

European Master's Degree
In Human Rights and Democratisation

Awarded Theses
of the Academic Year
2012/2013

“Water and the Arab Uprisings: the human right
to water and sanitation in post-transition Egypt”

Thesis *by* Leonard Alexander Hessling





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FOREWORD

The *European Master's Programme in Human Rights and Democratisation* (E.MA) is the first Master's course in human rights and democratisation launched and financed by the European Commission that later served as model for establishing other Regional Master's around the world. Since January 2013 these are all connected and managed by the *European Inter-University Centre for Human Rights and Democratisation* (EIUC) under the *Global Campus of Regional Master's Programme* (GC).

E.MA is a one-year master's course aimed at preparing professionals to respond to the requirements of daily work in international organisations, field operations, governmental and non-governmental bodies, and academia. The programme offers an action and policy-oriented approach to learning about human rights, democratisation and international relations from legal, political, historical, anthropological, and philosophical perspectives. This interdisciplinary nature and wide-ranging scope of E.MA reflect the benefits of true European inter-university cooperation in human rights education. It is an inter-disciplinary programme that reflects the indivisible links between human rights, democracy, peace and development.

During the first semester in Venice, students have the opportunity to meet in a multi-cultural environment and be taught by leading academics, experts and representatives of international and non-governmental organisations. During the second semester students relocate to one of the *participating universities* in the various EU member states to follow additional courses in an area of specialisation of their own choice and to write their thesis under the supervision of the E.MA Director or other academic staff. After successfully passing exams and completing a Master's thesis, students are awarded the European Master's Degree in Human Rights and Democratisation jointly conferred by a group of EIUC/E.MA universities.

Each year the E.MA Council of Directors selects five theses which

stand out not only for their formal academic qualities but also for the originality of topic, innovative character of methodology and approach, and potential usefulness in raising awareness about neglected situations or issues and capacity for contributing to the promotion of the values underlying human rights and democracy.

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- DE MAN, Annelie, *Are We Protecting Future Generations' Right to Food? A Study of Intergenerational Obligations*, Supervisor: Prof. Jean Allain, Queen's University of Belfast (United Kingdom).
- HESSLING, Leonard, *Water and the Arab Uprisings – The Human Right to Water and Sanitation in Post-Transition Egypt*, Supervisor: Vincent Durac, University College Dublin (Ireland).
- ODOYO, Roselyn Awuor, *From Russia with Love: An Impact Assessment of Resolution A/HRC/21/L2 on Sexual Minorities in Africa*, Supervisor: Prof. Maria Teresa Beleza, New University Lisbon (Portugal).

This volume includes the thesis *Water and the Arab Uprisings – The Human Right to Water and Sanitation in Post-Transition Egypt* by Hessling, Leonard, and supervised by Vincent Durac, University College Dublin (Ireland).

BIOGRAPHY

Leonard Hessling holds a German Legal State Exam from the University of Munich and a French Master's Degree in European Law from the Université Panthéon-Assas, Paris. He has worked for several international law firms, the UNESCO human rights unit, the international water rights NGO WASH United, and the water competence center of GIZ. After graduating from E.MA with honors he became Carlo Schmid Fellow of the German National Merit Foundation and the Federal Foreign Office working as Operations Analyst for the World Bank Country Office for Egypt, Yemen

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ABSTRACT

This thesis analyses the water and sanitation crisis through the human rights lens in the context of the Egyptian uprisings of 2011. It introduces a tripartite approach, the water-human rights-governance nexus offering an alternative narrative to the uprisings. In questioning whether the water and sanitation crisis can be considered as one of the factors that fed into the uprisings, it is argued that the human right to water and sanitation provides an adequate framework to address precisely the grievances at the root of the uprisings. Post-transition has opened a window of opportunity in a unique socio-political situation when governance structures are under review, and a holistic and effective water and sanitation strategy taking account of the human right could finally be established. The thesis successively investigates the Egyptian context with particular regard to the authoritarian state and the water and sanitation crisis. The human right to water and sanitation is examined in the Egyptian legal context including the new constitution of 2012. Finally, the implementation of the human right is investigated through a baseline study of relevant stakeholders and their achievements as well as shortcomings. Identified challenges are mainly systemic in nature, relating to an inadequate institutional design and a lack of participation, transparency and accountability, which all can be traced back to a lack of political will to implement the human right to water and sanitation.

Like past editions, the selected theses amply demonstrate the richness and diversity of the E.MA programme and the outstanding quality of the work performed by its students.

On behalf of the Governing Bodies of EIUC and E.MA and of all participating universities, we congratulate the author.

PROF. FLORENCE BENOÎT-ROHMER
EIUC Secretary General

PROF. RIA WOLLESWINKEL
E.MA Chairperson

LEONARD HESSLING

WATER AND THE ARAB UPRISINGS –
THE HUMAN RIGHT TO WATER AND SANITATION
IN POST-TRANSITION EGYPT

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| AFED | Arab Forum for Environment and Development |
| AHDR | Arab Human Development Report |
| APP | Advisory Panel for Water Management and Drainage |
| CEDAW | Convention to Eliminate All Forms of Discrimination Against Women |
| CESCR | Committee on Economic, Social and Cultural Rights |
| CESR | Centre for Economic and Social Rights |
| CIHRS | Cairo Institute for Human Rights Studies |
| CRC | Convention on the Rights of the Child |
| CRPD | Convention on the Rights of Persons with Disabilities |
| CSO | Civil Society Organisation |
| ECESR | Egyptian Centre for Economic and Social Rights |
| EHDR | Egyptian Human Development Report |
| EOHR | Egyptian Organisation for Human Rights |
| ERSAP | Economic Reform and Structural Adjustment Programme |
| FAO | Food and Agriculture Organisation of the United Nations |
| GDP | Gross Domestic Product |
| HRBA | Human Rights-Based Approach |
| HRC | Human Rights Council |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| IMF | International Monetary Fund |
| ISI | Import Substituting Industrialisation |
| JMP | Joint Monitoring Programme |
| KfW | German Financial Corporation (Kreditanstalt für Wiederaufbau) |
| MDG | Millennium Development Goals |
| MENA | Middle East and North Africa |
| MWRI | Ministry of Water Resources and Irrigation |
| NDP | National Democratic Party |
| NGO | Non-Governmental Organisation |
| NWRP | National Water Resources Plan |
| OHCHR | Office of the High Commissioner for Human Rights |

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|------------|---|
| UDHR | Universal Declaration of Human Rights |
| UN | United Nations |
| UNDP | United Nations Development Programme |
| UNESCO | United Nations Educational, Scientific and Cultural Organisation |
| UNFPA | United Nations Population Fund |
| UNGA | United Nations General Assembly |
| UN-Habitat | United Nations Human Settlements Programme |
| UNICEF | United Nations Children's Emergency Fund |
| USAID | United States Agency for International Development |
| WHO | World Health Organisation |
| WPRR | Water Policy and Regulatory Reform |
| WUA | Water User Association |

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1.

INTRODUCTION

This chapter is divided into three sections. The first section provides an orientation and explains the conceptual and motivational approach to the study. Secondly, the literature review presents the consulted sources and how relevant items were identified through bibliographical analysis. Finally, section three reflects on the research method that has been adopted.

1.1. ORIENTATION, CONCEPTUAL AND MOTIVATIONAL APPROACH

This section provides an orientation to the study. It announces the study topic by providing essential background information. Subsequently, the purpose of the study is stated, and the significance of the topic is explained. After briefly clarifying the terms “human right to water and sanitation” and “Arab uprisings,” the research questions are established. Finally, the further organisation of the study is presented.

The Study Topic

This thesis analyses the problems surrounding water and sanitation in the case of Egypt through the human rights lens in the context of the uprisings of 2011. The study topic is located at a disciplinary intersection that can be described as the water-human rights-governance nexus. The argumentation is based on factual evidence of a decreasing availability of water per capita with Egypt dropping beneath the so-called “water poverty line.” Despite efforts to improve access to water and sanitation, significant parts of the population remain without access, especially the most vulnerable populations living in informal settlements and

rural areas. It is argued that the social contract was dissolved under the authoritarian state failing to address essential needs such as providing water and sanitation equitably. The thesis makes a case for the human right to water and sanitation in Egypt through a baseline study of relevant stakeholders, their achievements, shortcomings and the challenges that need to be addressed if the human right to water and sanitation is to be effectively implemented.

Purpose of the Study

The uprisings that erupted across the Arab world after December 2010 mark a historical turning point. Many factors for the uprisings have been discussed except for the water and sanitation crisis. The purpose of the study is to investigate water and sanitation as an understudied factor in the uprisings and to introduce a different narrative to the perception of the uprisings that too often focuses solely on the role of social media, and civil and political rights. In this sense, the thesis aims at establishing the link between the uprisings and socio-economic grievances, including those resulting from the water and sanitation crisis in Egypt. Emphasis is given to the crucial role of the human right to water and sanitation and the implementation of a human rights framework as an adequate mechanism to address the water and sanitation crisis. It is proposed that by implementing this framework, the needs of many Egyptians, especially those living in informal settlements and rural areas, can be addressed, simultaneously preventing further conflict within Egypt. This is a necessity if further social and economic crises are to be avoided.

Beyond the analysis of the water and sanitation crisis as a neglected factor in the uprisings, the broader state structure and its governance and management of resources are also considered. Although the human right has been formally acknowledged, the necessary political will and real engagement that lead to the implementation of the right are missing and many Egyptians still lack access to safe drinking water and adequate sanitation. The post-transition phase, however, opens a window of opportunity in a unique socio-political situation when governance structures are under review, and a holistic and effective water and sanitation strategy taking account of the human right could finally be established.

Significance of the Topic

This study is relevant for reasons that relate to the three spheres it links together. From the human rights perspective, the specific human right to water and sanitation in Egypt is understudied. From the political and Middle Eastern studies perspective the Arab uprisings represent a crucial moment in time providing a unique opportunity for change in the transitional process, and from the developmental perspective the water and sanitation crisis is worsening. In all three disciplines linked in this study, the respective issues are among the most pertinent issues at the forefront of research in their discipline. Be it the recent acknowledgement of the long controversial and much observed human right to water and sanitation, the overwhelming repercussions of the Arab uprisings, or the alarming water and sanitation crisis highlighted by the declaration of 2013 as the United Nations International Year of Water Cooperation.

Clarification Concerning Terminology

Two central terms of this study need to be clarified in order to prevent confusion. First, there is an ongoing debate “whether there is a single right to water and sanitation or whether they are separate rights¹.” In its statement of November 2010 the Committee on Economic, Social and Cultural Rights (CESCR) states “[s]anitation has distinct features which warrant its separate treatment from water,” noting that, “[a]lthough much of the world relies on waterborne sanitation, increasingly sanitation solutions which do not use water are being promoted and encouraged. The CESCR therefore calls on states to recognise a freestanding right to sanitation².” Considering that such a separate right has not been recognised yet, this study follows the prevailing terminology and refers to a single right. For practical reasons reference is sometimes made to water only. This should, however, not distract from the fact that sanitation is an integral part of all water issues. Second, there is a debate about the terminology one should use for the events that have

¹ Alston & Goodman, 2013, p. 298.

² CESCR, Statement on the Right to Sanitation of 19 November 2010, UN Doc. E/C.12/2010/1, available at <http://www2.ohchr.org/english/bodies/cescr/docs/statements/E-C-12-2010-1.doc>.

occurred in the Arab world since December 2010. The controversial term “Arab spring” is misleading and evokes Orientalist connotations³. The term “Arab uprisings” has been chosen because it is more neutral. It discards the notion of a singular, unilinear Arab revolt and it is neither reductionist in time nor does it suggest a merely political dimension⁴.

Research Questions

This thesis attempts to find a solution to the following interlinked questions. To what extent did water scarcity and insufficient access to safe drinking water and sanitation trigger the Arab uprisings – can they be considered as *one* of the factors that fed into the Arab uprisings? If so, how can the concerns over water and sanitation be addressed in the transition process and implemented in Egypt’s legal and policy framework so as to ensure the realisation of the human right to water and sanitation and prevent future unrest? Besides these research questions, the underlying questions that have guided the study throughout are whether there has been real change in Egypt since the uprisings and whether there is sufficient political will to effectively implement the human right to water and sanitation.

Organisation of the Study

The thesis gives a chronological overview of the Egyptian context and the human right to water and sanitation in order to highlight the achievements, challenges, and obstacles to the realisation and effective implementation of the human right to water and sanitation. The main body of the thesis consists of three substantial chapters. Chapter two provides the background necessary to understand the country specific situation, its political system, political economy, the socio-economic grievances leading to the uprisings, and the water and sanitation crisis. Chapter three focuses on the human right to water and sanitation, its legal foundations, legal characteristics, and the legal context in Egypt. Chapter four links the two previous chapters and investigates how the human right is implemented and the ability of different stakeholders to

³ Pace & Cavatorta, 2012, p. 136.

⁴ Anderson, 2011, p. 7; Durac, 2013, p. 190.

address the grievances and the crisis via the human rights framework. Finally, chapter five concludes the study and gives a tentative outlook.

1.2. LITERATURE REVIEW

Relevant items were identified through an extensive bibliographical analysis. Both primary and secondary sources were consulted and analysed. The generic areas reviewed reflect the tripartite approach of the water-human rights-governance nexus, the case study area being Middle Eastern studies and within that, Egypt in particular.

First, primary sources were consulted. They include mainly international and national legal texts, policies and political statements. Most importantly all international human rights treaties were consulted regarding their relevance for the human right to water and sanitation. Among these General Comment No. 15 of 2002 is the prevailing legal document outlining the human right to water and sanitation (Annex V). Various political statements have been assessed, among which feature, most importantly, the UN General Assembly (Annex III) and Human Rights Council resolutions (Annex IV). Furthermore, the UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation conducted a mission to Egypt in 2009 and issued a report, which has been essential to this study. In the Egyptian legal system the new constitution of 2012 was analysed and in particular Article 67, which expressly mentions “clean water” (Annex I). The new Egyptian water law was not accessible at the time the research was undertaken, however, the main Egyptian water policy, the National Water Resources Plan (NWRP) of 2005 was analysed.

The review of secondary sources was extensive and conducted in several phases. Published books, journal articles, conference papers, and documents by international agencies and think tanks were reviewed, examined for reliability, relevance and appropriateness, and analysed⁵. Key authors were identified and the prevailing literature from the three above-mentioned generic areas was reviewed. Published books on the human right to water and sanitation are scarce and the body of literature available on this particular right has been consulted entirely. The main

⁵ Hart, 1998; Meth & Williams, 2006.

reference has been Winkler's recent text on the human right to water and sanitation from 2012⁶. In the field of Middle Eastern studies a core of authors focussing on Egypt could be distinguished. The leading journals in the field were consulted and database research has proven to be extremely useful in identifying key authors and journals. Although the events are recent, literature on the uprisings is already extensive and widespread, whereas literature focussing on socio-economic grievances and rights in the context of the Arab uprisings is manageable and could therefore be consulted at length. Concerning the field of water and sanitation, however, sources were abundant, often emanating from distinct disciplines addressing a myriad of issues. Here information was mainly retrieved from international organisations and renowned think tanks, which have been a very important source for the research conducted for this study. Key texts and data sources from international agencies, especially the UN and UN specialised agencies were reviewed. Considered as professional and reliable sources, data from international agencies have been consulted when factual knowledge is conveyed and especially in relation to the water and sanitation crisis but also concerning country specific data⁷.

1.3. RESEARCH METHODOLOGY

The nature of the research method has been qualitative. A quantitative approach would have proven less feasible and less effective because of the lack of available quantified data on the study topic. Although access to water and sanitation can be measured, the possibility of measuring human rights and the relating principles is questionable. Also, there is a lack of data concerning human rights in Egypt resulting from authoritarian rule. Due to financial and time restrictions, conducting on the ground interviews and sampling were not possible. Therefore, the approach has been to conduct a literature review based on primary and secondary sources, to analyse and evaluate the appropriateness of the documentary sources and extract relevant information. By contextualising this information according to the research questions and

⁶ Winkler, 2012.

⁷ Rigg, 2006.

the aim set out initially, the study aims to achieve a holistic understanding of the complex realities and processes surrounding the topic.

In the two fields of study concerning the Arab uprisings and the water and sanitation crisis, available literature was extensive. The scope could however be narrowed by focussing on specific aspects of the two topics. In the case of the Arab uprisings, the focus was directed towards Egypt and socio-economic grievances in particular, thus distilling the information pertinent to the topic from the available sources. In the field of water and sanitation the focus was directed at water governance and management and as a result of the nature of the human right, the focus was directed exclusively towards water for domestic use, merely accounting for 8 per cent of the entire water allocation. Consequently, issues surrounding irrigation and agricultural use of water, which constitute 86 per cent of water allocation, were excluded. In the field of the human right to water and sanitation this approach was not necessary as the number of experts on the topic is limited and expertise is easily located.

The case study approach has been chosen because the Arab uprisings and the Middle East and North Africa (MENA) are too vast and too complex to form the topic of a single study. Choosing the entire MENA region would either have led to simplifications and reductions or to unanswered questions. Locating the topic within one specific country has made it possible to approach the issue in a more coherent and concise manner. Egypt is not only the centre of the Arab world, it was also at the centre of the Arab uprisings. Furthermore, the particular relevance of water and sanitation in a country with a surging population, which is dependent on the Nile for 96 per cent of its water supply, was a decisive factor making the case for Egypt. Time and financial constraints prevented a field trip to Egypt and interviews with relevant stakeholders. Although this would have been desirable, the extensive literature review surfaced enough material for analysis.

Limitations

Dealing with a multi-layered and multidisciplinary topic requires the exclusion of neighbouring topics that are less relevant in this precise context. The disciplinary location of the study is threefold, dealing with human rights, development studies, and politics and international relations. The topic could be studied exclusively in each of the three

disciplines considered here. However, it is precisely this nexus, which constitutes the novelty and pertinence of the chosen approach. Each of the three disciplines is in turn closely linked to other related disciplines and scholarly debates. Human rights discourse for instance is linked to questions of enforceability of economic, social and cultural rights emanating from current discussions concerning the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The political and Middle Eastern studies discourse is open to discussions concerning Egypt's transition, current trends of political instability and transboundary issues, to name a few. Water and sanitation are closely linked to technical questions as well as considerations relating to climate change, the water sector being a vast field, consisting of many different discourses. For practical reasons, expectations from all of these complex disciplinary realms could not be satisfied, the aspiration being that the interdisciplinary nature of this study is taken into consideration when its inherent limitations become apparent.

2.

BACKGROUND: THE EGYPTIAN CONTEXT

Chapter two sets the scene for this assessment. In order to provide the background necessary to understand the uprisings, the political context is reviewed chronologically. The inequalities created by both the political system and the political economy have entrenched socio-economic grievances among which the micro-focus will be on one particular, but nonetheless hugely important aspect: the water and sanitation crisis. The chapter goes on to investigate the research question, suggesting that the water and sanitation crisis was one of the factors that fed into the uprisings and lead to a breach in the connection between the government and the population, culminating in the uprisings of 25 January 2011.

2.1. THE POLITICAL CONTEXT

The array of discontent expressed throughout the numerous revolts that gained momentum towards the end of the first decade of the 21st century can only be understood within Egypt's historical context taking into account the broader political setting. First, both the historical origins and core features of authoritarianism are investigated throughout the three regimes in contemporary Egypt since the end of colonialism. Second, the link between the state and Egypt's political economy is established. Finally, the consequences of authoritarianism for Egypt today are analysed, revealing the challenges that lie ahead, which then leads to the socio-economic challenges that will be discussed in the next section.

2.1.1. *Egypt's Political System: Authoritarianism*

How can the political system in Egypt best be described? What were the mechanisms that made it so powerful on the one side and so unpopular on the other? In order to understand the dynamic of the uprisings it is necessary to look back. Besides the many factors invoked for the uprisings, Shokr stresses that “[a]nother dimension to consider is history⁸,” as “[t]he Egyptian state in 2011 was a patchwork of its own histories⁹.” According to Shokr, “[t]he deep sense of unrepresentativeness of the state – that it does not stand for ‘the people’ and its interests – can be traced much further back than the last 30 years” and “the events of 2011-2012 were about Mubarak” but “they were also profoundly about the Free Officers and the system they helped forge¹⁰.”

Looking back entails the question: what characterises Egyptian politics since the 1952 coup and why is this date chosen as a breaking point here. In a first step the system itself has to be defined. Among scholars there is consent as to the classification of Egypt’s political system: it is widely referred to as an authoritarian state. What is authoritarianism, what are its core features and how did it become the dominant political system in Egypt?

2.1.1.1. *The Historical Context of the “Authoritarian Bargain”*

There have been different approaches of classification of political systems in the MENA region. Some scholars (Bellin 2004, Owen 2004, Pratt 2007) have focused on commonalities of authoritarian rule among MENA states, which are instructive in the present context in order to distinguish Egyptian specificities. Other scholars have focused on Egypt in particular (Kienle 1998, Kassem 2004, Kandil 2011, 2012). Authoritarianism is a developed system that was created and refined by successive regimes until perfection. It is understood best when looked upon chronologically in its contextual emergence.

The Arab Republic of Egypt emerged after a military coup d’état on 23 July 1952 lead by Gamal Abdel Nasser, ending the monarchy and the formal role for Britain in Egyptian politics. When tracing back the origins of Egypt’s political system, the year 1952 inevitably becomes the

⁸ Shokr, 2012, p. 4.

⁹ Ibidem, p. 6.

¹⁰ Ibidem, p. 12.

starting point and in many ways the revolution of 1952 shows parallels to the uprisings of 2011. What Nasser offered the Egyptians in order to curtail opposition is what many scholars refer to as “the authoritarian bargain,” a sort of tacit deal struck between the ruler and the ruled, which dominated most of Egyptian political life since 1952 and can be considered as a form of social contract in which the Egyptians “exchanged political quiescence for stability as well as for economic growth¹¹” and the populace “gave up its rights to independent political activity in return for the state’s provision of social welfare¹².” Kamrava illustrates this as follows: “[p]olitical authoritarianism owes its longevity to the continued ideological and institutional cohesion of authoritarian elites on the one hand, and their ability to perpetuate authoritarian ruling bargains that incorporate or pacify potentially oppositional social actors on the other¹³.” Shokr describes the authoritarian bargain as “the old formula of power” whereby Egyptians “sacrificed political freedom for social welfare, democratic representation for corporatism and public participation for technocracy¹⁴.” The political system that evolved under the authoritarian bargain is complex and multi-layered with various mechanisms of government. In order to comprehend the functioning of this complex system, some of its features deserve further explanation.

