

Protecting vital human water needs in the context of transboundary river basins

PS15.8 WATER GOVERNANCE, LAW AND HUMAN RIGHTS
CHRISTINA LEB – MAY 29, 2015

Outline

1. Why should we think about this topic?
2. Overview of the appreciation of water in Human Rights Law
3. Protection of vital human water needs through international water law

Figure 1: The Global Risks Landscape 2015



- Top 10 risks in terms of Likelihood
- Interstate conflict
 - Extreme weather events
 - Failure of national governance
 - State collapse or crisis
 - Unemployment or underemployment
 - Natural catastrophes
 - Failure of climate-change adaptation
 - Water crises
 - Data fraud or theft
 - Cyber attacks

- Top 10 risks in terms of Impact
- Water crises
 - Spread of infectious diseases
 - Weapons of mass destruction
 - Interstate conflict
 - Failure of climate-change adaptation
 - Energy price shock
 - Critical information infrastructure breakdown
 - Fiscal crises
 - Unemployment or underemployment
 - Biodiversity loss and ecosystem collapse

1.0 7.0

Categories

- Economic
- Environmental
- Geopolitical
- Societal
- Technological

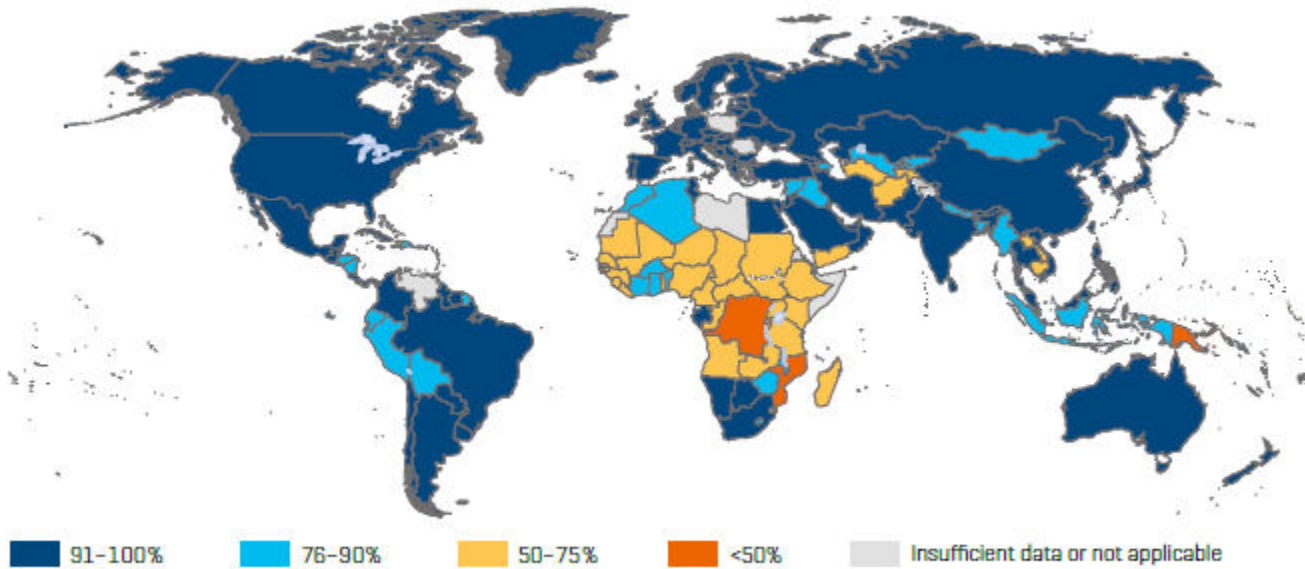


Fig. 3. Proportion of the population using Improved drinking water sources In 2012

- MDG Goal 7 achieved 5 years ahead of schedule
- 1990-2010 2.3 billion gained access to improved drinking water source
- there will still be 547 million without improved drinking water supply in 2015

