initiatives is the adoption of the eight Millennium Development Goals (MDG). The MDGs have been adopted during the Millennium Summit in the United Nations Headquarters in New York from the 6th to the 8th of September 2000. The Project of the Millennium has been mandated by the General Secretary of the UNO in 2002. In order to reach the MDGs a world action plan has been established. The goals of the Millennium for Development are bound with targets to reach within precise deadlines, so that the advancements made in the fight against monetary poverty, hunger, disease, the absence of adequate housing and exclusion can be measured, and at the same time gender equality, health, education and the protection of the environment are being promoted.

Within the framework of the target of MDG7, States have engaged to halve by 2015 the population percentage which does not have a sustainable access to safe drinking water supply. This goal is closely tied to other targets concerning poverty, alimentation, health and housing. The recent setting of a new goal, adopted at the world Summit for sustainable development, which is to cut by half by 2015 the population percentage which does not have access to sanitation means, is a good initiative. The increase of access to water is a precondition to reach many other MDGs. 24: reduce extreme poverty and hunger, ensure primary education for all, cut down infant mortality, improve maternal health, protect the environment, fight HIV, malaria and other diseases, promote gender equality and the empowerment of women. This means that the lack of access to water prevents the realization of other human rights such as the right to health, to education, to food and to a standard of living.

(2002) The World Summit on Sustainable Development, Johannesburg, South Africa. Plan of implementation: “we agree to halve, by the year 2015, the proportion of people who are unable to reach or to afford safe drinking water (as outlined in the Millennium Declaration) and the proportion of people who do not have access to basic sanitation.”

According to the **Global report on human development**, to satisfy the MDG7:

²⁵ EL DERECHO AL AGUA: BASES LEGALES Traducción parcial al español del trabajo “Source N° 8: LEGAL RESOURCES FOR THE RIGHT TO WATER: International and National Standards”. Centre on housing rights and evictions. <http://www.cohre.org/store/attachments/RTWP%20-%20Bases%20Legales.doc>.

- States should recognize a human right to water –especially concerning water which is protected, accessible, affordable and free for the most deprived people
- States must develop national water strategies and the sanitation devices which integrate those factors into poverty reduction strategies and which include regulatory mechanisms concerning public and private services 26

World Water Day: this year's theme for the Day (March 22nd, 2010) was “Clean Water for a Healthy World”. It was meant to draw attention to the fact that it is both the quality and the quantity of water resources which are threatened. Unhealthy water kills more human beings than all of the other forms of violence, war included. Their early disappearance questions our consciences and endangers the efforts of numerous countries to realize their potential of development.

Water situation in Latin America

Socio-economic approach of a developing continent

The Latin American and Caribbean region is made of 33 countries.

It can be divided into three sub-regions:

- Caribbean,
- Mesoamerica(Mexico and Central America)
- And South America.²⁷

More than 700 million of people live in this région.

In this region human development –measured by the UNDP's Human Development Index (HDI)- is at an intermediary level. Compared to 1985 all the nations of the regions have improved within the world ranking: on average, the inhabitants have become wealthier and better educated (UNDP 2006), but only 33% of the total population of the region lives in countries with a high human development index.²⁸

Poverty and inequalities remain a major challenge. In 2004 the proportion of poor people stayed at 42.9% (that is 222 million people), among whose 95 million people living in extreme conditions of poverty (CEPAL 2005). Of all the regions of the world, Latin America and the Caribbean region is the one whose income inequalities are the most important. In Bolivia the 20% of the poorest people share between 2.2% of the national wealth; in Uruguay between 8.8%. The 20% of the richest people benefit from a percentage of the national wealth ranging from 62.4% in Brazil to 41.8% in Uruguay (CEPAL 2005)²⁹

The map of inequalities in the distribution and access to water

²⁶ Association canadienne pour les Nations Unies, Un droit humain à l'eau. Rapport sommaire du Séminaire. Ottawa, 29 et 30 mars 2007. http://www.unac.org/fr/library/unacresearch/2007RightToWater_f.pdf

²⁷ . http://www.unep.org/geo/geo4/report/GEO-4_Report_Full_FR.pdf pg 239

²⁸ . http://www.unep.org/geo/geo4/report/GEO-4_Report_Full_FR.pdf

²⁹ . http://www.unep.org/geo/geo4/report/GEO-4_Report_Full_FR.pdf

Latin America and the Caribbean is a region with a wide range of climactic zones and a wide variety of hydro-ecological regions.³⁰

In Latin America and the Caribbean the demand for water and its soiling –in particular in developing urban centers and their surroundings- combined with a bad use have progressively decreased the access to water and its quality. For the first time in 30 years the access to water has become a limiting factor for the socio-economical development of some areas of the region, in particular in the Caribbean (UNECLAC 2002).³¹

Map 4. Access to drinking water (% of population), 2010



Source : <http://go.worldbank.org/OMO7TUDXN0> (consulted) 4 de mayo de 2010)

Map 5. Access to sanitation (% of population), 2010

³⁰ Regional Office for Latin America & the Caribbean (ROLAC) Water Resources in Latin America & the Caribbean. Récupéré le 23 avril 2010 du site du United Nations Environmental Programme.