2.1.1.2. Core Features of Egyptian Authoritarianism

Authoritarianism in Egypt is characterised by the interplay of a core set of features. Its first central feature is the huge expansion in the power and pervasiveness of the state apparatus and the growth in the size of bureaucracy, police, army, and number of state enterprises. It was especially administrative expansion and “management of so large an apparatus with such extensive commitments, that gave the small number of individuals at the apex of each regime enormous power. The result was a type of system best classified as authoritarian¹⁵.” After Nasser’s coup of 1952, Egypt came under control of a one-party regime dedicated to state-led development and Arab socialism. Immediate

¹¹ Bellin, 2012, p. 138.

¹² Brumberg, 1990, p. 120.

¹³ Kamrava, 2007, p. 212.

¹⁴ Shokr, 2012, p. 3.

¹⁵ Owen, 2004, p. 27.

steps were taken to institute measures of economic development such as land reforms, development projects (e.g. the Aswan High Dam and the Helwan Iron and Steel Complex) as well as nationalisations (e.g. the Suez Canal). Leading to a huge expansion of the state apparatus and entailing an improved ability to regulate and control, all steps were justified by the need for rapid development, which provided an important source of legitimation.

The second pertinent feature relates to the question how authoritarianism established itself as the dominant political system in Egypt without being contested by the opposition. The cause is to be seen in the marginalisation of pluralist political discourse. According to Pratt, “there were calls for the establishment of parliamentary democracy and an end to the military’s role in politics, however these voices were either co-opted or driven out of the public domain. Other regime opponents, such as the Muslim Brotherhood in Egypt, were brutally repressed. Their demands possessed little validity within a discursive framework that prioritised the goals of protecting the achievements of national modernization¹⁶.” The authoritarian state is characterised by strategies to control society with an underlying logic of state violence, which Bellin describes as the “coercive apparatus.” She describes a state, which is dominated by patrimonialism and a low level of institutionalisation making it a particularly robust state that has been “exceptionally able and willing to crush reform initiatives from below¹⁷.” Her analysis of the coercive state rejects the argumentation line that explains the MENA region’s rejection of democracy via the absence of democratic prerequisites. Instead she advances four factors for the capacity and will of the coercive apparatus to repress democratic initiatives. First, the coercive apparatus requires the maintenance of fiscal health to sustain exceedingly robust expenditures on security apparatuses. Second, it has maintained international support networks and international patronage particularly of the US. Third, low levels of institutionalisation have allowed for a patrimonial logic under which the distinction between public and private is not always scrupulously observed, personalism pervades staffing decisions and entire branches of the military and security forces are family affairs. The fourth variable is a low level

¹⁶ Pratt, 2007, p. 57.

¹⁷ Bellin, 2004, p. 144.

of popular mobilisation or popular enthusiasm on behalf of political reform. Bellin has reconsidered the “robustness of authoritarianism” after the uprisings, coming to the conclusion that her original analysis persists¹⁸.

The third core feature of authoritarianism consists in what Kassem describes as the institutionalisation of personal authoritarian rule in contemporary Egypt. It proved to be “so overtly flexible and resilient that it can function over a long period of time, with successive rulers and under the guise of various political structures and policies¹⁹.” Kassem distinguishes a number of similarities in the patterns of rule and formal structures of governance common to regimes from Nasser to Mubarak: first, the use of legal-constitutional framework to curtail the influence and powers of institutions, groupings and individuals; second, the distribution of state patronage to create a dependent clientelist network; third, the presence of electoral malpractice and fourth, the use of the mentioned state coercion to control perceived challengers. Within these patterns of government Kassem underlines the president’s powers of appointment at the highest levels that have resulted in “a clientelist structure in which the president remains the ultimate patron²⁰.” Personal authoritarian rule depends on a reliable apparatus, which Kandil describes as a “power triangle.” The tripartite structure with a division of labour between its component parts is typical for a regime that came into force through military force: “The first component of the ‘power triangle’ consists of those who take over the daily government through a political apparatus, typically composed of a president (or monarchy) and a ruling party. The second component consists of military officers who handle domestic repression through a multi-layered security complex, which includes police, intelligence and paramilitary forces. The third group consists of those who return to the barracks and continue to represent the military proper. [...] The three components of this kind of regime both cooperate and compete, their interests both overlapping and diverging all the time²¹.” This regime left hardly any space for a functioning civil society.

The fourth core feature of authoritarianism in Egypt relates to the

¹⁸ Bellin, 2012, p. 135.

¹⁹ Kassem, 2004, p. 167.

²⁰ *Ibidem*, p. 168.

²¹ Kandil, 2011, p. 28.

role of civil society. Repression and co-optation of political opponents were the major instruments of the coercive apparatus. Nasser's regime fostered the repression of all political parties and forces, as well as trade unions and other independent civil-society organisations (CSOs)²². Up until the present day this prolonged vacuum has marked civil society. The cause for this can be seen in the pursued strategy of "corporatisation" of civil society and co-optation of many citizens into the process of state building²³. The ways in which the state established control over civil society were manifold. One was by enacting restrictive laws: "By frequently invoking the dreaded Law of Associations (Law 32, enacted in 1964), for example, the Egyptian state gave itself rights and put constraints on members of the public from freely associating to promote their own individual and collective rights (e.g. basic human rights)²⁴." State repression led to the dissolution of societies. In Cairo, for example, a substantial proportion of the societies registered after 1945 were dissolved or abandoned. In 1966 the government abolished some 1,300 societies, on the ground that they did not conform to the law of associations²⁵. Even the growth of CSOs after the 1970s is considered "a function of top-down, regime-driven processes of controlled political liberalisation²⁶." Many of those who participated in corporatist structures believed in the state-led modernisation project of Nasser's regime – even if they did not support the regime itself. In large parts the passivity of civil society can only be explained through the broad support backing Nasser and the veil of modernisation ideology that hid the erosion of pluralism.

It has become clear, that on the one hand civil society "played a role in the normalisation of authoritarianism through its support for national modernisation" and thus sustained authoritarianism²⁷. On the other hand civil society was suppressed or co-opted by the "corporatist state" regime which deployed a divide and rule strategy with certain classes and the elite also pursuing self-interest in sustaining the regime. Accordingly, civil society played an important role in facilitating and often pushing for authoritarian political systems to emerge.

²² Pratt, 2007, p. 40.

²³ Ibidem, p. 42.

²⁴ Kamrava, 2007, p. 209.

²⁵ Moore, 1974, p. 206.

²⁶ Durac, 2013, p. 184.

²⁷ Pratt, 2007, p. 57.

Adding to these factors constituting authoritarianism, Kienle introduced another analysis that explained the process of “deliberalisation,” marking Egyptian politics in the 1990s, when “opportunities for formal representation and participation through elections [were] restricted rather than simply stopped from expanding²⁸.” These measures were intensified in the aftermath of the 2005 presidential election which saw Mubarak’s major political opponent jailed and as Durac notes, “a further series of measures to limit political freedoms” was introduced, among which was the end of judicial supervision of elections and the prohibition of religious parties. Durac extends Kienle’s thesis of deliberalisation by stating “[t]he culmination of the deliberalisation of Egypt came in the last elections before the Arab revolts of 2011 in which the NDP won an overwhelming majority of seats in parliament, while the Muslim Brotherhood was let without representation²⁹.” The fact that roughly half of Egypt’s population is under 25 years of age and has never experienced any other rule than the personalised authoritarian rule of Mubarak embodies the challenges for Egypt’s future. Any change that is to be made will have to face the heavy legacy of authoritarian rule, the influence of which cannot be underestimated.

2.1.2. *Egypt’s Political Economy: Cementing Inequalities*

Egypt’s political economy is also deeply connected with authoritarian system. This deserves particular attention when investigating socio-economic rights and the human right to water and sanitation. In this sense, the World Bank states: “[t]he political economy affects every aspect of water management³⁰.” Accordingly, the study of the Egyptian uprisings cannot circumvent political economy as they are intrinsically linked. According to Dahi “the explanation for the uprisings is better found in the political economy of regime consolidation³¹,” and “understanding the political economy of regime consolidation helps one to understand the Arab revolts better than a simple focus on deprivation or economic success³².”

²⁸ Kienle, 1998, p. 220.

²⁹ Durac, 2013, p. 178.

³⁰ World Bank, 2007, p. 27.

³¹ Dahi, 2011, p. 2.

³² *Ibidem*, p. 6.

The political economy of Egypt since 1952 has been reviewed and analysed at length. For the purpose of the present study and in view of space constraints, a synthesis of the evolution of the political economy provides sufficient background information, whereas the most recent developments are considered in more detail because of their immediate effect on the uprisings.

2.1.2.1. *Synthesis: Three Successive Paradigm Shifts*

The overarching theme that can be observed very clearly in modern Egypt is a change in the political economy of state intervention. From the Free Officer's coup d'état on 23 July 1952 until the uprisings on 25 January 2011, Egypt's economy shifted from state-led planned industrialisation to a retreat of the state and policies of liberalisation and privatisation, which was then to be called in IMF case studies a "successful converting"³³. Among scholars there is consent to distinguish five phases in the history of Egypt's political economy³⁴.

The first period between 1956 and 1967 can be summarised by the following major characteristics: under Nasser Egypt witnessed the appearance of a socialist economic agenda marked by the central events of 1956, 1957 and 1961 – the nationalisation of the Suez Canal, the proclamation of the five-year industrial plan introducing Import Substituting Industrialisation (ISI) strategies and the socialist decrees announcing nationalisations and land reforms as a means of wealth redistribution³⁵. During the second period between 1968 and 1973, Egypt underwent a remarkable transformation: the devastating military defeat in 1967 and Nasser's death in 1970 were followed by a severe recession which marked the end of the Nasserist experiment and a shift towards new economic policies³⁶. The third period ranging from 1974 to 1985 marks a paradigm shift. Sadat announced the new "open door policy" also known by its Arabic name "infitah" (literally "opening up") in 1974, mainly aiming at the encouragement of foreign investment. The economic liberalisation and privatisation was also accompanied by an apparent political opening. Egypt witnessed a phase of strong economic growth after its infitah, the opening up to the World

³³ Pfeifer, 1999, p. 23.

³⁴ Owen & Pamuk, 1998, p. 128; Said, Chang & Sakr, 1995, p. 2; Yousef, 2004, p. 94.

³⁵ Milton-Edwards, 2006, p. 80; Richards & Waterbury, 1998, p. 183.

³⁶ Richards & Waterbury, 1998, p. 77; Owen & Pamuk, 1998, p. 133; Cooper, 1982, p. 11.

Economy that entailed the inflow of great external rents, making Egypt a rentier state³⁷. This growth of the oil-boom and foreign remittances then came to a slow-down during the fourth period between 1986 and 1991. “Egypt’s decade of rapid economic growth ended in 1985/86 with the collapse of the price of oil – the government’s oil revenues fell by 70% in 1986³⁸.” In the mid-1980s Egypt had become one of the world’s major debtor nations and the economic state of Egypt at this moment in time was devastating³⁹. The remedy to this weakened economy was clear: structural adjustment.

2.1.2.2. *Structural Adjustment and Liberalisation since 1991*

In 1991 the Economic Reform and Structural Adjustment Programme (ERSAP) was initiated under agreements between the Egyptian government, the IMF and the World Bank. After decades of central planning and the dominance of public sector activity, the ERSAP had the principle aim of “shifting the economy to an outward-oriented, market based economy⁴⁰.” This embodied a new approach to economic policies, the year 1991 thus marking a turning point and paradigm shift in Egypt’s political economy. Alissa identifies three generations of reform since the 1991 ERSAP. The first generation of reform lasted from 1991 to 1998 and was mainly characterised by liberalisation to foreign exchange markets and “the successful stabilisation of the economy and serious privatisation efforts, which resulted in about one-third of all state-owned enterprises’ assets being privatised⁴¹.” “The second generation of reform, from 1998 to 2004, focused on trade and institutional measures⁴²” and included the signing of a number of free trade agreements such as the EU Association Agreement that came into force in June 2004. The third generation of reform then began in 2004 with the appointment of Ahmed Nazif as prime minister under which the reform process was further intensified and the pace of privatisation was accelerated⁴³.

³⁷ Said, Chang & Sakr, 1995, p. 4; Ehteshami & Murphy, 1996, p. 761; Ayubi, 1995, p. 339; Mahdavy, 1970, p. 428; Handoussa, 1991, p. 3.

³⁸ Owen & Pamuk, 1998, p. 138.

³⁹ Richards & Waterbury, 1998, p. 219.

⁴⁰ Said, Chang & Sakr, 1995, p. 1.

⁴¹ Alissa, 2007, p. 4.

⁴² Ibidem, p. 5.

⁴³ Ibidem, p. 6.

The assessments of the outcome of structural adjustment vary. The IMF and the World Bank applauded the ERSAP as “a remarkable recovery,” drawing positive conclusions from the adjustment policies to stabilise the economy and restore growth⁴⁴. In the words of Henry and Springborg, “both the IMF tutor and its Egyptian student were heralding the IMF-led stabilisation package as a textbook case of financial reform. Spokespersons for the IMF began referring to the “Tiger along the Nile⁴⁵.” The majority of commentators, however, express critique and the outcome of the quasi imposition of the ERSAP by the IMF and World Bank remains controversial. According to Lustick, “[e]ven those economists that have trumpeted structural adjustment as an escape route from poverty and underdevelopment set their sights for these societies no higher than bringing economic performance into line with population growth⁴⁶.” Even the World Bank itself acknowledged that substantial problems remain and that “poverty and unemployment remain serious problems⁴⁷.” Similarly, Richards and Waterbury argue that “Egypt illustrates the poverty implications of dilatory reform and poor human-capital performance⁴⁸.” Focussing on neoliberal policies, Pace and Cavatorta state, “[w]hen one assesses the Arab Awakening, it clearly emerges that ordinary Arab citizens rose up against precisely those rigged neo-liberal reforms imposed by Western organisations like the IMF and the World Bank that led to an even more unequal distribution of wealth in their countries and impoverished the masses over the last two decades⁴⁹.” In the environmental context relevant for the water and sanitation crisis, the macro-economic policy package of reform and adjustment “paid little attention to adverse impacts on the quality of life of low-income urban dwellers and the environment,” thus representing what Zetter and Hassan analyse as a prevailing economic development paradigm favouring an urban-based model of economic development at the expense of environmental considerations⁵⁰. In conclusion it can be assessed that, the shift of the urban environmental agenda from the public domain, the removal of subsidies, the reduction

⁴⁴ World Bank, 1998, p. vii.

⁴⁵ Henry & Springborg, 2001, p. 140.

⁴⁶ Lustick, 1997, p. 660.

⁴⁷ World Bank, 1998, p. vii.

⁴⁸ Richards & Waterbury, 1998, p. 264.

⁴⁹ Pace & Cavatorta, 2012, p. 130.

⁵⁰ Zetter & Hassan, 2002, pp. 169-184.

of government spending on services, the privatisations and the neo-liberal policies resulting from the ERSAP, all fed into the causes endemic to the water and sanitation crisis in Egypt.

2.1.3. *Overview*

Through a historical analysis the previous considerations have demonstrated that the political system and the political economy of Egypt were dominated for decades by a very particular, multifaceted authoritarian system, the legacy of which provides numerous challenges for contemporary Egypt. The study presented here shows that the uprisings of 2011 were the outcome of a historical, both political and economic process, initiated in 1952 and not simply a momentary explosion. As a result of this process, the situation that prevailed at the end of the first decade of the 21st century was a deeply divided country characterised by personalised authoritarian rule relying on a power triangle that used its coercive apparatus to suppress an unincorporated civil society. A small ruling elite at the apex of a hugely expanded apparatus was pursuing mainly personal interests. Having performed a paradigm shift in the political economy of the country this patriarchal crony capitalist elite was now abandoning Nasser's state-led industrialisation and nationalisation in favour of the privatisation of many parts of the economy under the veil of structural adjustment programmes. These successive paradigm shifts from agrarian economy to market economy models of development have mostly hit low-income groups, "intensified the process of rapid urbanisation, increased informal urban growth and produced substantially deteriorating environmental conditions⁵¹."

The different variables and factors responsible for the emergence of an authoritarian political system in Egypt are indeed interwoven and interdependent – in the words of Pratt, "authoritarianism represents not only a regime type but also a hegemonic system underpinned by a complex interplay of socioeconomic, ideological and institutional structures⁵²." The contextualisation of politics in Egypt has lent itself to a number of intertwined questions, the analysis of which has given

⁵¹ *Ibidem*, p. 182.

⁵² Pratt, 2007, p. 189.

insight into the mechanisms that established authoritarianism as the dominant political system by suppressing opposition forces whilst relying on nationalism and aspirations for modernisation. The uprisings have unravelled many grievances that evolved under this system. For Egypt's current state this entails many challenges. Besides the above-mentioned factors for the breach in the connection between ruler and ruled resulting from the political economy, the protests had a socio-economic nature. The continued exploitation of the population resulted in a divided society suffering from socio-economic deficiencies that will be analysed next.

2.2. THE SOCIO-ECONOMIC CONTEXT

“Bread, Freedom and Social Justice!”
(The revolutionary slogan of 25 January 2011)

The term “socio-economics” designates the social science that studies how economic activity affects social progress. In this sense, this section considers how the before-mentioned political economy and economic activity have (negatively) affected social progress, by presenting a number of conditions, such as poverty and urbanisation as intervening variables between the water and sanitation crisis and the uprisings.

Kandil distinguishes socio-economic factors as part of the “double deterioration” that, besides the political repression of the coercive apparatus, led to the uprisings. The socio-economic grievances Kandil points at, arise from the economic exploitation of vast portions of the population that after decades of suppression “appeared to be utterly passive, fragmented and demoralised.” Kandil illustrates the social change after 2004 under Gamal Mubarak, and Ahmed Nazif, which had led to “a combination of outrageous looting by the insider capitalists, and blatant neo-liberal exactions on the population⁵³.”

The result of the economic exploitation were heavy protests, strikes and labour sit-ins: from 1998 to 2004 there were over 1,000 workers' collective actions. More than one quarter occurred in 2004 alone, a 200 per cent increase over 2003⁵⁴. “The increase in 2004 was triggered by an

⁵³ Kandil, 2011, p. 18.

⁵⁴ Beinin, 2008.

accelerated economic liberalisation process with few social safeguards undertaken by Prime Minister Ahmed Nazif. After the 2005 elections, protest activities continued to gain momentum in number and scope⁵⁵. 222 strikes, labour sit-ins, and demonstrations were reported in 2006 and 580 in 2007 including the famous tax collectors strike in Cairo⁵⁶. 2008 witnessed over 400 instances of workers' collective action involving an estimated 300,000 to 500,000 workers⁵⁷. In 2009 Egypt witnessed approximately 1,000 strikes and other forms of industrial protest⁵⁸. "These protests however have not ceased after the uprisings. According to the Egyptian Centre for Economic and Social Rights, during 2012 there were over 3,400 protests over economic and social issues, mostly labour actions. This number is nearly five times higher than the number of collective workers' actions in any year of the 2000s. Over 2,400 of these protests occurred after Muhammad Morsi's inauguration as president on 30 June 2012⁵⁹."

The Egyptian Centre for Economic and Social Rights (ECESR) in its recent submission to the CESCSC gives an account of the present socio-economic situation in Egypt: "[a]lthough demands for socio-economic justice were at the core of the outbreak of the revolution, the transitional governments that have led Egypt have done little to respond to the calls of the revolution. It has so far failed in translating the motto of the Egyptian revolution 'Bread, Freedom, Social Justice' into policies that side with the poor and provide them with their basic social and economic rights. [...] the government has consciously taken steps to undermine the respect for and realisation of socio-economic rights, in breach of the state's obligations. Although the new constitution contains a promising array of socio-economic rights, it is less than clear that these are anything more than rights in name only, as the government's conduct risks leading to significant retrogression in the realisation of socio-economic rights⁶⁰."

Continuous economic exploitation and ignorance of the needs of the population have led to serious inequalities in Egyptian society and have fostered the gap between the rich and the poor leading to

⁵⁵ Ottaway & Hamzawy, 2011, p. 2.

⁵⁶ Beinin & El-Hamalawy, 2007.

⁵⁷ Beinin, 2008.

⁵⁸ Ottaway & Hamzawy, 2011, p. 3.

⁵⁹ Beinin, 2013, p. 1.

⁶⁰ Egyptian Centre for Economic and Social Rights (ECESR), 2013.

even greater poverty. This section will first examine the most pressing and complex socio-economic issue: poverty. Second, the dire socio-economic situation resulting from urbanisation will be assessed, before turning to the third subsection, which will deal more specifically with the relationship between the political and socio-economic grievances expressed in the uprisings. The fourth subsection argues that the socio-economic demands expressed in the uprisings can be considered as political demands as well, and the last subsection consists of a conclusion of the specific mix of grievances shaping the socio-economic situation.

2.2.1. Poverty and Exclusion from Development

Poverty is a relative, social concept and it is multi-faceted. Therefore, depending on which parameters are used to illustrate poverty, only certain aspects can be portrayed. When assessing poverty levels and its causes in Egypt, many factors in the country's economic policies play a role: extreme population growth, the particular structure of the labour market, dire housing conditions, the food subsidy system and a lack of investment in human capital, just to name a few.

The most recent World Bank report on poverty in Egypt of June 2011, states that although poverty in Egypt decreased between 2005 and 2008, "the sudden economic slowdown in the context of accelerating inflation in 2008/09 reversed the gains in poverty reduction achieved during the period of rapid growth. By the end of 2008, the standard of living of the poor and near poor, which had been rising, was falling again as a result of the economic downturn⁶¹." The report goes on to say that poverty and especially extreme poverty remains a major challenge for Egypt. It indicates "extreme poverty, i.e. the inability to afford basic food needs, reached during 2008/09 its highest level in the last 15 years: 6.7 per cent on average, and 9.6 per cent in rural areas. This means that 5.1 million Egyptians were severely deprived of basic food needs in 2008/09. Overall, around 16 million Egyptians were below the poverty line, and 30 million below the upper poverty line⁶²." These figures not only illustrate the dire situation of poverty in Egypt today, they also show

⁶¹ World Bank, 2011, p. i.

⁶² Ibidem, p. 2.

that Egypt underwent significant periods of prosperity and economic growth, the fruits of which however failed to trickle down to the most vulnerable members of society.

Portraying poverty in its entire bandwidth would go beyond the scope of this thesis, rather the increase of poverty is portrayed as relevant for the present study and as a determining factor leading to socio-economic grievances, considering that “the revolution had at its heart the aim to improve the living standards of the more than 40 per cent of Egyptians who eke out a meagre living on less than US\$ 2 a day⁶³.”

Bush and Ayeb deliver an insightful description of poverty in Egypt by arguing that “people’s poverty in the region and in Egypt is the result of their exclusion not from government policy but from development⁶⁴.” Poverty, Bush argues, “is the outcome of capitalist modernisation and the process may better be understood as abjection,” which refers to “people being excluded from development⁶⁵.” Bush suggests a different understanding of poverty from something that can simply be solved by appropriate policy intervention as often proclaimed by many UN agencies. He understands it as “the outcome of systemic unequal global and local relations of production between capital and labour in the process of capital accumulation⁶⁶.”