- SDG 6.1: by 2030 achieve universal and equitable access to safe and affordable drinking water for all

The MDG drinking water target has already been surpassed

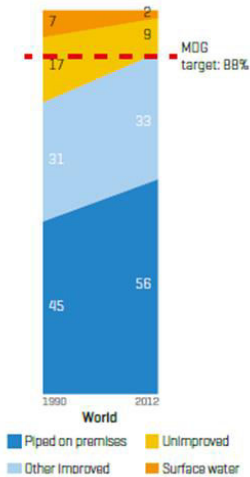


Fig. 1. Trends in global drinking water coverage (%), 1990-2012.

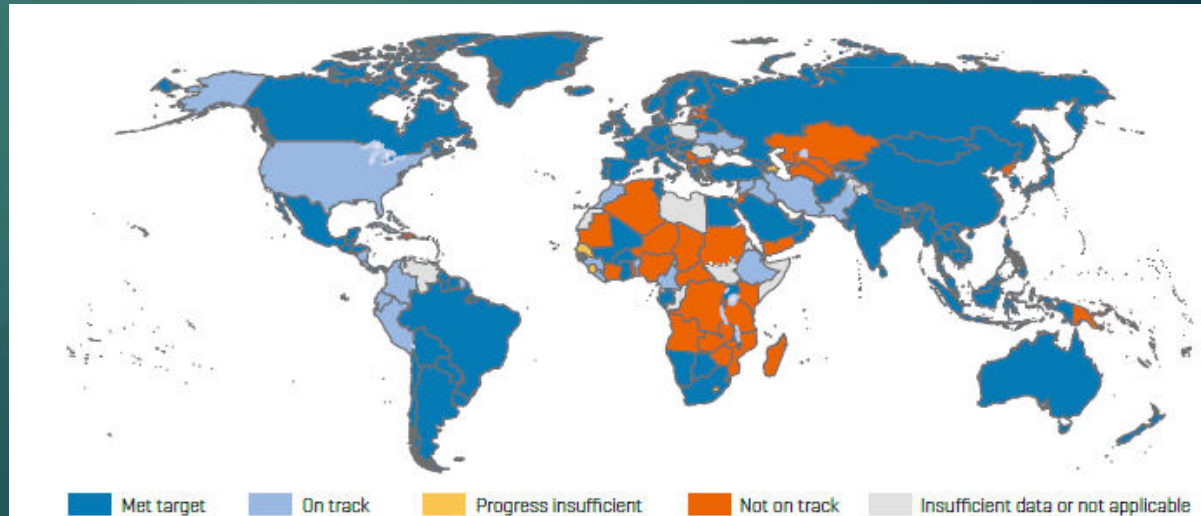
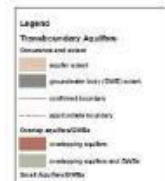


Fig. 7. Progress towards the MDG drinking water target, 2012

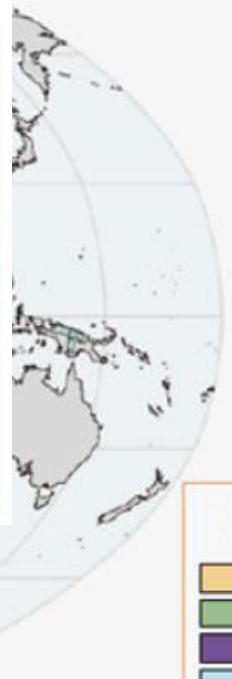
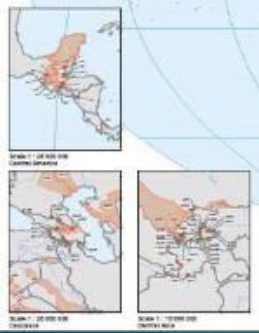


India and Pakistan - flooded and overwhelmed

Once again, floods have ravaged parts of India and Pakistan. Those who are affected by the calamity still need relief. However, the frequency of the floods in the region tells us it can't be just a natural disaster.