<http://www.unep.org/themes/Freshwater/Regions/index.asp?case=rolac>

³¹ http://www.unep.org/geo/geo4/report/GEO-4_Report_Full_FR.pdf



Source : <http://go.worldbank.org/OMO7TUDXN0> (consulted May 4th, 2010)

So that the supply of sanitation services has increased: 67.9% of the population in 1990, against 77.2% in 2004 (85.7% and 32.3% respectively in urban and rural areas). Only 14% of wastewater are treated in an adequate manner (CEPAL 2005) and in 2004 127 million of people still did not have access to sanitation services (Data Portal GEO, WHO and UNICEF 2006 and OPS 2006). Surface and underground water resources are often polluted; the region is suffering from a lack of systematic control and protection of water sources. The impacts of the hydric pollution are significant on coastal areas, where 50% of the population is living (Data Portal GEO, PNUE/DEWA/ GRID-Europe 2006).³²

The access to running water is highly differentiated. In Mexico more than 90% of the population is connected to a source of clean water; but this coverage abruptly decreases when we go from more developed urban areas of the North to smaller towns and especially to retreated rural regions of the country and to the States from the poverty belt in the South.

In Peru for instance the access to running water is universal among the wealthiest 20%, while the two thirds of the poorest 20% are buying their water to retailers or resort to unprotected sources. Disparities in terms of access to sanitation are equally pronounced. They maintain close ties with human development since they are associated with the distribution of opportunities concerning survival, education and poverty in terms of incomes.³³

The relationship between the price and the geographical drawback contributes to the explanation of the important differences which are dividing numerous cities in terms of water supply. In theory most of the cities have enough water to fulfill the needs of all. The problem is in the inequality of its distribution:

³² http://www.unep.org/geo/geo4/report/GEO-4_Report_Full_FR.pdf pag 244

³³ PNUD, Informe sobre Desarrollo Humano 2006. hdr.undp.org/en/media/HDR_2006_FR_Chapter1.pdf

- Lima produces more than 300 liters of water per inhabitant and per day, but 60% of the population only gets 12% from it
- In Guayaquil, Equator, billions of liters are going across the town each with via the Guayas river. The very high income suburbs have the universal access to running water. But some 800,000 inhabitants of the informal areas with low incomes are dependent from a supply from water retailers.³⁴
- In Mexico the States of Chiapas, Guerrero and Oaxaca are displaying the strongest water availability of the country because of their wetness; yet the lowest access to drinking water. This access is inferior to those of some developing countries with much lowest incomes –such as Sri Lanka and Thailand³⁵

Regional inequalities in terms of access to water and to sanitation are also associated with much larger inequalities concerning human development. In Peru, in the provinces of Huancavelica and Pasco for instance, the cover rates in clean water are largely below the national average; and the infant mortality rates are much more superior to the average.

Once again, the existence of a correlation does not necessarily show a causal link, but it is difficult not to conclude to the existence of some interactions.³⁶

The defense of the right to water in South America

South America countries have used a lot of ways to protect the right to water.

a) Citizen mobilization

In 1999 the inhabitants of Cochabamba, Bolivia, have raised against the privatization of water and sanitation services of the town by the northern American company Bechtel. In just a few months this private company which had the concession of the production and distribution of water services had increased the rates, in numerous cases up to 250%. The concession was a clear grabbing of the sources, until then used by regional peasants, without any improvement in terms of connection to the network as a counterpart. The spectacular citizen mobilization against Bechtel and the Bolivian government has forced Bechtel out of the country. The “war of water” was an upbeat for the social struggles in South America. It represents the popular resistance to a logic of privatization of all the essential services in those countries –such as water– under the pressure of international financial institutions. The struggles led against privatization throughout the continent have drawn their strengths from there, as well as the initiatives to have water recognized as a right, and not only a human right but also a right of nature in numerous countries.³⁷

b) The inclusion of the right to water in the Constitution

³⁴ PNUD, Informe sobre Desarrollo Humano 2006. http://hdr.undp.org/en/media/HDR_2006_FR_Chapter1.pdf

³⁵ PNUD, Informe sobre Desarrollo Humano 2006. http://hdr.undp.org/en/media/HDR_2006_FR_Chapter1.pdf

³⁶ PNUD, Informe sobre Desarrollo Humano 2006. http://hdr.undp.org/en/media/HDR_2006_FR_Chapter1.pdf