The overall lesson that can be derived from Bush’s analysis of poverty and alleviation strategies in Egypt is that the issue has for a long time not been acknowledged. Once it was then acknowledged, mainly because of pressure from UN agencies and donors, the approach taken was wrong. The government believed it could alleviate poverty through more economic growth, whereas the UN agencies and donors elevated inclusion to become their key strategy and “a remedy for poverty” at the core of human development initiatives, as can be seen in the 2009 Arab Human Development Report (AHDR). What all of these approaches lacked in Bush’s view was the understanding, that “poverty can only meaningfully be analysed if it is grasped in its structural and relational sense.” The government failed to understand that it is the system of wealth creation itself, which creates poverty and furthermore Bush reveals a sharp contradiction between the government’s rhetoric and

⁶³ Bush & Ayeb, 2012, p. 11.

⁶⁴ *Ibidem*, p. 8.

⁶⁵ Bush, 2012, p. 55.

⁶⁶ *Ibidem*, p. 57.

the actual level of spending allocated to social measures, which actually fell in Egypt between 2003 and 2007⁶⁷.

2.2.2. Urbanisation and the Marginalisation of Informal Settlers and Rural Peasantry

An integral part of the socio-economic setting portrayed here and relating to poverty is the phenomenon of urbanisation in Egypt. Population growth has been steady over the last decades, especially in urban areas as a result of the “shift away from the peasantry towards urban slums⁶⁸.” The United Nations Population Fund (UNFPA) estimates that between 12 and 15 million people live in informal settlements in Egypt⁶⁹ and the Ministry of Economic Development acknowledged that slum areas increased between 2004 and 2006 (from 1,174 to 1,210) as well as the share of urban population living in slums, which has increased by 3.5 per cent from 2004 to 2006⁷⁰.

The phenomenon of urbanisation is relevant in the present context because of the water and sanitation implications. According to the Ministry of Economic Development, lack of access to improved water supply and lack of access to improved sanitation are two of the four determining characteristics of informal settlements besides overcrowding and the fact that dwellings are made of non-durable material⁷¹. UN-Habitat has indicated that the main deprivation suffered in Egyptian slums is lack of access to improved sanitation⁷². The UN Special Rapporteur⁷³ and the NGO “Al-Shehab” both come to similar results. The most pressing issue identified were problems relating to the right to housing and associated services such as right to access safe water. It was discovered that many districts are deprived of safe water and the only source of safe water in these deprived districts are water-carrier pickups that sell one gallon of water at a price of 0.75 L.E. – a price too expensive for the poor communities in informal settlements⁷⁴.

⁶⁷ Ibidem, p. 60.

⁶⁸ Selby, 2005, p. 336.

⁶⁹ UNFPA, 2007, p. 17.

⁷⁰ MOED, 2008, p. 56.

⁷¹ Ibidem.

⁷² UN-Habitat, 2008, p. 97.

⁷³ UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report of the Mission to Egypt, 2010, p. 5.

⁷⁴ Al-Shehab Institution for Comprehensive Development, “Campaigning the Egyptian

Despite the relevance of informal settlements for the water and sanitation crisis, this part of the population did not participate in the uprisings. Surprisingly the slum-dwellers, the so-called “ashwa’iyyat” (coming from a root word meaning “random”), an estimated 5 to 6 million people only in Cairo, living in subhuman conditions – shantytowns with no running water, no electricity and no sewage system – did not express their grievances in the uprisings. As Kandil writes, “Fortunately this menacing human mass was entirely absent from the revolt, which probably contributed to its civilized and peaceful character⁷⁵.” This is not to say, however, that this share of the population was not suffering under the socio-economic grievances, as they were actually the ones suffering most from state neglect. Their absence in the uprisings is rather an expression of the tragic isolation of this mass of poor from normal links to the rest of society⁷⁶.

2.2.3. *The Dichotomy between Economic and Political Struggles*

Although the struggle for socio-economic rights in Egypt has been expressed in the uprisings, they have yet to be acknowledged and adequately addressed by the government as shown by the above-mentioned ECESR report. The current political debate over necessary change risks being side-tracked by the establishment of a dichotomy between economic and political struggles as a deliberate tactic to protect the interests of the capitalist state and its agents.

According to Abdelrahman, Egypt’s revolutionary process is facing serious challenges and “[t]he forces of the counter-revolution are using all means to derail the process especially by effecting a schism between ‘economic’ and ‘political’ demands where the former is portrayed as extraneous to the course of the revolution⁷⁷.” Abdelrahman states “an understanding of economic struggles as separate from, and even in contradistinction to, political struggle is falsely conceived⁷⁸.” She explains that the different protests leading up to January 2011 were

Government to Provide Households with Access to Safe Water – Ezbet El Haggana”, published 8 June 2009, available at http://www.alshehab.m2014.net/article69.html?var_recherche=water&lanfg=en.

⁷⁵ Kandil, 2011, p. 25.

⁷⁶ Ibidem, p. 26.

⁷⁷ Abdelrahman, 2012, p. 614.

⁷⁸ Ibidem, p. 615.

inextricably connected, “under the authoritarian regime of Mubarak, no struggle for any set of demands could remain confined within itself, but gave birth to and fuelled other struggles⁷⁹.” In her view “this tactic of accentuating a schism between political and economic elements of what is in fact an integral struggle is central to the elite’s tactic of reducing Egypt’s revolutionary process to an orderly transition to democracy. Thus, the free market will be protected and neoliberal policies can flourish in return for occasional, limited political representation through elections⁸⁰.” She convincingly depicts a deliberate tactic of “driving a wedge and accentuating supposed differences between political and economic activists” in order to guarantee the interests of the capitalist state and a ruling elite as described above in the context of neo-liberal economic policies.

In a sense this reminds of the “authoritarian bargain” of previous regimes in which small concessions were made to the populace in order to pursue self-interested motives. Ottaway and Hamzawy who claim that “all episodes of protest have political implications, particularly in authoritarian and semi-authoritarian countries where demonstrations and even strikes are strictly controlled if not outright banned” support Abdelrahman’s claim⁸¹. They also point to the fact that the separation of socio-economic and political demands “helps incumbent authoritarian and semi-authoritarian regimes stay in power despite the high levels of discontent that are apparent in many countries⁸².”

2.2.4. *Demanding Water Is a Political Act*

For the purpose of the present study, the third factor in Abdelrahman’s above-mentioned typology of demands in the uprisings is of particular concern, as the “market-relations-based protests” “broke out in reaction to the state’s failure to provide minimal services and goods such as health care, electricity, *running water*, and affordable basic foodstuffs⁸³.” Abdelrahman further raises awareness to the circumstance that in examining the demands of different groups in the uprisings, one can

⁷⁹ Ibidem.

⁸⁰ Ibidem, p. 626.

⁸¹ Ottaway & Hamzawy, 2011, p. 7.

⁸² Ibidem, p. 12.

⁸³ Abdelrahman, 2012, p. 620.

easily oversee their “overtly political character.” “By demanding potable water and effective garbage collection, disempowered and marginalised groups have been bringing the state and its agents to account and putting pressure on its institutions to be responsive and accountable in the only way that was left open to them⁸⁴.” Abdelrahman makes the point that this seemingly socio-economic demand is necessarily a political act: “[i]n the absence of any channel of political representation where different groups in society can delegate democratically elected representatives to negotiate their demands, people have been directly representing their own interests and forcing state institutions to react⁸⁵.” Ergo, the demands for water can be seen as a political act. This link between the socio-economic dimension of neglected minimal services such as water and sanitation and the larger political dimension of water governance, management and policies will be studied in depth in chapter four.

2.2.5. Overview

The socio-economic problems depicted here have been greatly influential in the uprisings. The study has shown that these interlinked socio-economic problems flow from the nature of the political system and the accelerated economic liberalisation process undertaken by Nazif after 2004, which provided few social safeguards. The consequence of this economic exploitation has been the impoverishment of large parts of the population, which can be viewed as an abjection and outright exclusion from development. Linked to the issue of poverty, the socio-economic situation is characterised by a particularly young society many of whom are marginalised in informal settlements and rural areas. Furthermore, the study has investigated the opinion forwarded by scholars that the deliberate separation of political and socio-economic struggles constitutes a tactic of “driving a wedge” in order to guarantee the interests of the capitalist state and ruling elite. It has been proven that these struggles are actually intrinsically linked and the socio-economic struggle contains a political dimension, as the numerous protests, sit-ins and labour strikes both before and after 25 January 2011 have shown. The previous subsection established the claim that the struggle

⁸⁴ Ibidem.

⁸⁵ Ibidem.

for improved services can also be considered to be, in part, political. The micro-focus will now be set on the particular issue of water and sanitation as one of the socio-economic grievances mentioned here.

2.3. THE WATER AND SANITATION CRISIS

“Arab countries are already in the midst of a water crisis⁸⁶.”

The water and sanitation crisis as a subset of the broader political and socio-economic context is complex and multi-layered. The problems and challenges facing the water and sanitation sector in Egypt are, much like the uprisings, multi-dimensional, interconnected and interdisciplinary⁸⁷. The aim of this section is to show that there is a water crisis, which constitutes an existential threat that needs to be addressed immediately. The approach has been to identify all factors that constitute the water crisis in Egypt. In a second step these factors have then been attributed to a typology as either static factors leaving less room for manoeuvre, or as soft factors that leave a margin of appreciation to stakeholders. The latter, consisting of water governance and management options, will either be dealt with at a later stage in Chapters 3 and 4 or are entirely excluded as not pertinent for the study topic. From a methodological perspective the particular factors chosen here constitute the framework and the boundaries in which water governance operates and aim to give a structure to the complex interactions. The choice for this approach is further based on the evaluation of a large body of literature, which proceeds accordingly. AFED, for instance, focuses on policy and institutional reforms and strategic political decisions, their core recommendation consisting in a reorientation of the government’s role. When assessing the water crisis in Egypt and the MENA region, one common narrative is that of surging population levels and finite water resources. A caveat that should be kept in mind is that most technical experts and development institutions recognise that “the roots of the water crisis lie less in the realm of population and resource thresholds than in various forms

⁸⁶ AFED, 2010, p. v.

⁸⁷ *Ibidem*, p. 22.

of sub-optimal management and governance⁸⁸.” These institutional inefficiencies will be addressed in Chapter 4, at this stage the focus shall be on scarcity of the physical resource⁸⁹.

2.3.1. *Geographic Availability, Population and Different Water Usages*

Being the most static factors of all, geography, population and water usages provide insight into the setting in which water governance and management need to operate.

The Arab region is one of the driest in the world, ranking last in renewable freshwater availability per capita compared to other regions of the world. Currently, 13 Arab countries are among the world's 19 most water-scarce countries⁹⁰. Of the about one million km² territory, the total cultivated area is only 4.4 million ha, or about 3 per cent of the total area of the country resulting in a high population density and competition over land⁹¹. Conventional water resources are limited to the Nile River and deep groundwater. The Nile is the main source of fresh water in Egypt providing an annual allocated flow of 55 km³/year under the Nile Waters Agreement of 1959. Together with internal renewable surface water and groundwater resources the total actual renewable water resources of the country are 57.3 km³/year⁹². Approximately 97 per cent of the total population relies on piped water supply and the total amount of indirect reuse via non-conventional water resources is relatively low⁹³. The UN Special Rapporteur assesses that the decreasing water availability has “serious implications for the availability of safe water for personal and domestic uses. Furthermore, water scarcity can impact the quality of the water as it is rendered more vulnerable to contamination, which results in less overall water being available for human consumption⁹⁴.”

Egypt's estimated population is 83.6 million (2013) with an average annual growth rate of 1.8 per cent⁹⁵. The rural population is 58 per cent

⁸⁸ Selby, 2005, p. 332.

⁸⁹ World Bank, 2007, p. 21.

⁹⁰ AFED, 2010, p. xiii.

⁹¹ FAO Aquastat, 2005, p. 1.

⁹² Ibidem, p. 3.

⁹³ UNDP EHDR, 2005, p. 170.

⁹⁴ UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report of the Mission to Egypt, 2010, p. 9.

⁹⁵ Central Agency for Mobilisation and Statistics (CAPMAS), available at <http://www.capmas.gov.eg/pdf/EgyptInFigure/EgyptinFigures/Tables/English/pop/population/index.html>.

of the total population. Overall population density is 73 inhabitants/km², however, with about 97 per cent of all people living in the Nile Valley and Delta, population density reaches more than 1,165 inhabitants/km² in these areas⁹⁶. 90 per cent of the growth in population in the coming two decades will occur in urban areas⁹⁷. In sum, Egypt can be considered as a densely populated country with a growing and urbanising population living along the Nile and in the Delta. If these figures are now set in correlation with the limited water resources, the resulting figures of per capita water availability illustrate the situation of water stress.

The World Bank emphasises the importance of understanding water scarcity correctly by evaluating it within the specific context of each country's geographic and socio-economic setting. "The absolute measure that denotes 'water security' refers to an index that identifies a threshold of 1,700 m³/capita/year of renewable water, based on estimates of water requirements in the household, agricultural, industrial and energy sectors as well as the needs of the environment⁹⁸." Countries that cannot sustain this figure are said to experience water stress. In Egypt the water supply was 771 m³/capita/year in 2005 and it is expected to fall to 720 m³/capita/year in 2017 and to 582 m³/capita/year by 2025⁹⁹. This means that at the moment, Egypt is already facing a water crisis, since the water consumption per person is below the water poverty line of 1,000 m³/capita/year, whereas the world average ranges at over 6,000 m³¹⁰⁰. In March 2013 the government released a report stating that the per capita share had fallen beneath 660 m³/capita/year, which represents a worrying decline compared to the 2005 UNDP estimates¹⁰¹. These figures combined leave no doubt that Egypt is facing a situation of severe water stress¹⁰² and assessment from different analysts (AFED, FAO, UNESCO, World Bank) all come to the same conclusion.

Requirements of the agricultural sector represent the largest component with 85 per cent of the total water demand in Egypt¹⁰³. Agricultural use and food security are particularly important in Egypt

⁹⁶ Ibidem.

⁹⁷ AFED, 2010, p. 4.

⁹⁸ World Bank, 2007, p. 9.

⁹⁹ UNDP EHDR, 2005, p. 170.

¹⁰⁰ UNESCO, 2003.

¹⁰¹ Ooskanews.com, press release of 4 March 2013, available at http://www.ooskanews.com/daily-water-briefing/egypt-s-capita-share-water-660-cubic-meters_26545.

¹⁰² Falkenmark, 1989.

¹⁰³ UNDP EHDR, 2005, p. 170.

and provide great potential for efficiency improvements. The present study, however, adopts a human rights perspective focusing on water for domestic use, an arguably small but nevertheless immensely important share of overall water use. The relevance of the focus on domestic use is emphasised by the International Law Association's "Berlin Rules on Water Resources," which stipulate that "in determining an equitable and reasonable use, states shall first allocate waters to satisfy vital human needs¹⁰⁴." Another, unconventional form of water use beyond the scope of this study is virtual water¹⁰⁵. With Egypt being the world's second largest importer of foodstuffs¹⁰⁶, it is making imported virtual water in foodstuffs a core feature of its water budget¹⁰⁷.

2.3.2. *Environmental Dimensions and Health Implications*

The water crisis has important environmental and ecological dimensions resulting from climate change, pollution and the deteriorating water quality, all of which have implications for the sustainability of the water and sanitation sector.

Climate change, according to AFED, will further worsen the water and sanitation crisis. An average increase of 2°C may decrease the flow in the Nile by 50 per cent and by the end of the 21st century, Arab countries are predicted to experience an alarming 25 per cent decrease in precipitation and a 25 per cent increase in evaporation rates¹⁰⁸. Global warming and "an increase in the Earth's temperature by three or four degrees would raise the sea level by approximately one metre, creating 6 million refugees in Egypt, with 4,500 square kilometres of agricultural land in the Delta flooded. Even if the sea level rises by only one-half metre, it could create two million refugees and cause more than \$35 billion in economic losses¹⁰⁹." Despite the serious risk of climate change, Arab countries have demonstrated a lack of interest in studying the impact of these changes and have committed the least amount of public funds to invest in and support their research and technology institutions that are needed to address the challenges of

¹⁰⁴ ILA, 2004, Article 14.

¹⁰⁵ AFED, 2010, p. 14.

¹⁰⁶ Selby, 2005, p. 333.

¹⁰⁷ Allan, 2001.

¹⁰⁸ AFED, 2010, p. v.

¹⁰⁹ UNDP AHDR, 2009, p. 4.

climate change¹¹⁰. According to FAO Aquastat, “the main challenge for the sustainability of water resources is the control of water pollution¹¹¹.” Water quality degradation is a major issue and less than half of the total wastewater flows generated by all the governorates receive treatment¹¹². The 2009 AHDR distinguishes stressed groundwater systems as one of seven dimensions of threat for human security in the region besides water scarcity, water pollution and climate change¹¹³. Pollution is closely linked to sanitation as low sanitation coverage in rural areas has made raw sewage the most critical source of pollution¹¹⁴.

As coverage of sanitation for the populations living in urban areas was long prioritised, rural populations were neglected and there are few sewerage facilities in rural areas despite high population density. 20 per cent of urban and 92 per cent of rural sewages are not covered by sewerage¹¹⁵. The Joint Monitoring Programme of UNICEF and WHO reports that only 66 per cent of the population had access to improved sanitation in 2006. One grave consequence of such low coverage rates is child mortality, which, especially in rural areas, can be attributed to diarrhoeal diseases caused by poor sanitation facilities and practices. Diarrhoeal disease alone has a greater impact on children than HIV/AIDS, tuberculosis, and malaria combined¹¹⁶. Diarrhoea-induced illnesses leave children underweight, stunted mentally and physically, vulnerable to other deadly diseases, and too debilitated to go to school. In Egypt, the WHO reports under age five mortality to be 46 per 1,000 live births in 2001, and 20 per cent of all child deaths every year are due to diarrhoeal diseases¹¹⁷.

2.3.3. *Other Factors*

Considering the broadness of the treated subject matter, a number of related and interlinked factors for the water crisis cannot be dealt with.

First, based on the UN Special Rapporteur’s argument that it is “not

¹¹⁰ *Ibidem*.

¹¹¹ FAO Aquastat, 2005, p. 9.

¹¹² UNDP EHDR, 2005, p. 171.

¹¹³ UNDP AHDR, 2009, p. 3.

¹¹⁴ UNDP EHDR, 2005, p. 182.

¹¹⁵ *Ibidem*.

¹¹⁶ WHO & UN-Water, 2010, p. 2.

¹¹⁷ Abou-Ali, 2003, p. 3.

the main issue” in the realisation of human rights, the complex issues involving the commercialisation of water, the privatisation of services, and the underlying paradigm of full cost recovery are excluded from this study¹¹⁸.

Second, the issue of transboundary river basin agreements is excluded because the water crisis is primarily subject to domestic intra-state rather than inter-state conflict. This study rejects “doom-laden prophecies on the coming water wars¹¹⁹” and follows the opinion that discourse on Middle Eastern water politics is too much concerned with inter-state hydro-political relations and therefore fails to recognise the relevance of local scarcities and local conflict dynamics¹²⁰. Therefore the discussion of the Ethiopian Renaissance Dam is also excluded.

Third, solutions to the crisis discussed in the technical field including topics such as desalination, innovative and more efficient irrigation have not been dealt with because of their disciplinary distinctiveness. They are closely linked with considerations of climate change¹²¹ and the hugely important issue of food security, which could not be considered because of the limited scope of this study. Links between the uprisings, water and subsidies, drought-based food shortages and larger socio-political impacts would require a study of their own¹²².

This section has shown the extent of the water crisis as a multi-dimensional field of study that on the one hand should not overlook any of the factors constituting the crisis and on the other hand should not lose focus in pursuing the aim of improving the human dimension which will be subject of Chapter 3.

¹¹⁸ De Albuquerque & Winkler, 2010, p. 168; Piper, 2012, p. 1.

¹¹⁹ Selby, 2005, p. 332.

¹²⁰ *Ibidem*, p. 331.

¹²¹ More information on climate change in relation to the Arab uprisings can be found in the following documents: The Centre for Climate and Security’s 2013 study, *The Arab Spring and Climate Change*, available at <http://climateandsecurity.files.wordpress.com/2012/04/climatechange-arab-spring-ccs-cap-stimson.pdf>; S. Null & M. Prebble, “Spring Thaw: What Role Climate Change and Natural Resource Scarcity Play in the Arab Spring?”, article of 20 May 2013, available at <http://www.newsecuritybeat.org/2013/05/spring-thaw-role-climate-change-natural-resource-scarcity-play-arab-spring/#.UblYROvHQpp>.

¹²² Wigley, 2011, p. 1; El-Naser, 2013, p. 1; Biello, 2011; UNESCO World Water Assessment Programme, *United Nations World Water Development Report 4: Managing Water under Uncertainty and Risk*, p. 218.

2.4. CONCLUSION

Chapter 2 has investigated the Egyptian political system, the origins and characteristics of authoritarianism, a complex multi-layered political system with personalised rule and an expanded, coercive apparatus relying on a power triangle of military, security and a single ruling party. The chapter has explained the robustness and pervasiveness of authoritarianism relying on the “authoritarian bargain” initiated under Nasser after 1952, which, for decades functioned as the underlying social contract.

The study of Egypt’s political economy has shown that Egypt has undergone three successive paradigm shifts from a state-led planned industrialisation under Nasser’s Arab socialism to a retreat of the state and policies of liberalisation and privatisation under Sadat’s *infitah* and finally the structural adjustment programmes and the full scale neoliberal turn in Egypt’s economy. The resulting exploitation of large parts of the population has led to a disruption of the social contract, as will be explained below.

The study of the socio-economic context has revealed the dire situation and long time neglect of poverty in Egypt and its relevance for the uprisings, as they had at their heart the demand to improve the living standards for the poor who are currently excluded from development. Relating to poverty, phenomena such as urbanisation have been distinguished as important water and sanitation implications. The claim has been advanced here that these socio-economic grievances should not be seen as separate from political struggles as attempted by certain forces of the counter-revolution that deploy this tactic of creating a dichotomy as a deliberate means to defend their own capitalist interests. Instead, demanding water should also be considered as a political act, as socio-economic demands also contain a political dimension. Finally, it can be asserted that the correlation of the different issues dealt with here has confirmed the research question and the chapter concludes with a concern increasingly often expressed in recent commentary that warns of the sidelining of the pressing issues presented here.