© Reuters/Z. Bensema



Global Climate Risk Index 2010 (covering 1990-2008)

Source: Germanwatch and Munich Re NatCatSERVICE®



Climate change will depress agricultural yields in most countries in 2050, given current agricultural practices and crop varieties

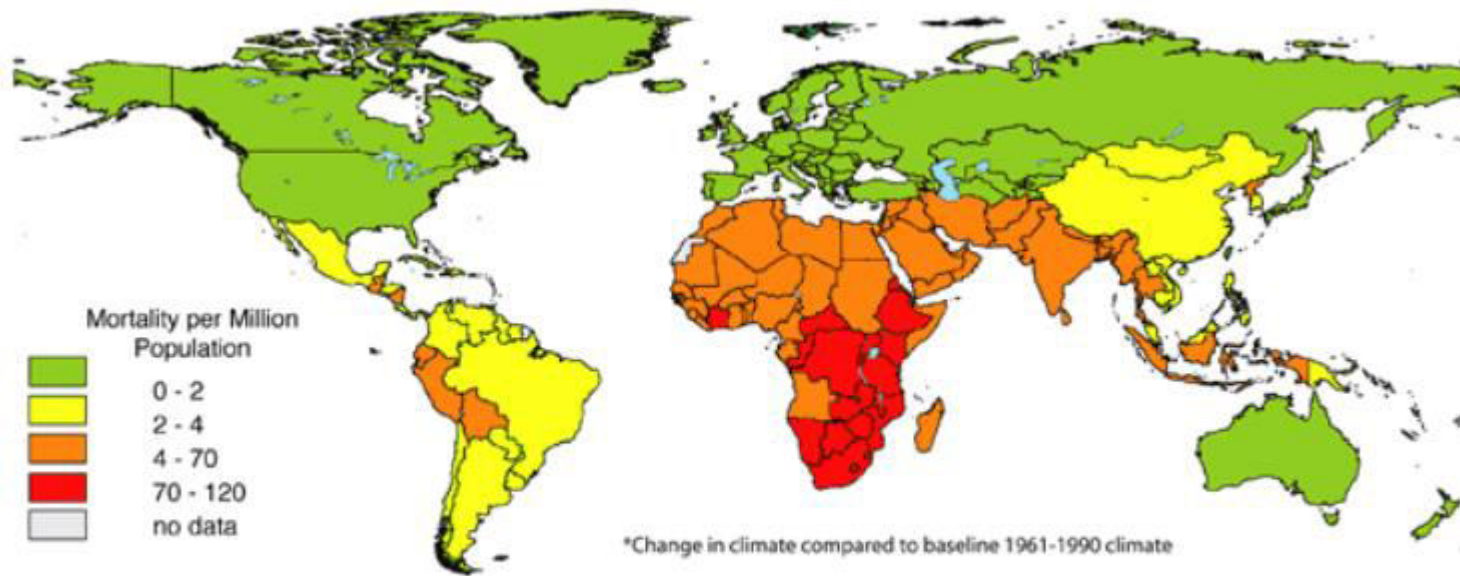
Countries most affected from extreme weather events (1990 to 2008)

1	Bangladesh
2	Myanmar
3	Honduras
4	Viet Nam
5	Nicaragua
6	Haiti
7	India
8	Dominican Republic
9	Philippines
10	China

Countries where more than 90% of deaths/losses were caused in one year



Estimated Deaths Attributed to Climate Change in the Year 2000, by Subregion*



*Change in climate compared to baseline 1961-1990 climate

Sources: Miller

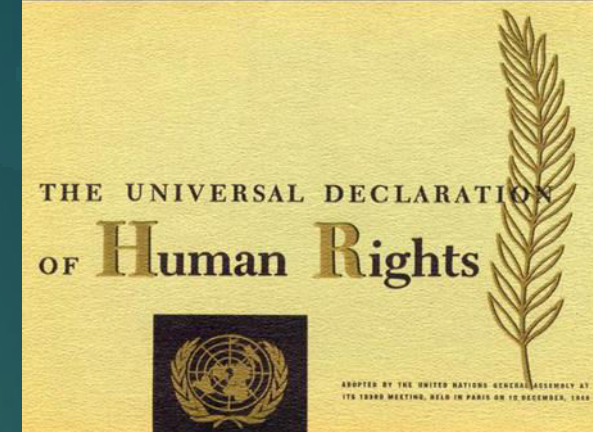
Data Source:

McMichael, JJ, Campbell-Lendrum D, Kovats RS, et al. Global Climate Change. In Comparative Quantification of Health Risks: Global and Regional Burden of Disease due to Selected Major Risk Factors. M. Ezzati, Lopez, AD, Rodgers A., Murray CJL. Geneva, World Health Organization, 2004



Maps produced by the Center for Sustainability and the Global Environment (SAGE)

Genesis of the Human Right to Water



- ▶ 1948 Universal Declaration of Human Rights
- ▶ 1966 International Covenant on Civil and Political Rights
- ▶ 1966 International Covenant on Economic, Social and Cultural Rights
- ▶ 1965 International Convention on the Elimination of All forms of Racial Discrimination
- ▶ 1979 International Convention on the Elimination of all Forms of Discrimination against Women
- ▶ 1984 International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- ▶ 1989 International Convention on the Rights of the Child
- ▶ 1990 International Convention on the Rights of Migrant Workers and All Members of their Families
- ▶ 2006 International Convention on the Rights of Persons with Disabilities
- ▶ 2006 International Convention against Enforced Disappearances
- 1990 African Charter on the Rights and Welfare of the Child
- 2003 Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa

**Economic and Social
Council**Distr.
GENERALE/C.12/2002/11
20 January 2003

Origin

**COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS**Twenty-ninth session
Geneva, 11-29 November 2002
Agenda item 3**SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION
OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND
CULTURAL RIGHTS****General Comment No. 15 (2002)****The right to water (arts. 11 and 12 of the International Covenant
on Economic, Social and Cultural Rights)****I. INTRODUCTION**

1. Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life of dignity. It is a prerequisite for the realization of other human rights. The world has been confronted continually with the widespread denial of the right to water in both developing as well as developed countries. Over one billion persons lack access to basic water supply, while several billion do not have access to adequate sanitation, which is the primary cause of water contamination and diseases linked to

United Nations

A/RES/64/292

**General Assembly**Distr.: General
3 August 2010Sixty-fourth session
Agenda item 48**Resolution adopted by the General Assembly on 28 July 2010***[without reference to a Main Committee (A/64/L.63/Rev.1 and Add.1)]***64/292. The human right to water and sanitation***The General Assembly,*

Recalling its resolutions 54/175 of 17 December 1999 on the right to development, 55/196 of 20 December 2000, by which it proclaimed 2003 the International Year of Freshwater, 58/217 of 23 December 2003, by which it proclaimed the International Decade for Action, "Water for Life", 2005–2015, 59/228 of 22 December 2004, 61/192 of 20 December 2006, by which it proclaimed 2008 the International Year of Sanitation, and 64/198 of 21 December 2009 regarding the midterm comprehensive review of the implementation of the International Decade for Action, "Water for Life"; Agenda 21 of June 1992;¹ the Habitat Agenda of 1996;² the Mar del Plata Action Plan of 1977 adopted by the United Nations Water Conference;³ and the Rio Declaration on Environment and Development of June 1992,⁴

Recalling also the Universal Declaration of Human Rights,⁵ the International Covenant on Economic, Social and Cultural Rights,⁶ the International Covenant on Civil and Political Rights,⁶ the International Convention on the Elimination of All Forms of Racial Discrimination,⁷ the Convention on the Elimination of All Forms of Discrimination against Women,⁸ the Convention on the Rights of the Child,⁹ the



Credit: ANDA El Salvador

The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.