³⁷ <http://www.alternatives.ca/fra/journal-alternatives/publications/dossiers/imperialisme-ecologique/article/cochabamba-de-la-guerre-de-l-eau-a-5502?lang=fr>; Enrique de la Garza Toledo (Ed.) Sindicatos y nuevos actores sociales en america latina. La guerra del Agua en Cochabamba, Bolivia: Terrenos complejos, convergencias nuevas, p. 85 <http://docencia.izt.uam.mx/egt/publicaciones/libros/nvosactores/capituloiv.pdf>

Some States, as it is the case in Uruguay, Equator and Bolivia, ensure the right to access to water as a constitutional right.

c) Use of juridical tools of democracy

Peru is shaken by social conflicts opposing lead mining and the local population. The control and the management of natural resources and the rights of local governments and populations to participate to the decision-making process on major issues about the future of their region are at the heart of those conflicts.³⁸

The Tambogrande case is a good example. The mining project of Manhattan Minerals of Canada (MMC) was only in the exploratory phase when popular opposition got organized in Tambogrande. The project was planning to divert the main river of the region. The use of water –superficial and underground- was another controversial topic because the population feared the negative impacts on the ecosystem, agriculture and water supply. The municipal district organized a **public vote** about this project. The population was invited to express itself in favor or against the Manhattan Minerals project. The opposition to the lead mining won this vote with a crushing majority of 98.65%.

However for the Peruvian central government this poll was not a juridical obligation for the competent authorities. The mining company tried to go on with its project but in 2003 the public society in charge of evaluating this controversial project decided to put an end to it, due to the non-compliance to the criteria of the exploration contract. Manhattan Minerals then tried to appeal but the project was definitely given up in 2004. The victory of Tambogrande's people is now giving hope to the other communities fighting against mining projects to protect their rights.³⁹

In Uruguay the public decided during the October 31st, 2004 referendum, with more than 60% of the votes, that the water services and sanitation supply would be dealt with by public companies and that mechanisms should be implemented so that society could manage and control the water resources.⁴⁰

d) The resort to tribunals

There are cases in several countries in which the judicial has linked water and sanitation. For instance in Argentina, thanks to a summons a judge has stopped in 2009 the increase of the water price and assigned a private water supplier (ABSA). The plaintiffs said that the excessive increase represented between 300 and 500%. In his decision the judge heard that previous to the adoption of a new tariff for an essential public service, a public hearing is required so that the concerned users can know whether the tariff proposed by the concessionaire is fair and reasonable and, if necessary, they can exercise administrative or judicial complaints.⁴¹

There is another interesting regional initiative: the Latin-American Water Tribunal (LAWT) which offers interesting alternatives for the improvement of social participation to water debates; the LAWT is focused on

³⁸ La problématique de l'activité minière canadienne au Pérou. 2007 <http://www.alternatives.ca/fra/journal-alternatives/publications/nos-publications/articles-et-analyses/article/la-problematique-de-l-activite?lang=fr>

³⁹The problematic of the Canadian mining activity in Peru 2007 <http://www.alternatives.ca/fra/journal-alternatives/publications/nos-publications/articles-et-analyses/article/la-problematique-de-l-activite?lang=fr>

⁴⁰ Empresas transnacionales del agua en América Latina.

http://www.rel-uita.org/agricultura/ambiente/agua/empresas_transnacionales_agua.htm

⁴¹ http://www.lanacion.com.ar/nota.asp?nota_id=1178823. 25 sept 2009

legal justice. Contrary to the approach of political protestation, the basis of this initiative is the legal interpretation and application of social rights. The unfair access to water resources, which the Latin-American water politics characterizes, is not only a social issue but it also reflects the crisis of the environmental legislation which puts the emphasis more on the symptoms of water shortage than its structural causes –which include the inefficient jurisdiction and the above-mentioned lack of participation. The wrongs related to water are all present in those terms and there seems to be a certain “ecological impunity”: if the environmental right was pertinent as a part of a transparent jurisdiction, the Water Tribunal would not be necessary (Helfrich 2006). So the first contribution of the LAWTT to the improvement of the democratic participation to the results of water debates puts the emphasis on a quasi-legal context in which participation can be encouraged.

e) Appeal to the International Law Institutions

Bolivian President Evo Morales has announced that his government will propose to the UNO a declaration pointing out the access to drinking water and sanitation as a human right.⁴²

Following this announcement, on July 28, 2010, the United Nations General Assembly discussed and enshrined the essential human right to safe and clean drinking water and sanitation, voicing deep concern that almost 900 million people worldwide do not have access to clean water. This Assembly resolution received 122 votes in favor, zero against and 41 abstentions.

Conclusions will be presented by author MAGANDA during the Congress.

⁴² Bolivia propone a ONU declaración sobre agua como derecho humano.
<http://www.ecoportat.net/content/view/full/91835> 23.03.2010