2.4.1. *The Abrogation of the Social Contract*

The authoritarian political system prevalent in Egypt until 25 January 2011 could only be maintained because of the underlying “authoritarian

bargain.” The study of the political economy, however, has shown that with structural adjustment as well as the neo-liberal expansionist policies under Nazif the economic exploitation of the population had reached a level where the nexus between ruler and ruled had been damaged.

The social contract in form of the before-mentioned specific Egyptian “authoritarian bargain” of political quiescence in exchange for stability, social welfare and growth was no longer being fulfilled at the end of Mubarak’s reign. Kamrava underlines that “so long as the ruling bargain holds and the balance of power remains unchanged, with the state as the dominant actor and social groups continually dependent on it for its largesse, a transition to democracy is unlikely to occur¹²³.” Having failed however, to fulfil its contract obligations, for the majority of the population at least, this transition has now taken its course. Kandil refers to the dissolution of the contract governing state-society relations since Nasser’s coup in the 1950s as one of the developments responsible for the uprisings: “people understood that they were trading their political rights for social welfare. From the eighties onwards, this contract was eroded, but it was not until the new millennium that it was fully abrogated¹²⁴.” Kandil holds the 2004 businessmen cabinet of Ahmed Nazif and Gamal Mubarak responsible for “violating the social contract that underwrote the July 1952 regime” and for ignoring the country’s severe poverty, unemployment, illiteracy, [and] deteriorating public services,” such as water and sanitation services¹²⁵.

2.4.2. *Water and Sanitation Problems Fed into the Uprisings*

It is largely believed that socio-economic issues fed into the discontent that spurred the uprisings, as Durac notes, “[i]n Egypt socio-economic conditions were central to the outbreak of revolt in 2011¹²⁶.” The hypothesis advanced in the research question at the beginning of this study was that water and sanitation problems could be considered as *one* of the factors that fed into the uprisings. Bellin points at the “difficulty of distilling a simple parsimonious hypothesis that predicts

¹²³ Kamrava, 2007, p. 211.

¹²⁴ Kandil, 2011, p. 17.

¹²⁵ Kandil, 2012, p. 210.

¹²⁶ Durac, 2013, p. 180.

the incidence of mass protest during the Arab Spring¹²⁷.” In the patterns for social mobilisation according to Bellin, one of the four variables besides emotional triggers, impunity and social media are socio-economic grievances¹²⁸ and one factor in this mix of grievances expressed in the uprisings is water.

This hypothesis according to which the grievances over the water and sanitation crisis fed into the Arab uprisings can additionally be supported by the resurging water protests in the wake of the uprisings. Egyptian water activist Abdel-Mawla Ismail speaks of around 40 protests concerning the absence of basic rights with relation to drinking water between the second half of 2007 and January 2008¹²⁹ and there are reports of many more in the phase up until the uprisings of 25 January 2011¹³⁰.

2.4.3. *The Sidelining of Socio-Economic Grievances*

Sallam points at another worrisome development in post-Mubarak Egypt, which has to do with the sidelining of pressing socio-economic problems. He observes a degradation of the demonstrations and sit-ins aiming for distributive justice illustrated through the usage of the derogatory term “fi’awi” (fi’awi is the adjectival form of fi’a, which simply means “group” but has recently acquired negative connotations), which not only stigmatises and dehistoricises these demands, it also masks the serious national economic problems¹³¹. “The proliferation of the term “fi’awi” to describe Egyptian workers’ demands and reduce them to parochial, even counter-revolutionary interests is more than just a denial of the right to a humane living standard¹³².”

Having established the hypothesis that Egypt is facing a serious water and sanitation crisis and bearing in mind the multiple implications, the focus will now be narrowed down to domestic water use, human impacts and the options of how to improve access to safe drinking water and adequate sanitation through the proliferation of a human rights framework.

¹²⁷ Bellin, 2012.

¹²⁸ Ibidem.

¹²⁹ Ismail, 2008, p. 1.

¹³⁰ IRIN News of 27 July 2010.

¹³¹ Sallam, 2011, p. 25.

¹³² Ibidem.

3.

THE HUMAN RIGHT TO WATER AND SANITATION:
FROM ACKNOWLEDGEMENT TO IMPLEMENTATION

Chapter 3 focuses on the human right to water and sanitation. It examines the legal foundations, the legal characteristics, and the specific Egyptian legal context, paving the way for the assessment of the current water management, governance and implementation of the human right in Egypt in Chapter 4.

The methodology deployed for this chapter has been to reconsider the research questions. The previous chapter aimed at proving the hypothesis that the water and sanitation crisis was one important factor that has fed into the uprisings. The overall aim of this research however, is not only to address the water issue but the broader issue of the state structure and its management of resources. The consequent critical question is whether the human right to water and sanitation provides an adequate mechanism to tackle the complex issues arising from water scarcity and can help prevent future conflict. The hypothesis here being that implementing the human right to water and sanitation is a crucial necessity if further social and economic crises are to be avoided. It is suggested that the transition can provide a real opportunity to advance beyond rhetoric and create change in order to avoid further unrest. The human rights framework can function as a catalyst for change to be sincerely enshrined in the country's legal framework by empowering people and expressing their needs.

The approach chosen here is chronological and intends to provide all necessary background knowledge. Additionally, the analysis elaborates on possible criticisms of the human right to water and sanitation. The idea is to present an overview of the right. As the right shall be instrumental in facilitating change and improving the water and sanitation crisis in Egypt, it must first be understood. In the words of Bulto: "any meaningful analysis of the problems of implementation of

the right and associated states' obligations must examine the normative basis of the right as a starting point¹³³." The critiques of the right will be reviewed followed by an assessment of whether it is suitable as a framework to improve the water and sanitation crisis.

Proceeding from acknowledgement to implementation, the first two sections are more abstract and present the legal concept of the right, whereas the third and fourth sections create the link to the specific Egyptian legal context. The first section sketches out the legal foundations and shows the progressive acknowledgement of the right in order to convey that the human right to water has become an internationally accepted, solid legal concept, and not only a declaration of intent. The second section demonstrates that the right is binding and enforceable, and assesses possible doubts expressed towards the right. The third section assesses the status of acknowledgement of the right in Egypt and links the right to the Egyptian context from a legal perspective.

3.1. LEGAL FOUNDATIONS OF THE HUMAN RIGHT TO WATER AND SANITATION

This section will provide the legal background necessary to grasp the idea of a human right to water and sanitation. The political will necessary to implement a right follows upon its acknowledgement. By sketching out the recognition of this rather newly established right, it becomes clear that we are dealing with a tangible, clearly defined, and legally acknowledged right, although some criticism persists. Tracing back this process of acknowledgement demonstrates that there is increasing consensus on the recognition of the right to water in the international sphere that creates pressure for Egyptian policy makers and stakeholders to take action. In order to be able to assess whether the human right to water and sanitation can be used as a framework to improve the water and sanitation crisis in Egypt, all doubts concerning its sheer existence, provenance and scope need to be addressed and ruled out.

In a first step a brief background on the emergence of the human

¹³³ Bulto, 2011, p. 7.

right to water and sanitation as such will be given and the legal provisions in international human rights treaties as well as the institutional mechanisms and political statements will be presented. Then the progressive acknowledgement of the right will be dealt with, exemplified through specific legal documents. Also, the question of international consensus on the right to water will be addressed. Finally, the most recent developments will be assessed in order to illustrate the status quo of the right and potential implications for the future.

3.1.1. The Emergence of a Human Right to Water and Sanitation

There are different ways to approach the human right to water and sanitation from a historical perspective. Winkler distinguishes the sources from which the right can be derived or that state the right explicitly according to treaty provisions, customary international law (including political statements) and general principles of law¹³⁴. Gupta, Ahlers and Ahmed distinguish different discourses in three different arenas, these being the international water law arena, the broader agency beyond the UN arena and the water policy and human rights arena¹³⁵. The assessment of the various accounts of the emergence of the human right to water and sanitation exemplifies the diversity in the water sector and its interdisciplinary composition. The approach chosen here is a human rights perspective focussing on treaty provisions.

In reviewing the recognition in the human rights arena, Gupta, Ahlers and Ahmed distinguish three phases: the implicit, explicit and independent right. In summary it can be said that initially the right flowed out of other rights as “subordinate and necessary” to achieve other human rights specified in the Human Rights Bill. The right was then adopted more explicitly as an element of other issues in human rights treaties. In 2010 the UN General Assembly recognised the human right to water and sanitation as an independent right¹³⁶. These three phases of recognition should be kept in mind as the overall plot to the present analysis. The emergence of the right will be assessed, first by looking at the legal provisions, then the institutional mechanisms that ensure the realisation of the right and finally the political statements

¹³⁴ Winkler, 2012.

¹³⁵ Gupta, Ahlers & Ahmed, 2010, pp. 294-305.

¹³⁶ *Ibidem*, p. 297.

and declarations that have been issued in various conferences and international fora.

3.1.1.1. *Legal Provisions on the Right to Water*

As any assessment of the foundations of human rights, the point of departure here must be the United Nations Charter of 1945 and the Universal Declaration of Human Rights (UDHR) of 1946, the founding texts from which arose the modern human rights regime. Neither the Charter nor the UDHR explicitly mention the human right to water and sanitation, the only provision capable of providing a source for interpretation being Article 25 UDHR that mentions the right to an adequate standard of living¹³⁷. The same right is mentioned in the International Covenant on Economic, Social and Cultural Rights (ICESCR) that was adopted in 1966 and entered into force in 1976. With regard to the ICESCR, Alston notes, “one of the most striking features of the Covenant is the vagueness of the normative implications of the various rights it contains¹³⁸.” Although the human right to water and sanitation is not explicitly mentioned in the ICESCR, there is consent that water can be considered to be an unmentioned, implicitly included component of the right to an adequate standard of living according to Article 11 (1) ICESCR¹³⁹. It has the same status as the rights to food and housing that are also encompassed under the same heading. Winkler is cautious to emphasise that water, although playing an important role for food and housing remains a separate component of the adequate standard of living¹⁴⁰. Furthermore, it can be held that access to clean and safe water is a precondition for the realisation of the right to health according to Article 12 ICESCR.

In terms of integrity it should also be mentioned that other international human rights law and humanitarian law¹⁴¹ treaties mention the human right to water and sanitation. Concerning international human rights law, these are treaties that are limited in scope, either *ratione personae* or *ratione loci*. Among the treaties with a limited scope *ratione personae* feature conventions such as the Convention on the Elimination of All

¹³⁷ Alston, 1987, p. 332.

¹³⁸ *Ibidem*, p. 351.

¹³⁹ Salman & McInerney-Lankford, 2004, p. 5.

¹⁴⁰ Winkler, 2012, p. 45.

¹⁴¹ *Ibidem*, p. 60.

Forms of Discrimination against Women (Article 14 (2) (h) CEDAW), the Convention on the Rights of the Child (Article 28 (2) (a) CRC) and the Convention on the Rights of Persons with Disabilities (Article 28 (2) (a) CRPD). A relevant treaty limited in scope *ratione loci*, beside the other regional instruments, is the Arab Charter on Human Rights that is mentioned in the Egyptian legal context below.

Although not explicitly mentioned in the ICESCR, the human right to water and sanitation is *de lege lata* guaranteed through international human rights treaties, as a component of the right to an adequate standard of living under Article 11 (1) ICESCR¹⁴². Besides the stipulations ensuring the realisation of the right through provisions of international human rights treaties, specific institutions are charged with the protection of the right.

3.1.1.2. *Institutional Mechanisms on the Right to Water*

Two institutional mechanisms of the UN human rights system need to be studied in particular: the Committee on Economic, Social and Cultural Rights (CESCR) and the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation.

The CESCR was created in 1986 with the task to assist the Economic and Social Council (ECOSOC) in monitoring states parties' compliance with their obligations under the ICESCR¹⁴³. The implementation of the ICESCR by the CESCR was to be "constructive, helpful and cooperative" and sought to identify "methods of bringing actual conditions nearer to the ideal¹⁴⁴." The issuance of General Comments was particularly important in the case of the ICESCR, because of the before-mentioned vagueness of the Covenant provisions. The role of General Comments is historic, descriptive and normative. In 2002, the CESCR adopted General Comment No. 15 on the human right to water that will be further explained below.

Besides the CESCR, another institutional mechanism in the UN system concerned with the human right to water and sanitation is the so-called "Special Procedures System," former UN Secretary-General Annan referred to as "the crown jewel of the UN human

¹⁴² Ibidem, p. 277.

¹⁴³ Salman & McInerney-Lankford, 2004, p. 30.

¹⁴⁴ Alston, 1987, p. 359.

rights system¹⁴⁵.” The Human Rights Council established the mandate of the “Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation” as a special procedure in 2008¹⁴⁶. The Special Rapporteur carries out thematic research, undertakes country missions, collects good practices, and works with development practitioners on the implementation of the rights to water and sanitation. In 2009 the Special Rapporteur undertook a mission to Egypt. Her report of this visit will be further discussed below.

3.1.1.3. *Statements on the Right to Water*

A further source that has played a decisive role in the establishment of the human right to water are the numerous statements resulting from conferences, political declarations and other meetings in international fora that also “substantiate the emergence of the right to water as customary international law¹⁴⁷.”

Winkler stresses the relevance of these sources, because “[s]tates that have not ratified the respective human rights treaties could nonetheless be bound by a customary human right to water¹⁴⁸.” Most prominently among these statements features the Mar del Plata Action Plan adopted during the UN Conference on Water in 1977. It is commonly cited as the first document referring to a right to water¹⁴⁹. It declared for the first time that “[a]ll peoples, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs¹⁵⁰.” The Mar del Plata Conference was succeeded by multiple other conferences and declarations, the enumeration of which goes beyond the scope of this study, however an interesting trend can be witnessed, as Winkler says “[t]he right to water has been acknowledged in a number of declarations, not at global conferences but in particular at a regional level or at meetings of specific groups of States¹⁵¹.”

The multiple provisions, institutional mechanisms, and statements concerned with the right to water reflect a growing concern with the

¹⁴⁵ Alston & Goodman, 2013, p. 699.

¹⁴⁶ UN HRC, Resolution 7/22, 2008.

¹⁴⁷ Winkler, 2012, p. 81.

¹⁴⁸ *Ibidem*, p. 69.

¹⁴⁹ Salman & McInerney-Lankford, 2004, p. 8.

¹⁵⁰ UN, Report of the UN Conference on Water, Mar del Plata, 1977, p. 66.

¹⁵¹ Winkler, 2012, p. 85.

water and sanitation crisis. There is no doubt that the issue has received growing attention in different fora and increasingly so in the MDGs and the post-2015 debate¹⁵². Being a human right, the main addressee and relevant actor remains the national state. Therefore the question whether a state acknowledges the right and assumes the responsibility arising from the right's obligations is of utmost importance.

3.1.2. Progressive Acknowledgement of the Right to Water

At this point, it is worth noting that a historical analysis of the progressive acknowledgement of the right to water is beyond the scope of this thesis. Not only might such an analysis detract from the broader objectives of this thesis in uncovering how the water and sanitation crisis fed into the uprisings and how the human rights framework can serve as a remedy to address these issues. The findings of the investigation of the acknowledgement of the right also have little influence on how governments and international organisations see the right, considering its codification, the ratification of human rights instruments and official recognition in political statements. Two central documents are of major importance for the acknowledgement of the human right to water and sanitation.

3.1.2.1. General Comment No. 15

The relevance of this document stems from the fact that access to water and sanitation was not authoritatively defined as a human right before the issuance of General Comment No. 15. Furthermore, it is the most comprehensive and authoritative interpretation of the right to date, stating for the first time that there is an autonomous human right by elaborating its normative content¹⁵³.

General Comment No. 15 of the CESCR came to exist because the Committee was alarmed by the fact that it was “confronted continually with the widespread denial of the right to water in developing as well as developed countries¹⁵⁴.” Because of the lack of explicit protection of the right in the ICESCR, the CESCR had to find innovative ways to ground the right, among which featured the teleological (purposive)

¹⁵² UN HLP, 2013, p. 30.

¹⁵³ Bulto, 2011, p. 9.

¹⁵⁴ General Comment No. 15, UN Doc. E/C.12/2002/11, para. 1.

interpretation, filling legal gaps in the ICESCR, and the derivation approach, deriving the right from other explicitly mentioned rights i.e. Article 11 ICESCR¹⁵⁵. The human right to water has been a contentious right among scholars, practitioners and governments and despite the issuance of General Comment No. 15 the academic controversy continued¹⁵⁶.

While some governments and NGOs enthusiastically embraced the right, General Comment No. 15 met strong reservations by some governments such as the Canadian who argued that “while governments owe a responsibility to their own people to provide access to water and sanitation, this did not translate into a human right¹⁵⁷.” Some commentators criticised the approach for the adoption of General Comment No. 15 as “unreflective¹⁵⁸” and criticised the CESCR as “revisionist” for inventing a novel right to water¹⁵⁹. This controversy would be addressed by another ground breaking document in 2010.

3.1.2.2. *The UNGA and HRC Resolutions*

Among human rights scholars the UNGA and HRC resolutions of 2010 have been labelled as a breakthrough and a landmark in international human rights law and are regularly advanced as the central means of legitimation for any claims relating to the existence of a human right to water and sanitation.

UNGA Resolution 64/262 explicitly “recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights¹⁶⁰.” The resolution was an initiative of Bolivia co-sponsored by 33 states and adopted on 28 July 2010 with 122 votes in favour, 0 against and 41 abstentions. Among the latter were many Western governments such as the USA and the UK. The UK argued that “there was no sufficient legal basis for declaring or recognizing water or sanitation as freestanding human rights, nor was there evidence that they existed in customary law¹⁶¹.” Winkler

¹⁵⁵ Bulto, 2011, pp. 9-16.

¹⁵⁶ Ibidem, p. 5.

¹⁵⁷ Alston & Goodman, 2013, p. 289.

¹⁵⁸ Tully, 2006, p. 461.

¹⁵⁹ Tully, 2005, p. 35.

¹⁶⁰ UNGA, The Human Right to Water and Sanitation, 3 August 2010, UN Doc. A/Res/64/292.

¹⁶¹ Alston & Goodman, 2013, p. 289.

highlights that the resolution “recognises” – instead of “declares” – that water and sanitation is a human right, meaning that it considers the right as an existing human right, a circumstance that strengthens the resolution’s persuasiveness in her opinion, as the legal basis of the adequate standard of living provides a sound legal basis¹⁶². The UNGA resolution was followed by a HRC resolution of 30 September 2010, which further reinforced the political significance of the human right to water and sanitation, especially because it was adopted by consensus¹⁶³. Furthermore, it affirmed the UNGA interpretation of the right to water as an implicit component of the right to an adequate standard of living according to Article 11 (1) ICESCR.

In summary it can be said that these two resolutions are of high political significance and the fact that no state voted against them underlines this. Nevertheless 41 states abstained and 29 were absent from the UNGA resolution, raising the question whether it is legitimate to speak of a true global consensus.

3.1.3. The Status Quo of International Recognition – Fragmented or Global Consensus

In view of all that has been said on the emergence and subsequent acknowledgement of the human right to water and sanitation, it remains questionable, despite the numerous legal documents, whether there is true consensus on the human right to water and sanitation on a global scale. What are the contemporary and future challenges for the human right and what are the perspectives for its future development? An extensive elaboration of the debate surrounding the status quo of international recognition goes beyond the scope of this study. Therefore, only considerations reflecting the nature of the debate are taken into account.

Some scholars are sceptical of a growing consent. According to Winkler, “statements on the right to water are not yet consistent and consolidated¹⁶⁴.” Barlow claims that the World Water Council’s World

¹⁶² Winkler, 2012, p. 79.

¹⁶³ UN HRC, Human Rights Council, Human Rights and Access to Safe Drinking Water and Sanitation, 6 October 2010, UN Doc. A/HRC/Res/15/9, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/15/L.14.

¹⁶⁴ Winkler, 2012, p. 87.

Water Forum has overtaken any gathering of the UN as the preeminent global water symposium and has refused to recognise the right to water¹⁶⁵. Gupta, Ahlers and Ahmed question consensus among the multidisciplinary actors in the water sector as even the UNGA resolution itself does not reflect universal consensus considering that countries such as the USA and the UK abstained from voting. They conclude that there is only fragmented consensus as “the water governance arena is a mobius web arena engaging many actors with competing discourses and approaches¹⁶⁶.” Other scholars, however, give evidence for a growing consensus. Dañino for instance, considers the adoption of General Comment No. 15 to be a gradual recognition of the centrality of water to the realisation of the rights enshrined in the UDHR and ICESCR¹⁶⁷. Bulto, in analysing the growing state practice through the state reporting procedure towards the CESCR, argues that this behaviour is “indicative of tacit assent by states to the fact that the ICESCR contains the human right to water and consequent state obligations¹⁶⁸.”

The comprehensive review of sources and legal foundations of the right has shown that there has been a growing and slowly consolidating consensus on the acknowledgement of the human right to water and sanitation over the recent years. This trend is illustrated through the adoption of General Comment No. 15, the UNGA and HRC resolutions and the appointment of the Special Rapporteur. The most recent entering into force of the Optional Protocol in May 2013¹⁶⁹ opens the door for the emergence of a new body of jurisprudence on the right to water as individuals and groups now have the opportunity to lodge complaints¹⁷⁰. As the right to water is increasingly acknowledged in national constitutions and legislation, illustrated by the recent case of the Californian law on water¹⁷¹, it may now be regarded as an emerging right, a “customary human right in *statu nascendi*¹⁷².”

In emphasising her thesis that the human right to water was no more than the discovery of a pre-existing right rather than an invention of

¹⁶⁵ Barlow, 2011, p. 9.

¹⁶⁶ Gupta, Ahlers & Ahmed, 2010, p. 298.

¹⁶⁷ Salman & McInerney-Lankford, 2004, p. vii.

¹⁶⁸ Bulto, 2011, p. 17.

¹⁶⁹ UN OHCHR, press release on the optional protocol of 8 May 2013.

¹⁷⁰ De Albuquerque, 2010, p. 147.

¹⁷¹ UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, press release of 28 September 2012.

¹⁷² Winkler, 2012, p. 277.

a novel right, Bulto is of the opinion that “[a]cademic debate needs to move beyond the prevailing controversy surrounding the existence or absence of the human right to water¹⁷³.” Efforts must now shift to the analysis of the normative content, implications for states’ duties and the particularities associated with its domestic implementation and enjoyment. The following section will therefore focus on these questions linked to the legal characteristics of the right.

3.2. LEGAL CHARACTERISTICS OF THE HUMAN RIGHT TO WATER AND SANITATION

The following section focuses on the legal characteristics of the human right to water. Attention is raised to the circumstance that the before-mentioned legal foundations and in particular General Comment No. 15 provide a meticulously construed framework and description of the legal characteristics of the right. Therefore, rather than repeating the content of General Comment No. 15, the following section will contend itself with brief and precise presentations focusing on those aspects of the right that are either controversial or require further explanation for the following study of the Egyptian context with particular focus on the state’s obligations as the primary duty-bearer of the right. First the legal nature of the right will be assessed. Second, the state’s obligations are and finally the normative content of the right will be described.