Image © Mustafah Abdulaziz, 'Grey Bush', Freetown, Sierra Leone, 2012

Content of State Obligations

- ▶ **RESPECT** - States may not prevent people already enjoying the rights from continuing to enjoy them
- ▶ **PROTECT** - States must prevent third parties from infringing on the enjoyment of the right
- ▶ **FULFILL** - States ensure that the conditions are in place for everyone to realize their rights

- ▶ Progressive realization
 - ▶ Process; full realization may face technical, economic and political constraints
 - ▶ Retrogressive actions need to be justified
- ▶ Obligation to access and utilize the “maximum available” resources

Extraterritorial and International Scope



International

- ▶ Duty to ask for assistance
- ▶ Duty to provide
- ▶ Article 23 ICESCR
 - ▶ Furnishing of assistance: technical, financial – water
 - ▶ Conclusion of additional conventions and international agreement

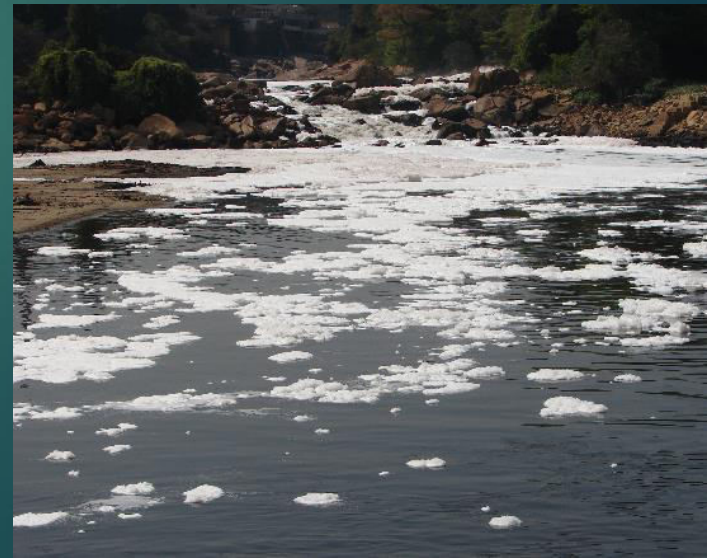
Extraterritorial



General Principles of International Water Law

- ▶ Obligation not to cause significant harm
 - ▶ Due diligence
 - ▶ Significant – impairment of use
- ▶ Principle of equitable and reasonable utilization
 - ▶ Social and economic needs
 - ▶ Basin-dependent populations
- ▶ General Duty to Cooperate

1997 UN Watercourses Convention:
Article 10 – vital human water needs



Recent Trends at Basin Level

2002 Senegal River Water Charter

- ▶ Enjoyment of the right to water as an explicit objective of any repartition of the river's water
- ▶ Satisfaction of vital human needs has priority over all technical and economic considerations of water allocation

2008 Niger Basin Water Charter

- ▶ Principle guiding cooperation
- ▶ Fundamental right to sufficient physically accessible water at affordable cost and of a quality that is acceptable for personal and domestic use by everyone
- ▶ Criteria to be weighed
- ▶ Off-taker-pays
- ▶ Priority for vital human needs



Conclusion

- ▶ Transboundary impacts on the ability of a State to satisfy vital human water needs (e.g. floods)
- ▶ Multiplicity of efforts required (e.g. MDG, SDG, HR, IWL)
- ▶ Different areas of law complement and mutually support each other
- ▶ Human rights law has limited international dimension
- ▶ International water law can fill gaps

Thank you!



UNIVERSITÉ
DE GENÈVE

PLATEFORME POUR LE **DROIT**
INTERNATIONAL DE L'EAU DOUCE

Université de Genève > Droit > Plateforme pour le droit international de l'eau douce



www.aida-waterlaw.org

<http://www.unige.ch/droit/eau>