3.2.1. *The Legal Nature of the Human Right*

It is important to delineate the legal nature of the right in order to understand the implications it will later have on implementation. Furthermore, some of the prevalent misunderstandings about the right to water stem from a lack of knowledge about its legal nature. One of the most common arguments against it, is concerned with the legally binding nature of the right. The claim is that economic, social and cultural rights do not impose legally binding obligations because “the type of obligation of the provisions of the contract is programmatic and

¹⁷³ Bulto, 2011, p. 25.

promotional¹⁷⁴.” Generally three arguments are advanced to dispute the legally binding nature of economic, social and cultural rights. First they are said to require resource-intensive positive interventions by the state, second they allegedly lack precision and third they cannot be legally enforced.

Winkler takes a firm standpoint towards these arguments and rejects them in saying that “the legally-binding nature of the human right to water is beyond question¹⁷⁵.” To support her claim, she suggests three counter-arguments in response to the above-mentioned. First, she repudiates the claim that economic, social and cultural rights are of non-binding nature because this would refer to the old conception of a dichotomy between the two groups of rights that has been settled in the 1993 Vienna World Conference for Human Rights, which emphasised the interrelatedness and indivisibility of all human rights. Second, the argument that the human right to water and sanitation lacks precision is not justified in the light of the above-mentioned legal provisions and especially because of the General Comment and the two resolutions, all of which are precise in content. Third, Winkler raises awareness to the fact that the question of the sheer existence of the right should not be confused with the question of justiciability¹⁷⁶. Legal enforcement of a right is not a precondition for its legally binding status and besides, judicial enforcement, yet quite rarely, does increasingly take place, “thus the argument of non-justiciability of economic, social and cultural rights can no longer be legitimately sustained in international law¹⁷⁷.”

In summary it can be argued that economic, social and cultural rights including the human right to water and sanitation are, like civil and political rights, legally binding. Addressing the state as primary duty-bearer, the legally binding human right to water and sanitation imposes a set of obligations on the state.

3.2.2. *The State’s Obligations Arising from the Human Right*

Several obligations need to be distinguished. First, those relating to state’s actions and omissions. These are the three obligations to respect,

¹⁷⁴ Brownlie, 2003, p. 539.

¹⁷⁵ Winkler, 2012, p. 106.

¹⁷⁶ *Ibidem*.

¹⁷⁷ Baderin & McCorquodale, 2007, p. 12.

protect and fulfil which are linked to the obligations immanent to all human rights obliging the state to non-discrimination and equality. Second, the obligations relating to the way in which the state has to realize its human rights obligations. The timely realisation of the rights is distinguished under the obligation of progressive realisation and the minimum core approach.

3.2.2.1. *The Obligations to Respect, Protect and Fulfil the Right*

The state's obligations arising from the human right to water and sanitation can be summarised under the tripartite distinction developed by Eide and employed by General Comment No. 15 (paras. 20-29), distinguishing the obligations to respect, protect and fulfil¹⁷⁸.

The obligation to respect requires the state to abstain from interfering with the enjoyment of human rights meaning that the state must not infringe rights that have already been realised. In the case of the right to water this means that the state must refrain from any conduct resulting in a deprivation of access to water – a related problem being arbitrary disconnections. Another example of a violation of the obligation to respect are public water providers that do not supply water to low-income areas in times of low water availability, while other areas continue to be served and are able to use water to excess¹⁷⁹.

The obligation to protect requires the state to prevent third parties from interfering with the enjoyment of human rights. This obligation is most relevant in connection to water pollution and the issue of privatisations: while the Covenant does not place legal obligations directly on private actors, it requires that governments take action, e.g. ensuring oil companies do not pollute water resources and there are a growing number of legal cases on this subject¹⁸⁰. Furthermore this obligation becomes relevant for the protection of vulnerable and marginalised populations, as it requires the state to take measures to ensure equal access to the enjoyment of the right in the case of provision by third parties. Therefore it is important to bear in mind that the state remains responsible even if it chooses to involve the private sector¹⁸¹.

The obligation to fulfil requires the state to adopt measures necessary

¹⁷⁸ Eide, 1989, p. 37.

¹⁷⁹ Winkler, 2012, p. 108.

¹⁸⁰ Langford, 2005, p. 278.

¹⁸¹ Winkler, 2012, p. 109.

to ensure the individual realisation of the right and according to the Covenant this requires that governments use all available resources to implement progressively the right to water. De Schutter describes the obligation stipulated in General Comment No. 15 (paras. 25-29) as “the most comprehensive description of the obligation to fulfil available to date¹⁸².” According to De Schutter, General Comment No. 15 highlights two characteristics of the obligation to fulfil: its dynamic as being open-ended and implemented progressively and its procedural implications as requiring the state to set up procedures to monitor the fulfilment of the right and the adoption of action plans and strategies¹⁸³. General Comment No. 15 further stresses the obligations of non-discrimination and equality. “The obligation of States parties to guarantee that the right to water is enjoyed without discrimination (Article 2, para. 2), and equally between men and women (Article 3), pervades all of the Covenant obligations¹⁸⁴.”

3.2.2.2. *The Principle of Progressive Realisation*

Another hugely important obligation pervades the human right to water and sanitation and is of relevance for the following section on the normative content of the right. It relates to the urgency of the realisation of the right and derives from the principle of progressive realisation and the connected minimum core approach.

The obligation of state parties under Article 2 ICESCR is not to realise the right to water overnight but rather to use maximum available resources to ensure that the right to water, along with all of the other rights recognised within the ICESCR, is realised progressively¹⁸⁵. This principle of “progressive realisation,” which is unique to the ICESCR, acknowledges the constraints due to the limits of available resources¹⁸⁶. It should not, however, be understood as an excuse for inaction, nor does it mean that the obligations are not binding. It is to be seen in conjunction with an approach developed by the CESCR: the minimum core approach stipulates, as the name suggests, that despite the progressive realisation

¹⁸² De Schutter, 2010, p. 464.

¹⁸³ *Ibidem*, p. 465.

¹⁸⁴ General Comment No. 15, para. 13.

¹⁸⁵ Steiner, Alston & Goodman, 2008, p. 275.

¹⁸⁶ UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, 2010, UN HRC, Report on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation, p. 10.

of Article 2 ICESCR, core obligations guaranteeing a minimum standard need to be fulfilled immediately¹⁸⁷. This minimum core may be regarded as “the baseline from which the progressive realisation of the right to water has to start¹⁸⁸.” The relation between these two obligations of progressive realisation and immediately fulfilling the minimum core is precisely the content of questions relating to water management and allocation that will be addressed in Chapter 4.

3.2.3. The Normative Content of the Human Right to Water and Sanitation

The normative content of the human right to water and sanitation is a direct result of General Comment No 15. Rather than repeating its content, the following is only intended as a brief outline. General Comment No. 15 distinguishes five criteria.

Availability: the water supply for each person must be sufficient and continuous for personal and domestic uses. For the quantity per capita the General Comment refers to the WHO guidelines. This criterion is linked to the above-mentioned issues of different water uses and competing water demands among users.

Quality: this criterion subscribes water for personal or domestic use to be safe and free of pollutants or other hazardous substances. It illustrates the strong link between the human right to water and the right to health, as contaminated water is a cause of many diseases. Again the General Comment refers to the WHO guidelines.

Accessibility: water and water facilities and services have to be accessible to everyone without discrimination. This entails physical accessibility, non-discrimination and information accessibility. It is of particular importance as the distance to a water source can entail multiple constraints on people especially in rural areas and informal settlements.

Affordability: as part of the before-mentioned accessibility, economic accessibility or affordability is considered as an independent criterion as physically accessible water is not sufficient if the population cannot afford it.

¹⁸⁷ Alston, 1987, p. 352.

¹⁸⁸ Winkler, 2012, p. 120.

Acceptability: this is often added as a criterion to address certain aspects such as cultural requirements for water provision including religious practices and requirements of acceptable colour, odour and taste.

These criteria have been quantified, refined and are subject to entire studies in themselves. In view of the limited scope of this study, an in depth analysis of each criterion is not possible.

3.3. THE LEGAL CONTEXT IN EGYPT

This section is concerned with the application of the above-mentioned legal foundations and characteristics of the human right to water and sanitation to the specific legal context in Egypt. Having established a sound basis for the right to water in human rights provisions and statements and outlined the content of the right, its application in Egypt needs to be reviewed in order to assess its potential to address the water and sanitation crisis and the socio-economic grievances expressed in the uprisings.

Although there is growing awareness of the water and sanitation crisis in Egypt, the human right cannot yet be considered established. In Egypt and the MENA region in general, the right to water has received little attention so far. As Biswas states, “[t]he water profession and the vast majority of the governments in the MENA region have for the most part not paid much attention to the UN declaration that water is a human right, especially in terms of what it means, and what are the implementation requirements to extend universal water and sanitation coverage.” Having carried out interviews in the region, Biswas relates this ignorance of policy makers towards the human right to water and sanitation to them either being unaware or only superficially aware of it¹⁸⁹. This is worrisome in particular because Egypt has ratified various international human rights treaties that either explicitly or implicitly refer to the right.

First, the status of ratification of international legal instruments in Egypt will be assessed and second, the section proceeds to investigate national legal instruments: the human rights situation in Egypt, the new constitution of 2012, and water laws and policies.

¹⁸⁹ Biswas, 2008, p. 7.

3.3.1. *International and Regional Instruments*

Proceeding in hierarchical legal order, the relevant international human rights treaties will be reviewed first with particular regard to Egypt's ratification of these legal instruments.

It has been established before that the human right to water and sanitation is read into the right to an adequate standard of living according to Article 11 (1) ICESCR. Egypt ratified the ICESCR on 14 January 1982. Egypt also ratified other human rights treaties: the CEDAW in 1981, the CRC in 1990 and the CRPD in 2008. Voting in favour of UNGA Resolution 64/292 of 2010, Egypt considered the human right to water and sanitation as existing under international law. The voting record on the resolution has been attached to this thesis (Annex II).

Another interesting development is Egypt's engagement in the so-called "Blue-Group." In a joint declaration the members of the "Blue Group" called upon all stakeholders of the 6th World Water Forum 2012, and the wider international community, to integrate human rights standards and principles when finding solutions to support the aim of universal access to water and sanitation, as well as in discussions on the post 2015 international development agenda¹⁹⁰. The declaration has a very wide scope and fully acknowledges the human right to water and sanitation. This subsequently rises the question what this declaration entails for Egypt's own obligations.

Located both on the African continent and in the Arab world, Egypt is also party to several regional human rights instruments. As a member of the League of Arab States, Egypt has ratified the Arab Charter on Human Rights that entered into force in 2008 and explicitly mentions water in Articles 39 (e) and (f) in the context of the right to health. Egypt also ratified the African Charter on the Rights and Welfare of the Child in 2001 that also mentions water in Article 14 (2) (c). Together with the Heads of State and Government of the African Union, Egypt adopted in 2008 the Sharm El-Sheikh Commitments for Accelerating the Achievement of Water and Sanitation Goals in Africa¹⁹¹.

In summary, Egypt is bound by international and regional human rights law to the obligations resulting from the human right to water and

¹⁹⁰ Blue Group Declaration to the World Water Forum, 2012.

¹⁹¹ African Union, 2008.

sanitation. This leaves no doubt as to Egypt's obligations and formal commitment to the human right to water. What is most relevant now is to compare this behaviour in the international sphere to the actual realisation of the right in the national sphere towards the population.

3.3.2. *National Legal Instruments*

“By their participation in the international human rights framework, states undertake to ensure that their constitutions, laws, policies, budgets, etc., reflect these legal obligations and achieve, rather than undermine, the minimum standards which they have agreed to be bound by¹⁹².” The assessment of the national legal context requires a preliminary examination of the human rights situation in Egypt. Then Egypt's new constitution of 2012 will be reviewed, leading to the question whether the human right to water has now developed into a constitutional right. Finally, on the lowest, yet most practical level of the legal echelon, water laws and policies will be assessed.

3.3.2.1. *Human Rights in Egypt – Controversy and the Spiral Model*

In reviewing the human rights situation in Egypt, particular attention must be paid to the human rights and cultural relativism debate in the Arab world as such. Hamzawy points at the scepticism expressed towards the concept of human rights as a carrier of Western ideology in the course of globalisation and authors such as Amin criticise globalisation's harmful influence on the Arab cultural heritage and the Arabic language as founded on Westernisation¹⁹³. While Amin accepts the importance of global standards and global discourse on democratic formation as well as the recognition of human rights, he insists on the transferral to the local context in order to achieve authenticity. He does not mention, however, that Arab governments (most likely for reasons of regime maintenance) have been reluctant to achieve human rights mechanisms as exemplified by the above mentioned Arab Charter on Human Rights that only entered into force after a lengthy process in 2008.

The extensive cultural relativist debate in human rights set aside,

¹⁹² Twomey, 2007, p. 47.

¹⁹³ Hamzawy, 2006, p. 52.

Egypt has nevertheless been ambitious to maintain its position in the human rights sphere and Hicks links this to Egypt's close ties to Western governments in international aid and trade agreements over regional stability which in turn have led to Egypt's internalisation of a concept known as "the human rights spiral"¹⁹⁴.

Hicks deploys Risse and Sikkink's "spiral model" in the Egyptian context to explain the controversy surrounding human rights in Egypt. As part of a socialisation process and the state's desire to improve its status in the world's view, the government undergoes five steps that work in a natural progression to first expose a state's human rights violations, and then change its norms to fit international standards. Risse and Sikkink's five phases of the spiral model range from initial repression to denial, tactical concessions, prescriptive status, and rule-consistent behaviour¹⁹⁵.

Applied to the Egyptian context this model varies in so far as that Egypt has opted for what Hicks coins "a soft denial" when faced with human rights criticism. "Egypt has never engaged internationally in public denial of the validity of international human rights norms" and, as described above, it has ratified most of them¹⁹⁶. The government's denial has rather targeted local human rights activists and NGOs, as described in Chapter 2, by accusing them of terrorist activities and defaming the country. In Hicks' view, Egypt has yet remained immune to the fourth level of the spiral. Egypt did not respond to the sustained international and national pressure to improve its human rights performance and "for the most part, they cannot be said to have a prescriptive status in law and practice"¹⁹⁷. Although some tactical concessions were made for the 2005 presidential elections, the Egyptian government has mainly paid lip service to international human rights norms and according to Hicks' analysis, Egypt "has remained becalmed in phase one of the spiral, practicing repression"¹⁹⁸. He concludes that it is quite remarkable that "a state that appears as susceptible to the transnational power of international human rights norms in fact remains so resistant to it"¹⁹⁹.

Bearing this analysis of Egypt's human rights performance in mind,

¹⁹⁴ Hicks, 2006, p. 67.

¹⁹⁵ Risse & Sikkink, 1999.

¹⁹⁶ Hicks, 2006, p. 67.

¹⁹⁷ *Ibidem*.

¹⁹⁸ *Ibidem*, p. 69.

¹⁹⁹ *Ibidem*.

the human rights situation after the uprisings of 2011 does not provide much hope that actual change has occurred. Concerning the overall human rights situation in Egypt today, the Cairo Institute for Human Rights Studies reports that human rights defenders representing the Egyptian NGO Forum, a group of 23 independent Egyptian human rights organisations, have been present at the 22nd session of the UN HRC in March 2013 to “draw attention to the worsening situation of human rights in Egypt²⁰⁰.”

With particular regard to the human right to water and sanitation in Egypt, the picture drawn by Hicks is consistent with Biswas’ description: he discerns significant resistance to the concept as such as most stakeholders have not paid much attention to the UN declaration that water is a human right. Furthermore, he criticises that the terms “human right” and “basic need” are used interchangeably and that there is no clear understanding of the concept and little discussion among scholars and in the human rights literature on how water as a human right can be achieved and who is responsible²⁰¹.

Despite this overall negative analysis of the Egyptian human rights situation in general as well as for the human right to water, a recent development that could provide hope can be found in the new constitution of 2012.

3.3.2.2. *The New Egyptian Constitution of 2012*

On 25 December 2012, Egypt’s High Election Commission announced the final results of the 2012 constitutional referendum. With a turnout of 33 per cent of eligible voters, the draft constitution was passed with 64 per cent approving the document (10,693,911 votes) and 36 per cent voting against it (6,061,101 votes). The new constitution is Egypt’s first since the 1971 constitution and the first to be democratically ratified after the uprisings of 25 January 2011²⁰². Selected articles of the constitution have been attached to this study (Annex I).

Article 19 of the new constitution reads: “[t]he Nile River and water resources are a national wealth. The state is committed to maintaining and developing them, and preventing abuse. The use of such resources shall be regulated by law.” Article 67, paragraph 1,

²⁰⁰ CIHRS (Cairo Institute for Human Rights Studies), press release of 16 March 2013.

²⁰¹ Biswas, 2008, p. 7.

²⁰² Carnegie Endowment for International Peace, 2012.

reads: “[a]dequate housing, *clean water*, and healthy nourishment are guaranteed rights” and Article 69 reads: “[e]very person has the right to a healthy, undamaged environment. The state commits itself to the inviolability of the environment and its protection against pollution. It also commits itself to using natural resources in a way that will not harm the environment and to preserving the rights of all generations to it²⁰³.” This stipulation of water resources as a national wealth as well as the commitment guaranteeing environmental safeguards and the explicit stipulation of clean water as constitutional guarantees certainly represents an important turn in national legislation.

It must be noted however, that the constitution faces strong criticism due to the weak turnout of 33 per cent and the absence of international observers from polling stations because of time and bureaucratic constraints. It should be noted that a broad coalition of NGOs, “extremely concerned about the future of liberties and human rights,” declared their rejection of the constitution with the claim that the constituent assembly lacked legitimacy²⁰⁴. Furthermore, “[t]here were also high expectations, in particular on the part of political parties and unions concerned with citizens’ socio-economic rights, that the new constitution would enshrine new entitlements. Article 67 does endorse the right to appropriate shelter, clean water and healthy food, however, once again it fails to clearly stipulate that these rights are to be underwritten by the state, through its own provision of services and infrastructure. This wording was dropped²⁰⁵.” It remains to be seen whether the guarantee of clean water proves to be effective, how this wording is to be understood and how this guarantee can actually be levied. Technically this explicit wording could also be understood as the proclamation of a constitutional right to water.

3.3.2.3. *From Human Right to Constitutional Right – An Early Prognosis*

The inclusion of an explicit stipulation of clean water as a “guaranteed right” in Article 67 of the new constitution raises a series of important questions concerning the scope of the human right to water and sanitation in Egypt. Regarding the stipulation itself, the wording and the value of

²⁰³ Constitution of the Arab Republic of Egypt, December 2012.

²⁰⁴ Coalition of NGOs rejecting the Constitution, press release of 10 December 2012.

²⁰⁵ Tadros, 2013.

constitutional rights need to be examined. Then its repercussions need to be assessed. Does mentioning water in the constitution automatically entail the acknowledgement of the human right to water?

In understanding whether the human right to water has obtained constitutional value in Egypt, the wording of Article 67 needs to be considered first. The three major approaches how to interpret legal texts are the literal, the teleological (purposive) and the comparative law method of interpretation.

A literal interpretation would lead to the guarantee simply focussing on *clean* water and the prevention of pollution as well as acceptability and quality concerns. Obviously this interpretation fails to encompass the much broader normative content of the human right to water and sanitation. Another literal interpretation could be to draw a comparison to “healthy food” mentioned in the same article. It could be argued that *clean* water and *healthy* food are only enumerative or selected aspects of the rights to water and food that should be emphasised, as it can clearly not be assumed that the drafters of the constitution intended to prescribe the populations’ diets to *healthy* food only. Although the literal interpretation is subject to translation from Arabic to English the words *clean* and *healthy* do not have other implications when read in Arabic.

The teleological interpretation approach dictates that primary attention should be given to the object and purpose of a legal provision, rather than giving the instrument a narrow and restricted meaning²⁰⁶. Article 67 is located in part II (rights and freedoms), chapter 3 (economic and social rights) of the constitution. Arguing from a teleological, purposive perspective, the location of the right in the constitution under these headings suggests a tangible, claimable right in a social justice context, which in turn suggests that the right should not only aim at clean water but at a broader availability and access to water as a component of social justice.

Finally, the comparative law method of interpretation should be considered as a growing discipline and as many scholars argue, the search for knowledge and enlightenment outside national borders seems to be entirely legitimate and experience should be shared²⁰⁷. In

²⁰⁶ Hall & Macken, 2009, p. 74.

²⁰⁷ Murray, 2007, p. 46.

the present context, comparison is not afar as Egypt itself has ratified numerous international human rights treaties containing the human right to water and sanitation itself.

Combining the different methods of interpretation led to the conclusion that the right contained in Article 67 of the new constitution most likely has a broader scope than the wording suggests, however this interpretation is subject to judicial interpretation from the constitutional court, which has not yet commented the issue. Assuming that this would be the case, the subsequent question would be how far this right reaches and whether it is claimable before national jurisdiction. As the state has undertaken to vindicate a right to water it could be argued that this then becomes an enforceable constitutional right with major repercussions for legislation on levels beneath the constitution.

It should be kept in mind however, that the new constitution is only a few months old and that its scope remains to be determined. It is indeed too early to draw any major conclusions and estimates need to be cautious that during the transitional phase the rhetoric is usually very high and many entitlements are created in order to accustom claims expressed by the population. It can be said that Article 67 bears great potential, but until it has not been tested in legal procedures before the courts, the current water laws and policies remain the relevant legal framework, which should be examined next.

3.3.2.4. *Water and Sanitation Laws and Policies*

Concerning Egypt's water and sanitation laws and policies, Egyptian expert Abdel-Gawad considers one of the major challenges facing the water sector in Egypt to be "closing the rapidly increasing gap between the limited water resources and the escalating water demands in the municipal, industrial and agricultural sectors"²⁰⁸. To this end, a series of water resources policies and guidelines have been developed. Among these features the National Water Resources Plan (NWRP) with a planning horizon covering the period from 1997 to 2017²⁰⁹. The NWRP consists of "three major steps: first, the development of additional water resources and cooperation with the Nile basin riparian countries; second, making better use of the existing water resources and increasing

²⁰⁸ Abdel-Gawad, 2008, p. 137.

²⁰⁹ Ibidem, p. 138.

water use efficiency; and third, the protection of water quality and the environment²¹⁰.” The NWRP will be further discussed in Chapter 4.

So far water policies in Arab countries have allowed for unrestricted use of scarce water resources. One of the most critical demand management issues is water re-allocation. This requires that effective policy guidelines will be developed to improve the performance of the agriculture sector, by far the largest consumer of water. Water governance should be considered as key in this respect and should include “water management with allocation policies based on the concept of IWRM²¹¹.”

A number of Egyptian human rights organisations concerned about the water and sanitation crisis in the country have pushed for the adoption of improved legislation in the field of water and sanitation, among them the Egyptian Organisation for Human Rights (EOHR) and the above-mentioned ECESR.

In a report of 2009, EOHR recommends “[r]econsidering legislations, strategies and water policies to ensure compliance with the obligations arising from the right to water stated in international covenants and conventions which were ratified by Egypt and to develop regulations governing the exploitation of water and to monitor the application of these regulations carefully and firmly²¹².”

The ECESR issued a joint submission to the CESCR Periodic Review of Egypt, highlighting key areas of concern regarding the state party’s compliance with its obligations under the ICESCR. Regarding water laws and policies the submission states, “[t]he water draft law, proposed before the revolution, has one of its aims the encouraging of private sector to invest in the water sector. However, it has not been enacted yet²¹³.”

The analysis of water laws and policies in Egypt reflects many of the concerns mentioned above and despite the adoption of the NWRP, lacunas persist as the reports of the EOHR and ECESR have shown. Another topic in the legal context in Egypt is that of judicial enforcement. In practice a formal right necessitates leverage for it to effectively change the situation of the claimant, however, hardly any jurisprudence is available as the Special Rapporteur noted in the report

²¹⁰ *Ibidem*.

²¹¹ Barghouti, 2010, p. 22.

²¹² Egyptian Organisation for Human Rights (EOHR), 2009.

²¹³ Egyptian Centre for Economic and Social Rights (ECESR), 2013, p. 10.

of her mission to Egypt. One recorded case will be dealt with in the following chapter in the context of the human rights-based approach to development.

3.4. CONCLUSION

The emergence and acknowledgement of the human right to water and sanitation have been discussed and the legal character has been examined. The status of the human right to water and sanitation can be summarised as follows: *de lege lata* the human right to water and sanitation is guaranteed through international human rights treaties and as a legally binding human right that gives rise to corresponding state obligations²¹⁴. Besides these obligations, the state must progressively realise the right to water to the maximum extent of its available resources, whilst always ensuring a minimum core of the right. The content of the right is precisely delineated in General Comment No. 15. Having investigated all relevant legal dimensions of the human right to water and sanitation, it was applied to the Egyptian context. The transposition of the human right from the international sphere to the national context of Egypt imposes precaution, as the national specificities must be acknowledged. Egypt has ratified the international legal instruments and it has even enshrined the right in its new constitution, nevertheless Egypt still has a poor human rights record and needs to move beyond the first level of Risse's spiral model from tactical concessions to real commitment. Following this legal human rights oriented analysis, the next question to be addressed is whether actual implementation in terms of water management and governance in Egypt has integrated this framework and what obstacles, challenges and opportunities remain, especially in view of the unique opportunity the current transition provides for real change to occur?

²¹⁴ Winkler, 2012, p. 277.

4.

WATER GOVERNANCE AND MANAGEMENT:
ACHIEVEMENTS, CHALLENGES AND OBSTACLES
IMPLEMENTING THE HUMAN RIGHT TO WATER
AND SANITATION IN EGYPT

“I am convinced that the biggest barrier to the enjoyment of these rights is lack of political will.”

(Catharina de Albuquerque, UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation)²¹⁵

This final substantial chapter provides a detailed discussion of water governance and management in Egypt. After having outlined the background on Egypt, the water and sanitation crisis and the corresponding human right in previous chapters, this chapter investigates the question what steps the Egyptian government and other stakeholders have undertaken to address the water and sanitation crisis. The aim is to provide a detailed discussion of the reality rather than just the provisions in the constitution and laws and to look beyond the rhetoric of planning reforms that is often used in political discourse and to look more closely at the effective measures of implementation.

In contrast to Chapters 2 and 3, which focussed on the water and sanitation crisis and the acknowledgement of the human right, Chapter 4 draws the line between rhetoric and implementation through a survey of current policy and practice: what is being done, what is not being done and what should be done. Rather than simply setting out the obstacles, this chapter assesses current policy and practice, confronting achievements with challenges and obstacles. Special attention is given to adopting a sober and critical assessment, regardless of how sceptical one might be regarding the capacity and functionality of the Egyptian

²¹⁵ Statement to the 18th session of the UN Human Rights Council, 15 September 2011, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11377&LangID=E>.

state for the last sixty years. It should be kept in mind that the water and sanitation crisis Egypt is facing would constitute a massive challenge for any state.

The approach followed in this chapter has been to review as much literature as possible, primarily academic but also government and agency documents as well as press releases dating up to June 2013. The result is a baseline study of the implementation of the human right to water and sanitation in Egypt, which begins by capturing the achievements and shortcomings of the respective stakeholders. The stakeholder review begins with the assessment of water governance, management and implementation by the prime duty-bearer, the Egyptian government. Then international development cooperation, agencies and donors are reviewed in a comparative approach, before attention is drawn to civil society consisting of particularly relevant actors at the interface between the before-mentioned stakeholders and the population. Finally these findings are summarised in a synthesis of the remaining challenges and obstacles for the sector altogether.

4.1. THE EGYPTIAN GOVERNMENT'S IMPLEMENTATION OF THE RIGHT TO WATER

In first instance, as part of the assessment of water governance and management in Egypt, the status quo will be reviewed. The previous analysis focussed on the legal acknowledgement of the right. The remaining question is how the Egyptian government translates this into practice and what are the achievements and shortcomings in this approach.

4.1.1. *Achievements in Addressing the Water and Sanitation Crisis*

Since the 1970s the Egyptian government launched initiatives in order to address the growing water and sanitation crisis. In an overview of the Egyptian water sector²¹⁶, Fahmy reviews the government's water planning, which began in 1977 when the government, UNDP, the German Development Bank (KfW) and the World Bank set up a Water

²¹⁶ Fahmy, 1997, pp. 55-141.

Master Plan for Egypt. He identifies only limited progress in terms of institutionalisation of the water planning activity²¹⁷. Hvidt stresses that “[t]he greater the scarcity the more planning is needed to counteract it²¹⁸.” Accordingly, Egypt, following a greater scarcity of its water supply, strengthened its water resource planning capability, and in 1998 a second national water plan was prepared. The government officially endorsed the National Water Resources Plan (NWRP) in 2005 with a planning horizon until 2017. The NWRP is implemented through efforts of nine partner ministries, although the Ministry of Water Resources and Irrigation (MWRI) has, according to its constitutional mandate, the prime responsibility for the development and management of water resources in Egypt²¹⁹. Additionally, the MWRI, with technical assistance from the World Bank, issued an Integrated Water Resources Management Plan in 2005 as a “transitional strategy including further reform interventions” building on the NWRP²²⁰.

Since the uprisings of 2011 a remarkable series of events has taken place both shifting the institutional setup of the MWRI and demonstrating an increased political and financial prioritisation of water and sanitation issues.

In February 2011, only shortly after the uprisings began, Mubarak appointed a new irrigation and water resources minister in a cabinet reshuffle aimed at easing public anger at the government’s performance²²¹. This event itself is emblematic of the important role the water and sanitation crisis played in the uprisings. Under President Morsi the water and sanitation crisis was addressed with high priority: in his first televised address in June 2012 Morsi said he would make water “one of his top priorities in office” and water issues featured prominently in his campaign²²². More recently, in response to the construction of the Ethiopian Renaissance Dam, he showed his determination not to “risk losing a single drop of Nile water²²³.” Besides Morsi’s efforts to place

²¹⁷ *Ibidem*, p. 70.

²¹⁸ Hvidt, 1995.

²¹⁹ MWRI, Official Website of the National Water Resources Plan, “About Us”.

²²⁰ MWRI, Integrated Water Resources Management Plan of 2005.

²²¹ Ooskanews.com, press release of 7 February 2011, available at http://www.ooskanews.com/international-water-weekly/egypt-appoints-new-irrigation-minister_17107.

²²² Ooskanews.com, press release of 29 June 2012, available at http://www.ooskanews.com/daily-water-briefing/egyptians-will-not-drink-polluted-water-any-more-president-elect-morsi_23188.

²²³ Ahram Online, 6 June 2013, available at <http://english.ahram.org.eg/NewsContent/1/64/>

the water and sanitation crisis high on his political agenda, Egypt's new prime minister and former minister for water resources and irrigation, Hesham Qandil, announced on 2 August 2012 the creation of a new Ministry of Utilities, Drinking Water and Sanitation²²⁴ and in December 2012 a Draft Water and Sanitation Law²²⁵ was unveiled as part of the government's effort to improve drinking water and sanitation services²²⁶. This political prioritisation is coupled with additional funding for the water and sanitation sector. Since the uprisings of 2011, the allocation of funds for water and sanitation have been impressive and besides the pivotal investment of \$1.5 billion for water and sanitation by the Egyptian government itself, multiple external donors have promised substantial funding²²⁷.

Considered together these developments convey a clear message: the water and sanitation crisis is a primary concern of the Egyptian government. The commitment at the highest levels by Morsi and Qandil, the restructuring of the ministry and adoption of a new law combined with the allocation of substantial funding all demonstrate increased prioritisation of the water and sanitation crisis, which is intensified by fears over decreasing water availability resulting from the construction of the Ethiopian Renaissance Dam. These developments suggest that the issue is of high popular concern necessitating interventions by the president and prime minister. In other words, at a time of great flux when Egypt does not even have a parliament, the issue would not be addressed with such emphasis and priority if it were not considered to be crucial for the country's survival. Furthermore, the recent measures suggest that the previous water and sanitation regime was insufficient, otherwise fundamental changes such as the creation of a new ministry and the adoption of a new law would not have been necessary.

In view of the flux in Egypt and the little time that has passed

73387/Egypt/Politics-/Morsi-to-ALAhram-Egypt-will-not-risk-losing-single.aspx.

²²⁴ Ooskanews.com, press release of 2 August 2012, available at http://www.ooskanews.com/daily-water-briefing/egypt-pm-creates-new-utility-drinking-water-and-sanitation-ministries_23702.

²²⁵ The Special Rapporteur states in the report of her 2009 mission to Egypt that "the draft act does not explicitly recognize water and sanitation as human rights, nor does it specifically outline the rights of people to access sufficient, safe, affordable and acceptable drinking water and sanitation," p. 6.

²²⁶ Ooskanews.com, press release of 4 December 2012, available at http://www.ooskanews.com/daily-water-briefing/egypt-drafts-national-water-and-sanitation-law_25424.

²²⁷ Ooskanews.com, press release of 28 March 2013, available at http://www.ooskanews.com/daily-water-briefing/egypt-invest-15-billion-water-and-sanitation-2013-2014_26913.

since the uprisings it is at present not possible to draw any further conclusions on the new government's achievements. Concerning the previous achievements, Rached and Brooks establish the hypothesis that "water-related institutions in MENA are slowly changing in ways that seem likely to improve the situation" and are gradually "turning their attention from technical and engineering ways to cope with chronic water shortages to political and managerial ways²²⁸." Although acknowledging some achievements, the Special Rapporteur warns that, "while the government has made incredible progress in extending the water network, sanitation lags behind jeopardizing the gains that Egypt achieved in the water sector²²⁹." Such shortcomings will be assessed in the following section identifying challenges and obstacles before then turning to other stakeholders.

4.1.2. Shortcomings of the Egyptian Government

Despite the above-mentioned efforts in water planning, and the acknowledgement that "water-related institutions are slowly changing in ways that seem to improve the situation," Rached and Brooks argue that "physical scarcity has been worsened by institutions," which are "increasingly failing to meet modern needs for water to be extracted in ways that are ecologically sustainable, used in ways that are economically efficient, and distributed in ways that are socially equitable²³⁰."

The review of an extensive body of literature on the situation of water and sanitation in Egypt undertaken for this study has surfaced a core of recurring issues and concerns among scholars with respect to the Egyptian government's approach to the water and sanitation crisis. Besides more technical issues concerning other water uses, especially efficiency in irrigation for agriculture, and with particular regard to water governance and management, a number of concerns can be distinguished.

²²⁸ Rached & Brooks, 2010, p. 142.

²²⁹ UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report of the Mission to Egypt, 2010, p. 3.

²³⁰ Rached & Brooks, 2010, p. 141.

4.1.2.1. *Inadequacy of the Institutional Framework*

It is a complex undertaking to distinguish the myriad of modifications in the “mobius web” of water governance that need to be reviewed, however, there is a broad consensus among experts concerning the need to redesign the institutional setup in which the water and sanitation crisis is dealt with²³¹.

Rached and Brooks argue that the institutional design is oriented to large-scale, engineering-dominated supply systems for urban water supply and for irrigation where water is allocated primarily to users who produce revenue²³². Allam and Allam claim a lack of coordination between the MWRI and other ministries, inadequate information dissemination and communication between different institutions and stakeholders, and they criticise the decision-making process on different levels in a centralised fashion²³³. Likewise, the Special Rapporteur in her 2009 mission to Egypt identified similar concerns regarding the institutional framework and organisation as “the responsibility for drinking water and sanitation straddles several different institutions, and some difficulties are faced in ensuring coordination” and “[t]he overlapping responsibilities also present problems in terms of accountability when people’s access to safe drinking water and sanitation is threatened²³⁴.”

All of this adds up to the limited implementation capacity Zetter and Hassan consider endemic to the public policy domain in Egypt, which suffers from the above-mentioned shortcomings and poor line ministry coordination and conflicts between sectoral and cross-sectoral policy formulation²³⁵. Surprisingly, the ministry itself is aware of these shortcomings: in 2009 the MWRI organised a workshop concerning the responsibilities of the MWRI to implement the NWRP²³⁶. The workshop exegesis pointed out several constraints affecting the progress of the NWRP measures in the MWRI. The main obstacles identified

²³¹ For the MENA region generally: Rached & Brooks, 2010. For Egypt specifically: Zetter & Hassan, 2002; Allam & Allam, 2007; the Special Rapporteur’s report of her 2009 mission to Egypt, and the MWRI itself in its 2009 workshop report.

²³² Rached & Brooks, 2010, p. 144.

²³³ Allam & Allam, 2007, p. 210.

²³⁴ UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report of the Mission to Egypt, 2010, p. 6.

²³⁵ Zetter & Hassan, 2002, p. 169.

²³⁶ MWRI, Report of the 2009 workshop on responsibilities of the MWRI to implement the NWRP, available at http://nwrpeg.net/index.php?option=com_docman&task=cat_view&gid=41&Itemid=59.

correspond to those described by scholars and water experts: lack of coordination and integration among institutions, inadequate technical and institutional capacities, lack of data and information exchange, limited budget and financial resources, and lack of law compliance and enforcement instruments²³⁷. These systemic shortcomings in water management and governance are so complex that they would require a study of their own which would have to set the inadequate institutional framework in the context of authoritarianism and the huge expansion in the power and pervasiveness of the state apparatus and the growth in the size of the bureaucracy.

4.1.2.2. The Lack of Adequate Legislation, Participation and Transparency

A further concern among experts concerning the Egyptian government's approach to water governance and management is the lack of adequate legislation and especially the lack of wider public participation and transparency in water and sanitation issues.

The sheer drafting of a new water law and the focus on legislation by the concerned ministries in cooperation with development agencies indicates the need for reform. Together with USAID the government launched the Water Policy and Regulatory Reform (WPRR) project. Its aim is to "strengthen the policy, legal and regulatory framework for the water and wastewater sector in Egypt and improve the quality and geographic coverage of water and wastewater services²³⁸." Considering that the WPRR was only launched in 2008 and the aim of passing a draft water law was only achieved in 2012, it is too early at present to draw conclusions concerning the success of these programmes. In any case these measures are overdue as experts have stressed the lack of adequate legislation and participation. For instance, Allam and Allam, in analysing water resources, future challenges and opportunities in Egypt, come to the conclusion that strengthening the existing water use and water pollution laws and establishing an adequate legal framework for water user associations is essential²³⁹.

A major issue, as Rached and Brooks note, is that the above-mentioned institutional changes, and policy and regulatory reform

²³⁷ Ibidem, p. 21.

²³⁸ WPRR website, available at <http://www.wprregypt.com/>.

²³⁹ Allam & Allam 2007, p. 217.

find support among water planners and in the minister's cabinet, however "those changes are not carried through to lower levels of organisation²⁴⁰." Therefore, particular attention should be given to the principle of participation as it is crucial for empowering people to claim their rights and forms an essential component of the human right to water and sanitation²⁴¹. In this regard, the three necessary changes identified by Rached and Brooks are "greater attention to demand management, wider stakeholder participation and adoption of pro-poor strategies²⁴²."

Although there has been a shift from top-down management to strategic policy development, Rached and Brooks consider water management institutions to be highly centralised. "One common adjustment to the failures of top-down management to achieve its objectives was the creation of Water User Associations (WUAs)²⁴³." WUAs primarily ensure the participation of water users in the allocation, distribution and management of water for agricultural purposes, and sometimes they also monitor safe drinking water and sanitation²⁴⁴. Allam and Allam criticise that the legalisation of the WUAs and water boards is not yet established²⁴⁵. The above-mentioned report of the MWRI workshop of 2009 stated that the legal status of WUAs was not yet defined, there was unawareness of some district engineers to the role of WUAs, and they were treated in an unfriendly way. Furthermore, there was a lack of awareness about the role of WUAs and their benefits²⁴⁶. The pertinence of insufficient public participation for the present debate gains further weight through Ismail's claim that the establishment of a Consumer Protection Regulation Organisation, accompanying Decree 135 of 2004 that converted Egypt's General Drinking Water Facility Authority into a holding company, only "gives the appearance of attempting to involve citizens²⁴⁷." There are however

²⁴⁰ Rached & Brooks, 2010, p. 151.

²⁴¹ General Comment No. 15 expressly mentions "genuine public participation" in paras. 24 and 48.

²⁴² Rached & Brooks, 2010, p. 151.

²⁴³ *Ibidem*, p. 149.

²⁴⁴ UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report of the Mission to Egypt, 2010, p. 16.

²⁴⁵ Allam & Allam 2007, p. 210.

²⁴⁶ MWRI, Report of the 2009 workshop on responsibilities of the MWRI to implement the NWRP, p. 23.

²⁴⁷ Ismail, 2008, p. 7.

also positive examples of ensuring community involvement such as the exemplary project described by the Special Rapporteur, which is led by a group of engineers to develop appropriate technologies for sanitation in rural areas and empowers individuals to have their voices heard²⁴⁸.

Besides the lack of wider public participation, the Special Rapporteur highlights the lack of transparency and access to information, which she considers to be “crucial elements of guaranteeing human rights and thus must be prioritized as a matter of urgency²⁴⁹.”

In summary it can be said that the relevant stakeholders are aware of the shortcomings identified here and measures such as the WPRR aim at tackling these issues. What is crucial at present is that the reform programmes, criticism by specialists and recommendations by the Special Rapporteur are carried through to lower levels of organisation and implemented.

The issue identified here of a lack of participation is linked to stakeholder involvement which will form the topic of the following considerations as both international development cooperation and civil society play an important role in assuring wider public participation in water and sanitation governance and management. This claim is supported by Trumbull IV, who sees the solution to the water crisis in decisions about water proceeding from the ground up: “[i]f those seeking to redefine access to water as a human right do not address the symbolic, individual and small-scale interactions that determine use of water, the decision-makers they advise will, so to speak, miss the boat²⁵⁰.”

4.2. DEVELOPMENT COOPERATION AND THE HUMAN RIGHTS-BASED APPROACH (HRBA)

Very much like the analysis of the government’s efforts in addressing the water and sanitation crisis, international development cooperation is an extensive field of study with a great variety of actors, the analysis of which goes beyond the scope of this study. The following considerations will therefore focus solely on major actors and human

²⁴⁸ UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report of the Mission to Egypt, 2010, p. 16.

²⁴⁹ *Ibidem*, p. 17.

²⁵⁰ Trumbull IV, 2010.

rights implications with particular focus on the human rights-based approach to development (HRBA). The review of the HRBA at this point is of particular relevance, as it constitutes the framework under which the human right to water and sanitation is translated into practice, which is necessary in order to achieve an efficient realisation of the right. After the presentation of the HRBA and an example from Egypt illustrating the approach, the responsible development stakeholders will be presented as well as their achievements but also the difficulties experienced by development practitioners applying the legal framework in their programming.

4.2.1. Realisation via the Human Rights-Based Approach to Development

The human rights framework encompasses both the legal right to water on the one hand and the human rights-based approach on the other. This section focuses on the HRBA, which promotes participation in and information about people's access to decision-making forums that affect their access to water, sanitation and hygiene services.

The human right to water and sanitation on its own (only) provides a useful legal framework with normative principles and guiding standards for addressing challenges and encouraging all actors to collaborate. What is needed additionally is a mechanism of implementation. As Filmer-Wilson states, "translating a legal principle and normative values into a model for development with a clarified methodology, analytical concepts and policy options, is a challenge. The right to water in itself does not answer the tough questions [...] and it does not provide practical guidelines²⁵¹."

Because of this inherent lacuna of the normative nature of the legal right, the HRBA has been developed as a tool or practice for "emphasising the accountability of all actors whose actions impact the development process; both State and non-State. Bilateral and multilateral donors, NGOs and private contractors have a duty to ensure that they respect and protect human rights in their work. They are also required to ensure that their programmes are locally accountable²⁵²."

²⁵¹ Filmer-Wilson, 2005, p. 239.

²⁵² Ibidem, p. 218.

In the following, the HRBA in the water and sanitation sector is further explained, arguing that this approach is beneficial for the realisation of the right to water. This is illustrated through an example of jurisprudence granting right-holders their human right to water and sanitation. Finally, the controversial question whether implementation of human rights is actually measurable will be addressed, before concluding on the HRBA.

4.2.1.1. *The HRBA in the Water and Sanitation Sector*

The HRBA “sets the achievement of human rights as an objective of development. It uses thinking about human rights as the scaffolding of development policy. It invokes the international apparatus of human rights accountability in support of development action²⁵³.” In placing people at the centre of the development process, the HRBA “establishes the obligations of the States to ensure that basic water needs are met and empowers communities to claim their right; it identifies and addresses the root causes for lack of access to water²⁵⁴.” Twomey stresses that there is no single human rights-based approach, rather there are principles to be applied to achieve human rights standards and the selection of methods and tools is left to states to choose, according to what is most effective²⁵⁵.

Filmer-Wilson notes, “[t]ranslating this complex approach into practice is challenging²⁵⁶.” This raises the question how the HRBA is to be applied in the present context of water and sanitation in Egypt. “From the perspective of the HRBA, lack of access to basic services such as water and sanitation is a denial of human rights” as the example below will demonstrate²⁵⁷.

In order to avoid such denial, human rights have to be mainstreamed in national legislation and development policies, implying that water and sanitation projects need to fulfil the requirements set out in the legal framework. In practice this means integrating the legal framework from the very first stage of planning of the respective development projects. This operationalisation refers to all main stages of the programming

²⁵³ Overseas Development Institute, 1999, *What Can We Do with a Rights-Based Approach to Development?*, ODI Briefing Paper, London.

²⁵⁴ Filmer-Wilson, 2005, p. 213.

²⁵⁵ Twomey, 2007, p. 66.

²⁵⁶ Filmer-Wilson, 2005, p. 213.

²⁵⁷ *Ibidem*, p. 230.

process from the initial assessment to analysis, planning, implementation, and monitoring and evaluation. It should include all human-rights principles: participation, non-discrimination, equality, accountability and the indivisibility and interdependence of human rights.

In principle this approach is convincing. The remaining question is which stakeholders are to proceed accordingly in the Egyptian context. As the Egyptian government has been found to have a poor performance in terms of the realisation of human rights in the past, one solution to promote human rights is to be seen in the engagement of development agencies. They have the potential to further advance human rights by applying a HRBA in the programming of their development projects and build upon previous experiences. The question is why this is advisable for the Egyptian water sector and what are the benefits of such an approach.

4.2.1.2. *Benefits of the HRBA*

The HRBA embraces the human rights principles stated in the legal framework and translates these principles into development practice. The pertinent literature advances a number of reasons why this approach is beneficial for the population targeted by development projects²⁵⁸. Primarily, the added value of the HRBA is seen in the empowerment of people who become right-holders with claims against duty-bearers. Also, the HRBA allows the determination of violations²⁵⁹. Twomey sees the key added value in its enhanced legitimacy derived from human rights treaties, which serve as minimum agreed standards thus facilitating greater transparency and offering “an authoritative basis for advocacy by civil society²⁶⁰.”

The HRBA “shift[s] the focus from the fact that the vulnerable in society have needs to the fact that they have human rights²⁶¹,” thus revealing additional concerns of the poor themselves and highlighting poverty as more than a material need but as “powerlessness and social exclusion²⁶².” “Local ownership of, and participation in, development process, inherent in HRBAs, are fundamental to designing development

²⁵⁸ Gupta, Ahlers & Ahmed, 2010, p. 299; Winkler, 2012, pp. 224 and 282-284; Twomey, 2007, p. 66.

²⁵⁹ Winkler, 2012, p. 284.

²⁶⁰ Twomey, 2007, p. 67.

²⁶¹ *Ibidem*.

²⁶² *Ibidem*, p. 68.

initiatives that are tailored to local realities and needs” and “[b]y identifying specific duties and duty-bearers, human rights-based development moves from the realm of charity to one of obligation²⁶³.”

Besides the benefits of the recognition of the human right to water, the economic benefits should briefly be mentioned as they provide an additional persuading argument that might counter claims suggesting that although the HRBA may entail positive change, it does not address the question of financing the huge investments that go along with the entitlements resulting from the human rights framework. In a comprehensive study, Whittington et al. demonstrate that on average, the benefits of investing in water management, sanitation, and hygiene range from \$2 to \$3 per dollar invested and the value of the productive time gained when households have access to safe drinking water in the home is worth three times the cost of providing it²⁶⁴. It is crucial that governments understand that by assuming their obligations resulting from the human right to water and sanitation they seemingly need to invest, the overall savings, however, outweigh, as citizens will be healthier and thus more productive. According to the WHO “for each US dollar invested, there is an average of eight US dollars of costs averted and productivity gained²⁶⁵.” Among experts there is consensus that the HRBA to development is beneficial to the affected communities and in terms of productivity gains it is also beneficial to the state.

4.2.1.3. *Jurisprudence on Water and Sanitation Illustrating the HRBA*

These considerations on the HRBA may seem somewhat abstract. The following example of jurisprudence on water and sanitation in Egypt helps to illustrate how the HRBA can benefit individuals in practice.

In 2009 the Special Rapporteur conducted a country mission to Egypt. In the light of authoritarianism it might seem peculiar that the Egyptian government gave its consent to such a country mission with the potential to reveal blatant human rights violations, but as Hicks notes, “Egypt has a tradition of granting access to international human rights research missions. As a relatively open country, it has been the subject of much reporting and monitoring over the last two decades²⁶⁶.”

²⁶³ Ibidem.

²⁶⁴ Whittington et al., 2009, pp. 469-609.

²⁶⁵ WHO & UNDP, 2007, pp. 21-22.

²⁶⁶ Hicks, 2006, p. 67.

This behaviour of the Egyptian government is logical when seen in the context of the above-mentioned third level of Risse's spiral model (tactical concessions). Nevertheless, locating opportunities for judicial enforcement and collecting jurisprudence on legal cases relating to water and sanitation in Egypt is difficult. Besides the language barrier and the badly maintained sources of information only few complaints seem to have been filed or reached substantial audience, which certainly correlates with the victims' unawareness thereof.

The Special Rapporteur herself only recorded little jurisprudence relating to water and sanitation, however, "[i]n one case the Al Shehab Institution for Comprehensive Development brought a case before court in 2002 concerning the lack of access to sanitation in Ezbet El Haggana, a major slum in Cairo, arguing that the lack of sanitation violated the community members' right to a dignified life. The court decided in favour of the applicants, and as a result, the sewage was expanded to the slum²⁶⁷."

In the context of the HRBA, the case of sanitation for slum dwellers in Ezbet El Haggana illustrates how a HRBA has been beneficial to the community members and how a development project for sanitation has been founded on the premise that the lack of access to basic services such as sanitation is a denial of a human right.

The Al-Shehab Institution for Comprehensive Development has disseminated a rights-based and democratic conception of development as it engages the residents in its efforts²⁶⁸. Its litigation shows how development actors are provided with a valuable advocacy tool for bringing attention to this sphere and for holding local or national governments accountable to their commitments. This simultaneously provides a platform from which to assist governments in establishing effective water policies and strategies and thus realises the aim of inclusion, participation and consequently empowerment. Hence, the community was empowered to demand the needed sanitation services. Had the approach not been rights-based and had the community not been aware of its rights it would not have presented its case as vigorously as with the understanding of the moral, ethical and legal grounds for its case.

One lacuna remains however: "human rights are not self-enforcing;

²⁶⁷ UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report of the Mission to Egypt, 2010, p. 12.

²⁶⁸ Al-Shehab Institution for Comprehensive Development, "About Us", 2013.

it is those whose rights are violated that have to seek redress to enforce these rights. The most vulnerable groups may not have the ability to seek redress and redress may therefore depend on whether NGOs can represent them and whether water access inequities are embedded in existing social and political relations²⁶⁹.”

The case of Ezbet El Haggana exemplifies this lacuna, as the claimants were dependent on the support of Al-Shehab. Although the dependence of the claimants on the development organisation is critical in a sense, this example also shows that the HRBA provides a solution by supporting the claimants and building their capacity so that they can eventually seek redress themselves. Furthermore, this example is useful in the respect that it shows how a development actor, aware of the legal right, has realised it through a rights-based approach and furthermore the actor was crucial in providing the necessary information to the rights-holders, which in turn were then empowered to advance their rightful claim.

4.2.1.4. *Conclusion on the HRBA*

The remaining issue, which can only briefly be touched upon due to space restrictions, is how to monitor the benefits and the realisation of the right to water through the HRBA. The High Level Panel of Eminent Persons in its post-2015 report underlines “[i]f a target is universal, like access to basic drinking water at home, it is not enough just to measure the average trend and expect that will continue. For example, the national average trend on basic drinking water may be very good if a major urban project is being implemented, but rural homes may be left out completely²⁷⁰.” This statement shows that precise measuring of the implementation of human rights is complex and yet essential in order to adopt the appropriate measures. There is an ongoing discussion concerning the measuring of implementation and experts have developed different tools such as indexes for measuring the progressive realisation of the human right to water and sanitation²⁷¹, specific frameworks for developing indicators²⁷² or an index to diagnose the causes of water scarcity²⁷³.

²⁶⁹ Gupta, Ahlers & Ahmed, 2010, p. 302.

²⁷⁰ UN HLP, 2013, p. 58.

²⁷¹ Luh, Baum & Bartram, 2013.

²⁷² Roaf, Khalfan & Langford, 2005.

²⁷³ phys.org, “researchers develop new index to diagnose causes of water scarcity”, available at http://phys.org/news/2013-05-index-scarcity.html?goback=.gde_3630228_member_240772297.

To sum up the findings presented here in relation to the HRBA as a means to realise the human right to water and sanitation in development cooperation, it has been demonstrated that the HRBA sets the achievement of human rights as an objective of development thus benefiting vulnerable people in society. This effect of empowerment was further illustrated through the review of jurisprudence in Egypt, exemplified by the case of Ezbet El Haggana. These considerations support the thesis set out in the research question that held that the human right to water and sanitation and the HRBA empower rights-holders and oblige the duty-bearer to live up to its commitments. Human rights are so to speak the “scaffolding of development policy,” which is then linked to practice through the HRBA.

4.2.2. Overview of Water and Sanitation Related Development Cooperation

The following considerations represent an overview of water and sanitation related development cooperation in Egypt, applying a comparative approach aimed at identifying the effectiveness and adequacy of development models and frameworks. The aim is to describe the dilemma that development cooperation plays a huge role in the Egyptian water and sanitation sector and although human rights knowledge exists within organisations, it was seen to constitute “untouchable technical, legal and often political language, which the international organisations lacked the mandate in which to engage²⁷⁴.” Nevertheless, there seems to be a trend in the field of development towards explicitly incorporating human rights language, and scholars such as Russell advocate the reinjection of the international human rights framework into development cooperation²⁷⁵. Russell also highlights the danger of using a simplified language which leads to standards not being integrated but rather diluted.

4.2.2.1. Multinational and Bilateral Development Cooperation

There are various multinational and bilateral organisations active in Egypt. Out of the 24 UN entities that comprise UN Water²⁷⁶, the main

²⁷⁴ Russell, 2010, pp. 1-23.

²⁷⁵ Ibidem, p. 15.

²⁷⁶ UN Water is the interagency mechanism for follow-up on international water-related commitments.

organisations concerned with water service delivery or meeting peoples' basic needs are UNICEF, WHO, UNDP, UN-Habitat, the World Bank Group and OHCHR. Among these the World Bank is probably the most influential actor in the international development arena and the largest external financier of water supply and sanitation projects involved in Egypt for decades and a lead agency in many projects. Their current portfolio for Egypt accounts for a total commitment of \$4.1 billion, of which water and sanitation account for 8 per cent. The World Bank has been providing ongoing support for efforts to expand access to sanitation and sewerage services in rural Egypt²⁷⁷. It is a strategic partner for Egypt, and the partnership process is ongoing in order to provide help and consultation to the government in solving sewage and water sector problems²⁷⁸.

Although the World Bank plays a hugely important role for development in Egypt, reviewing World Bank documents on Egypt shows an almost absolute absence of human rights language. Fujita reviews criticisms of the Bank's structural adjustment programmes, the following creation of the inspection panel, and its stance towards human rights. Obstacles to the Bank's human rights mainstreaming result from its emphasis on its non-political character, the obligations of recipient countries, emphasis on the concept that the Bank's mandatory contribution is development and human rights are only one of several ways of achieving development, and the lack of monitoring mechanisms²⁷⁹. According to Fujita this is not a responsible attitude when considering the Bank's tremendous influence.

Concerning bilateral development cooperation, Zetter and Hassan describe how the Egyptian state has been dominated by donor interest for most of the environmental initiatives, thus questioning the future sustainability of environmental activities that have so far adopted a carrot-and-stick logic and receive little local resources²⁸⁰.

An entire review of all development agencies active in the water and sanitation sector in Egypt is beyond the scope of this study. Some

²⁷⁷ World Bank, press release of 7 February 2013, available at <http://www.worldbank.org/en/news/feature/2013/02/07/world-bank-supports-improved-sanitation-services-in-rural-egypt>.

²⁷⁸ Egypt Independent, press release of 17 February 2013, available at <http://www.egyptindependent.com/news/world-bank-grants-egypt-us67-mn-water-resources>.

²⁷⁹ Fujita, 2011, pp. 374-396.

²⁸⁰ Zetter & Hassan, 2002, p. 181.

examples are USAID, which was involved in shaping the IWRM Plan of 2005²⁸¹. Furthermore, USAID played an important role by framing a legal document, which serves as the basis for the new Egyptian water law²⁸². German development cooperation “stopped water and sanitation work in Egypt because of failure to reform the sector and that this was not just related to the right to water, but was part of a wider sector policy dialogue²⁸³.” It then resumed and was engaged in providing strategic advisory services to the MWRI and management training to the water sector²⁸⁴. Other examples are the Euro-Mediterranean Information System on know-how in the water sector with support of the Italian Development Cooperation²⁸⁵ or the Cairo Climate Talks²⁸⁶.

Recently, Arab states have also developed organisations of their own such as the Arab Forum for Environment and Development (AFED), a not-for-profit regional NGO that focussed on the water and sanitation crisis and provides studies²⁸⁷ aimed at tackling the lack of information²⁸⁸. This trend reflects a growing awareness of pressing environmental issues and the publications list of Arab think tanks, organisations and the growing number of conferences all point at an increased awareness and commitment towards the issue. Concerning the human right to water and sanitation in particular, these organisations have, however, demonstrated little commitment so far.

4.2.2.2. *Difficulties in the Application of the HRBA*

Russell examines how international organisations and development

²⁸¹ MWRI, Integrated Water Resource Management Project Website, available at <http://www.iwrmeg.org/>.

²⁸² USAID, *A Legal Document which Serves as the Basis for the New Egyptian Water Law*, 2012, available at www.wprregypt.com/VirtualFileSystem/VirtualFileSystem.ashx?path=File+System%2fReports%2fDeliverables%2fWPRR+Report+on+Legal+Basis+for+Water+Law_FINAL.pdf.

²⁸³ Roaf, 2006, p. 199.

²⁸⁴ GIZ, Strategic Advisory Services to the MWRI and Management Training to Egypt's Water Sector, available at <http://www.giz.de/Themen/en/7730.htm> and <http://www.giz.de/themen/en/23065.htm>.

²⁸⁵ EMWIS, available at <http://www.emwis-eg.org/>.

²⁸⁶ Cairo Climate Talks, available at <http://www.cairoclimatetalks.net/events/growing-thirst-sustainable-water-solutions-egypt>.

²⁸⁷ Report of the Arab Forum for Environment and Development, *Arab Environment Water – Sustainable Management of a Scarce Resource*, 2010, available at <http://www.afedonline.org/Report2010/main.asp>.

²⁸⁸ AFED website “About Us”, available at <http://www.afedonline.org/en/>.

cooperation apply the HRBA. Her analysis reveals substantial shortcomings, which are linked to the fact that the human right to water and sanitation and the entire international human rights regime were “generally not seen as relevant to development activities and actual on-the-ground work²⁸⁹.” Furthermore she criticises that existing approaches were simply relabelled as HRBAs and often the term “rights-based approaches” was used loosely and variably, and typically associated with vague procedural principles. According to Russell, water practitioners were often uncomfortable discussing human rights for two main reasons: first this appeared to them as an issue from “a legal or specialised field, where technical staff were not comfortable” and second, many of them were hesitant to discuss the subject “because of the politics associated with using rights or right to water language in the sector²⁹⁰.”

In this respect there is a certain overlap between the criticism expressed towards the Egyptian government where officials are often either not aware of the existence of the human right to water and sanitation and the HRBA or if they are aware they use the terms interchangeably. One reason for this neglect might also be seen in the interdisciplinary nature of the water and sanitation sector. Much of the staff concerned with water and sanitation issues comes from an engineering background and therefore often lacks the legal knowledge to grasp these admittedly often complex considerations. Furthermore, the relative novelty of the human right to water and sanitation in particular, but even the first attempts to mainstream human rights in development cooperation which date back to 1997 must also be taken into consideration. Besides development cooperation other important stakeholders, which are hugely important in realising the empowerment of right-holders, are civil society organisations (CSOs).

4.3. CIVIL SOCIETY AND THE NEW LAW ON ASSOCIATIONS

The Special Rapporteur stresses the crucial role CSOs play in organising communities living in slums, and raising awareness about their rights. She suggests that the government should partner with such

²⁸⁹ Russel, 2010, p. 15.

²⁹⁰ Ibidem, p. 7.

organisations to better reach this population²⁹¹. She also criticises that CSOs have little information about the development of the new water and sanitation act²⁹².

Al Jayyousi points at the potential of civil society in the aftermath of the uprisings: “[i]n case the democratic processes in MENA regions are enhanced to ensure accountability and transparency, civil society could contribute in several ways to the realisation of the right to water and water as a human right²⁹³.” In this sense Gupta, Ahlers and Ahmed advance five arguments why NGOs within social movements act as drivers behind implementation²⁹⁴. First, they have been instrumental in placing the human right to water back on the political agenda; second, NGOs try to ensure that the human right to water is not co-opted and redefined by development banks and the water industry; third, there is a growing critical mass of multinational civil society actors working in this field from the local through to the global level²⁹⁵; fourth, as explained in the example of Ezbet El Haggana, the implementation of a legal right is not automatic or self-enforcing and civil society plays an important supportive role; and fifth, NGOs can also engage to provide services in cooperation with other actors as they often have intimate knowledge of how access and control over water is locally constructed²⁹⁶.

These considerations, promising as they are, are currently threatened by discussions over a controversial draft law on associations and a recent trial that sentenced civil society representatives to prison. The reactions both from within and outside Egypt speak a clear language condemning these measures. The UN High Commissioner for Human Rights²⁹⁷ and

²⁹¹ UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report of the Mission to Egypt, 2010, p. 8.

²⁹² *Ibidem*, p. 17.

²⁹³ Al Jayyousi, 2007, p. 337.

²⁹⁴ Gupta, Ahlers & Ahmed, 2010, p. 303.

²⁹⁵ Gupta, Ahlers & Ahmed, 2010, p. 303, give a detailed account of civil society actors active on the human right to water. Egyptian NGOs active in this field include: Al-Shebab, information available at <http://www.shehabinstitution.org/>; ECESR, information available at: <http://ecesr.com/en/>; EOHR, information available at <http://en.eohr.org/2009/12/17/the-egyptian-organization-for-human-rights-issued-a-qualitative-report-entitled/>; Habi Center, information available at <http://hcer.info/en/>; Maat for Peace, information available at <http://www.maatpeace.org/en/node/2677> and New Horizon, information available at <http://newhorizon-egypt.org/>.

²⁹⁶ Gupta, Ahlers & Ahmed, 2010, p. 303.

²⁹⁷ OHCHR, press release of 7 June 2013, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13424&LangID=E>.

various governments expressed their concern over these measures²⁹⁸. At present the instable situation and the flux in Egypt do not allow for further conclusions. What can be said is that civil society as a driver behind the implementation of the human right and as an important actor empowering right-holders might now be in danger of seeing its potential for change limited by restrictive legislation and adjudication.

4.4. SYNTHESIS: CHALLENGES TO THE IMPLEMENTATION OF THE HUMAN RIGHT

To conclude this chapter on water governance and management and the implementation of the human right to water and sanitation in Egypt, a synthesis of the findings will be given. It represents a discussion of the proposed policies, the NWRP, development cooperation and civil society actions. The main obstacles to the realisation of the human right to water and sanitation have been extracted from the findings above in order to give an overview of the challenges in implementing the right.

4.4.1. *Systemic Challenges*

The literature review has raised a series of recurring themes that impede progress and certain obstacles reoccur in different analyses of Egypt meaning that these are not merely subjective impressions of the Egyptian water sector but faults inherent to the system.

Concerning the Egyptian government, two primary concerns among experts can be distinguished: the inadequacy of the institutional framework and the lack of adequate legislation, public participation and transparency. The challenges concerning the institutional framework include inadequate information dissemination and communication between institutions and stakeholders, and overlapping responsibilities reflecting the limited implementation capacity endemic to the public policy domain in Egypt. The lack of adequate legislation, public participation and transparency were also identified as challenges. Especially because participation is crucial for empowering people to

²⁹⁸ Joint statement of the governments of Norway, the USA and Germany at the UN HRC, available at <http://www.genf.diplo.de/contentblob/3916646/Daten/3323091/20130611MRRBoSchumacherItem8.pdf>.

claim their rights, changes should be carried through to lower levels of organisation, and greater attention should be attributed to demand management, stakeholder participation and adoption of pro-poor strategies. Transparency, access to information and empowering WUAs are particularly important in this respect. Summarising the challenges facing the government it can be asserted that these are complex systemic shortcomings internal to the state system and in part a result of authoritarianism.

From a more international perspective, development cooperation and the HRBA have been critically reviewed. Although the HRBA was distinguished as a beneficial framework under which to implement the human right, the main challenge is to be seen in organisations considering human rights as untouchable technical, legal and often political language, which they lack the mandate in which to engage. Furthermore, terminology was used loosely, interchangeably and with considerable reluctance to the HRBA. Finally the need for more coordination between donors in the sense of the Paris Declaration on Aid Effectiveness of 2005 remains a challenge.

Finally, civil society and its potential to contribute to the realisation of the human right and act as a driver behind implementation was highlighted, the main challenge being the current threats by a controversial draft law on associations and a recent trial condemning NGO officials.

4.4.2. The Lack of Political Will

It is essential to note that none of the before-mentioned challenges can be addressed, and the human right will not be implemented, without political will. As mentioned in the introduction to this chapter, the Special Rapporteur considers the lack of political will to be the biggest barrier to the enjoyment of the right. Among scholars there is consent as to how crucial political will is: according to Arce, “the political will in partner countries to implement demand management is of utmost importance²⁹⁹” and Langford states that “in the Middle East it was more to do with political will, that there was a problem around enforcement,

²⁹⁹ Arce, 2006, p. 171.

a lack of strong civil society and extreme levels of discrimination³⁰⁰.” In 2010 Rached and Brooks were still sceptic, highlighting that there was “only limited evidence of the political will to ensure that the institutional change is as thorough as it needs to be³⁰¹.” AFED also sees the water and sanitation crisis to be linked to insufficient political will: “[i]t is a crisis of management: fragmented institutions, inadequate policies and deficient legal systems, insufficient funding for water supply and pollution control, and shortage of political will³⁰².”

Obviously political will is a dimension that is difficult to measure and even if stakeholders were to be interviewed, it is unsure whether they would admit that they lack the political will to implement the right to water. The problem is to be seen in rhetoric. The announced changes might simply be an iteration of policies by the government. While intentions are expressed with strong rhetoric, the question remains how much of the promised change actually occurs. Some might question why political will should now appear as the overall situation in Egypt has not changed profoundly and some scholars claim that there was no revolution but simply a popular uprising and regime decapitation that use rhetoric only to ease the demands from the street. How sincere acclamations of political will to reform have actually been cannot be assessed at present and remains subject to future research and retrospective analysis.

4.4.3. *Research on the Human Right to Water and Sanitation in Egypt*

The research undertaken for this thesis has shown that there is an evident lack of research concerning the human right to water and sanitation in Egypt. The lack of scholarly literature concerned expressly with this topic is presumably linked to the political context in Egypt and the relative absence of human rights discourse under the authoritarian system dominant in Egypt for the past 60 years. Considered in conjunction with Risse’s spiral model, tactic concessions coupled with a repressive coercive state system have lead to what scholars refer to as a widespread denial, ignorance and neglect of the human right to water and sanitation as such. This said, it should be kept in mind that there has

³⁰⁰ Langford, 2006, p. 200.

³⁰¹ Rached & Brooks, 2010, p. 152.

³⁰² AFED, 2010, p. xi.

generally been a neglect of this particular human right by many states such as the UK or the USA and the consensus of the mere existence of the right has only recently emerged over the past decade since the adoption of General Comment No. 15 and the UNGA and HRC resolutions.

So far scholars have only focussed on the human right to water and sanitation in a broader context either addressing the topic more generally for the Middle East³⁰³ or with particular regard to other cases such as the conflict between Israel and Palestine³⁰⁴. At present there is no single document apart from the Special Rapporteur's report of her mission to Egypt of 2009, an article by Abdel-Gawad³⁰⁵, and some scattered reports by NGOs that deal with the human right to water and sanitation in Egypt specifically. Abdel-Gawad, speaking at the Second Arab Water Forum in November 2011, stressed the relevance of enhancing research, knowledge and information exchange through networking of the centres of excellence of the Arab region³⁰⁶.

Nearly all government documents as well as most agency documents on Egypt neglect the human right to water and sanitation entirely, let alone in the context of the uprisings. Nevertheless, human rights-related issues are still addressed. Many human rights principles such as participation, transparency and accountability are mentioned throughout the literature reviewed for this study, they are, however, rarely addressed from a specific human rights perspective. At present the Special Rapporteur's mission report represents the most detailed account of the situation of the human right to water and sanitation in Egypt, the only lacuna being that it was issued in 2010. It could therefore not take into account the fundamental change of premises on which the legal framework and policies can now be built. This is one of the central arguments the present study attempts to convey: until now there was practically no scope to include human rights considerations in neither the legal framework nor the planning of development projects. Under a new government, which will hopefully address citizens' demands, the much-needed reforms could now be adopted.

³⁰³ Biswas, Rached & Tortajada, 2008.

³⁰⁴ Abu-Eid & Klawitter in Biswas, Rached & Tortajada, 2008, pp. 77-119.

³⁰⁵ Abdel-Gawad in Biswas, Rached & Tortajada, 2008, pp. 133-146.

³⁰⁶ Shaden Abdel-Gawad, "Enhancing Research, Knowledge and Information Exchange through Networking of the Centres of Excellence in the Arab Region", Presentation at the Second Arab Water Forum, 2011, available at http://www.arabwatercouncil.org/AWF/Downloads/Sessions/Topic8/P1-1_Prof-Shaden.pdf.

5.

CONCLUSION

The intention set out at the beginning of the study was to combine three disciplinary approaches under the water – human rights – governance nexus. The approach has been to analyse the Egyptian context in Chapters 2 and 3 including the water and sanitation crisis and its human rights implications. These findings were then linked in Chapter 4 and set in correlation with the implementation of the human right to water, water governance and management.

Chapter 2 highlighted the urgency of addressing the water and sanitation crisis, revealing that these grievances led to an abrogation of the social contract and the “authoritarian bargain,” thus feeding into the uprisings. This correlation between authoritarianism, the cementing of inequalities through an inequitable political economy and the resulting socio-economic grievances resulting in part also from the water and sanitation crisis, constitutes the essence of the findings of Chapter 2.

In response to these inequalities prevalent in Egypt before the uprisings, Chapter 3 assessed the human rights framework as an adequate mechanism to re-establish equality, the foundation of the social contract. Its distinguishing legal characteristic consists in the state’s obligations and the emphasis of the empowerment of right-holders towards the duty-bearer, the state. The legal status quo in Egypt was assessed and the formal acknowledgements of the right, its inclusion in the new constitution, but also lacunas in Egypt’s human rights record were detected through the interpretation of constitutional stipulations and the application of Risse’s “spiral model.”

Chapter 4 fulfilled the function of a baseline study assessing how the human rights framework, that aims at addressing the previously detected grievances and needs over water and sanitation, was implemented in the governance and management of water and sanitation in Egypt. The

assessment raised a number of challenges that have to be addressed if the human right to water and sanitation is to be implemented effectively.

This study argues that transition has opened a window of opportunity in a unique socio-political situation in which governance structures are under review. Previous explanations that the implementation of a human rights framework was not possible under authoritarianism are no longer valid as the transition has now paved the way for a reassessment of the status quo both in terms of human rights and development approaches. This flows not only from Egypt's own commitments expressed through the ratification of key human rights instruments, rather, all stakeholders owe this to the people of Egypt who increasingly expressed their socio-economic grievances over the last decade and in particular during the uprisings. Access to safe drinking water and adequate sanitation should stand at the beginning of the list of changes. It is the most basic and essential need for survival and constitutes the precondition for the realisation of all further freedoms and liberties demanded during the uprisings. This "key right" should therefore be addressed with the highest priority if the growing water and sanitation crisis is to be confronted.

The task of integrating the legal human rights framework falls upon the government through its ministries, which have already begun to restructure what many experts consider to be an inadequate institutional setup. Related shortcomings such as the lack of information, transparency and participation need to be confronted and a spirit of accountability should be integrated, because "accountability to citizens and users of water services will be key for allowing countries to act when opportunities arise and to pass reforms that lead to real improvements in water resources and services³⁰⁷."

Integrating the human rights-based approach to development is the duty of international organisations, donors and development agencies, which should be inclined to incorporate the framework and principles they formally already have adhered to following upon the concerted UN efforts to mainstream human rights in all agency work. The challenge for development cooperation and water and sanitation experts remains in the aspiration of the human rights framework as an integral cornerstone to their work. Scepticism towards the framework as a concept emanating from an alien legal sphere needs to be overcome

³⁰⁷ World Bank, 2007, p. xiv.

and this specific task is achievable through cross-sector human rights education and awareness raising among development specialists. Furthermore, international agencies need to live up to the 2005 Paris Declaration on Aid Effectiveness and overcome the issues arising from the lack of coordination.

Civil society, it has been argued, plays an essential role in empowering vulnerable populations, as the example of Ezbet El Haggana has shown. Recent developments restricting CSO efforts are alarming and threaten to discourage this important stakeholder at the intersection between the two previously-mentioned stakeholders, the government and international agencies. Civil society is indispensable for the empowerment of right-holders and must stand at the centre of all implementation measures in order to ensure participation.

It is undoubtedly an extremely challenging undertaking to cope with the highly complex multidimensional water and sanitation crisis and the flux, considering that both internal and external instability created by the uprisings increase the number of challenges. This is precisely why concerted efforts following inclusive human rights principles such as participation, accountability and transparency are the adequate means to unleash the potential of reform in the interest of all citizens. With the financial support and technical expertise of coordinated development cooperation that sets aside aspirations to implement vain development planning, the wrongdoings of the exclusively market economy oriented agendas that culminated after 2004 and neglected vulnerable poor populations in informal settlements and rural areas can be undone.

As this study has shown, the shortcomings are known and solutions have been advanced. What is needed most now is the political will to implement what has already been formally acknowledged and promised in political rhetoric, and to begin embarking upon systemic change, beginning with the most basic of all needs: access to water. This task is by no means to be underestimated and talk of a “Herculean” task is no exaggeration, however, the dynamic unleashed by the uprisings has been exemplary of the potential to change. The human rights framework can serve as a facilitator in this undertaking as it provides coherent and appropriate principles. The bottom-up efforts made by civil society in supporting vulnerable groups to claim their right to water and sanitation have to be backed by policy measures and an adequate institutional and legal framework.

On a more sober, perhaps realistic and certainly less optimistic note it must be said that until now, recent as the uprisings and installation of a new government may be, only little progress can be witnessed. Information is still scarce and research is hindered because of the non-disclosure of relevant documents. It can only be hoped that this is because stakeholders are redesigning and adopting the water and sanitation institutions and framework and not because the same untransparent procedures are maintained.

Finally, it must be acknowledged that this study comes at a very early moment in time considering that there have not even been parliamentary elections and Egypt has not yet come to a rest. It is therefore inherent to this study that only limited conclusions can be drawn and uncertainty prevails. Nevertheless, it is precisely this vacuum and flux which demand particular attention and make this study relevant in the sense that it can contribute by indicating possible paths how to improve the situation of the more than 40 per cent of the Egyptian population that live in poverty. Their grievances result from the bandwidth of issues relating to unsafe drinking water and inadequate sanitation facilities, be it diarrhoea-related illnesses induced through unsafe water, infant and maternal mortality, not being able to attend school or work because water needs to be collected, or simply the burden of having to pay up to 20 times as much for water from private distributors than citizens that are connected to the system.

The initial question whether there has been real change in Egypt since the uprisings comes at an early stage. Both President Morsi and Prime Minister Qandil have expressed concerns over the water and sanitation crisis. They have promised to attribute high priority to the issue and with the restructuring of the MWRI and the adoption of a new water law in late 2012 first measures are on the way, illustrating the significance of water and sanitation solutions in Egypt. From this perspective the answer must be yes, there has been change. Whether this change is “real” or sustainable is the more significant question that remains to be answered. Egypt has acknowledged the right in legal terms and from the assessment of recent events there also seems to be political will. Most importantly the implementation of the promised measures needs to take place now, more than ever before.

With regard to the future, the transition represents a unique opportunity to include the human right to water and sanitation in all strategies and policies in Egypt’s water and sanitation framework, yet the outcome

is unclear. Considering that this thesis deals with a contemporary topical subject it is inevitable that such uncertainty surrounds the topic. So far the picture is blurred and considering the instability surrounding the super-structure of Egyptian politics at present it is even more difficult to make an assessment.

The current trends against civil society and the distraction of attention towards the upstream construction of the Renaissance Dam in Ethiopia, however, are alarming events as they aggravate the conditions for an effective procedure to tackle the complex water and sanitation crisis, which is additionally increased by environmental threats deriving from climate change and unsustainable treatment of the already scarce water resources. Scholars warn that the Muslim Brotherhood seems to lack any transformative vision for society and that they are falling back to the free-market paradigms that sparked the uprisings. Most expert statements leave little room for hope that the current leadership has the necessary political will which would make room for a new social contract with enhanced participation, transparency and accountability. Besides these struggles of the government to deliver new ideas, there are fears over strong and deep-seated counter-revolutionary forces of the old guard that are still entrenched in the state security apparatus and defend powerful business interests that remain central in the persistence of neoliberal economic policy driven by international financial institutions.

As this study is being finalised, Egypt is witnessing renewed turmoil and instability resulting from the revolts of 30 June 2013. Difficult and premature as it may seem to draw any conclusions from these events, one assessment has not lost its pertinence: the Egyptian peoples' struggle over socio-economic grievances persists. Bearing this in mind, this study only gains in relevance as it addresses an integral issue at the heart of the revolts erupting in Egypt in these turbulent times. Unless the preconditions for the implementation of the human right to water and sanitation advocated in this study are achieved, the prospects that the needs of the most vulnerable people in Egyptian society are met remain uncertain.

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ANNEXES

The following documents have been attached to this study because of their exceptional relevance to the study topic. These are official documents, which can be consulted on the Internet. They have been reproduced here for quick reference and in order to facilitate the lecture of the study.

I. SELECTED ARTICLES OF THE CONSTITUTION OF 25 DECEMBER 2012

*Part I: State and Society*³⁰⁸
Chapter Three: Economic Principles

Article 19

The Nile River and water resources are a national wealth. The State is committed to maintaining and developing them, and preventing abuse. The use of such resources shall be regulated by law.

Part II: Rights and Freedoms
Chapter Three: Economic and Social Rights

Article 67

Adequate housing, clean water and healthy food are given rights.

The state adopts a national housing plan, its basis in social justice, the promotion of independent initiatives and housing cooperatives, and the regulation of the use of national territory for the purposes of construction, in accordance with public interest and with the rights of future generations.

³⁰⁸ Constitution of the Arab Republic of Egypt, 25 December 2012, English translation available at <http://worldcrunch.com/world-affairs/egypt-039-s-new-constitution-in-its-entirety-in-english/egyptian-constitution-egypt-constitution-mohammed-morsi-morsy-/c1s10493/>.

Article 69

All individuals have the right to a healthy environment. The State shall safeguard the environment against pollution, and promote the use of natural resources in a manner that prevents damage to the environment and preserves the rights of future generations.

II. VOTING RECORD OF EGYPT ON UN GENERAL ASSEMBLY RESOLUTION 64/292

Voting in favour of UNGA Resolution 64/292 of 2010, Egypt considered the human right to water and sanitation as existing under international law. The voting record on the resolution states the following: “[t]he representative of Egypt said he had voted in favour based on the understanding that the resolution did not create new rights or sub-categories of rights, other than those contained in internationally agreed human rights instruments. States had the obligation of ensuring the full enjoyment of basic human rights, he said, adding that doing so depended on the varying capacities of States, and that such a task was not expected to be achieved overnight. Acknowledging the need to set aside controversial questions of international water sources and transboundary water, he expressed regret that the resolution had been put to a vote. The Government of Egypt was mindful that certain human rights obligations relating to access to safe water and sanitation had yet to be studied. Hopefully, the resolution would bring such questions to the fore and add impetus to the Geneva process, with a view to achieving consensus³⁰⁹.”

³⁰⁹ UN press release of 28 July 2010, “UN General Assembly adopts resolution recognizing access to clean water and sanitation as human a right, by recorded vote of 122 in favour, 0 against, 41 abstentions”, available at <http://www.un.org/News/Press/docs/2010/ga10967.doc.htm>.



General Assembly

Distr.: General
3 August 2010

Sixty-fourth session
Agenda item 48

Resolution adopted by the General Assembly

[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

¹ *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992*, vol. I, *Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex II.

² *Report of the United Nations Conference on Human Settlements (Habitat II), Istanbul, 3–14 June 1996* (United Nations publication, Sales No. E.97.IV.6), chap. I, resolution 1, annex II.

³ *Report of the United Nations Water Conference, Mar del Plata, 14–25 March 1977* (United Nations publication, Sales No. E.77.II.A.12), chap. I.

⁴ *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992*, vol. I, *Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex I.

⁵ Resolution 217 A (III).

⁶ See resolution 2200 A (XXI), annex.

⁷ United Nations, *Treaty Series*, vol. 660, No. 9464.

⁸ *Ibid.*, vol. 1249, No. 20378.

⁹ *Ibid.*, vol. 1577, No. 27531.

Convention on the Rights of Persons with Disabilities¹⁰ and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949,¹¹

Recalling further all previous resolutions of the Human Rights Council on human rights and access to safe drinking water and sanitation, including Council resolutions 7/22 of 28 March 2008¹² and 12/8 of 1 October 2009,¹³ related to the human right to safe and clean drinking water and sanitation, general comment No. 15 (2002) of the Committee on Economic, Social and Cultural Rights, on the right to water (articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)¹⁴ and the report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments,¹⁵ as well as the report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation,¹⁶

Deeply concerned that approximately 884 million people lack access to safe drinking water and that more than 2.6 billion do not have access to basic sanitation, and alarmed that approximately 1.5 million children under 5 years of age die and 443 million school days are lost each year as a result of water- and sanitation-related diseases,

Acknowledging the importance of equitable access to safe and clean drinking water and sanitation as an integral component of the realization of all human rights,

Reaffirming the responsibility of States for the promotion and protection of all human rights, which are universal, indivisible, interdependent and interrelated, and must be treated globally, in a fair and equal manner, on the same footing and with the same emphasis,

Bearing in mind the commitment made by the international community to fully achieve the Millennium Development Goals, and stressing, in that context, the resolve of Heads of State and Government, as expressed in the United Nations Millennium Declaration,¹⁷ to halve, by 2015, the proportion of people who are unable to reach or afford safe drinking water and, as agreed in the Plan of Implementation of the World Summit on Sustainable Development (“Johannesburg Plan of Implementation”),¹⁸ to halve the proportion of people without access to basic sanitation,

1. *Recognizes* the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights;

¹⁰ Resolution 61/106, annex I.

¹¹ United Nations, *Treaty Series*, vol. 75, No. 973.

¹² See *Official Records of the General Assembly, Sixty-third Session, Supplement No. 53 (A/63/53)*, chap. II.

¹³ See A/HRC/12/50 and Corr.1, part one, chap. I.

¹⁴ See *Official Records of the Economic and Social Council, 2003, Supplement No. 2 (E/2003/22)*, annex IV.

¹⁵ A/HRC/6/3.

¹⁶ A/HRC/12/24.

¹⁷ See resolution 55/2.

¹⁸ See *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August–4 September 2002* (United Nations publication, Sales No. E.03.II.A.1 and corrigendum), chap. 1, resolution 2, annex.

2. *Calls upon* States and international organizations to provide financial resources, capacity-building and technology transfer, through international assistance and cooperation, in particular to developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all;

3. *Welcomes* the decision by the Human Rights Council to request that the independent expert on human rights obligations related to access to safe drinking water and sanitation submit an annual report to the General Assembly,¹³ and encourages her to continue working on all aspects of her mandate and, in consultation with all relevant United Nations agencies, funds and programmes, to include in her report to the Assembly, at its sixty-sixth session, the principal challenges related to the realization of the human right to safe and clean drinking water and sanitation and their impact on the achievement of the Millennium Development Goals.

*108th plenary meeting
28 July 2010*

IV. UN HUMAN RIGHTS COUNCIL RESOLUTION 15/9

United Nations

A/HRC/RES/15/9



General Assembly

Distr.: General
6 October 2010

Original: English

Human Rights Council

Fifteenth session

Agenda item 3

**Promotion and protection of all human rights, civil
political, economic, social and cultural rights,
including the right to development**

Resolution adopted by the Human Rights Council*

15/9

**Human rights and access to safe drinking water and
sanitation**

The Human Rights Council,

Reaffirming all previous resolutions of the Council on human rights and access to safe drinking water and sanitation, in particular resolution 7/22 of 28 March 2008 and resolution 12/8 of 1 October 2009,

Recalling the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities,

Recalling also relevant provisions of declarations and programmes with regard to access to safe drinking water and sanitation adopted by major United Nations conferences and summits, and by the General Assembly at its special sessions and during follow-up meetings, inter alia, the Mar del Plata Action Plan on Water and Development and Administration, adopted at the United Nations Water Conference in March 1977, Agenda 21 and the Rio Declaration on Environment and Development, adopted at the United Nations Conference on Environment and Development in June 1992, and the Habitat Agenda, adopted at the second United Nations Conference on Human Settlements in 1996, Assembly resolutions 54/175 of 17 December 1999 on the right to development, and 58/271 of 23 December 2003 proclaiming the International Decade for Action, "Water for Life" (2005-2015),

* The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its fifteenth session (A/HRC/15/60), chap. I.

Noting with interest regional commitments and initiatives promoting the further realization of human rights obligations related to access to safe drinking water and sanitation, including the Protocol on Water and Health, adopted by the Economic Commission for Europe in 1999, the European Charter on Water Resources, adopted by the Council of Europe in 2001, the Abuja Declaration, adopted at the first Africa-South America summit in 2006, the message from Beppu, adopted at the first Asian-Pacific Water Summit in 2007, the Delhi Declaration, adopted at the third South Asian Conference on Sanitation in 2008, and the Sharm el-Sheikh Final Document, adopted at the Fifteenth Summit Conference of Heads of State and Government of the Movement of Non-Aligned Countries in 2009,

Bearing in mind the commitments made by the international community to achieve fully the Millennium Development Goals, and stressing, in that context, the resolve of Heads of State and Government, as expressed in the United Nations Millennium Declaration, to halve, by 2015, the proportion of people unable to reach or afford safe drinking water, and to halve the proportion of people without access to basic sanitation, as agreed in the Plan of Implementation of the World Summit on Sustainable Development (“Johannesburg Plan of Implementation”),

Deeply concerned that approximately 884 million people lack access to improved water sources as defined by the World Health Organization and the United Nations Children’s Fund in their 2010 Joint Monitoring Programme report, and that over 2.6 billion people do not have access to basic sanitation, and alarmed that approximately 1.5 million children under 5 years of age die and 443 million school days are lost every year as a result of water and sanitation-related diseases,

Reaffirming the fact that international human rights law instruments, including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities entail obligations for States parties in relation to access to safe drinking water and sanitation,

Recalling resolution 8/7 of 18 June 2008, in which the Council established the mandate of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises,

1. *Welcomes* the work of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, including the progress in collecting good practices for her compendium,¹ and the comprehensive, transparent and inclusive consultations conducted with relevant and interested actors from all regions for her thematic reports, as well as the undertaking of country missions;

2. *Recalls* General Assembly resolution 64/292 of 28 July 2010, in which the Assembly recognized the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights;

3. *Affirms* that the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity;

4. *Calls upon* the independent expert to continue to pursue her work regarding all aspects of her mandate, including to clarify further the content of human rights obligations, including non-discrimination obligations in relation to safe drinking water and

¹ A/HRC/15/31/Add.1.

sanitation, in coordination with States, United Nations bodies and agencies, and relevant stakeholders;

5. *Acknowledges with appreciation* the second annual report of the independent expert² and takes note with interest of her recommendations and clarifications with regard to both the human rights obligations of States and the human rights responsibilities of non-State service providers in the delivery of water and sanitation services;

6. *Reaffirms* that States have the primary responsibility to ensure the full realization of all human rights, and that the delegation of the delivery of safe drinking water and/or sanitation services to a third party does not exempt the State from its human rights obligations;

7. *Recognizes* that States, in accordance with their laws, regulations and public policies, may opt to involve non-State actors in the provision of safe drinking water and sanitation services and, regardless of the form of provision, should ensure transparency, non-discrimination and accountability;

8. *Calls upon* States:

(a) To develop appropriate tools and mechanisms, which may encompass legislation, comprehensive plans and strategies for the sector, including financial ones, to achieve progressively the full realization of human rights obligations related to access to safe drinking water and sanitation, including in currently unserved and underserved areas;

(b) To ensure full transparency of the planning and implementation process in the provision of safe drinking water and sanitation and the active, free and meaningful participation of the concerned local communities and relevant stakeholders therein;

(c) To pay particular attention to persons belonging to vulnerable and marginalized groups, including by respecting the principles of non-discrimination and gender equality;

(d) To integrate human rights into impact assessments throughout the process of ensuring service provision, as appropriate;

(e) To adopt and implement effective regulatory frameworks for all service providers in line with the human rights obligations of States, and to allow public regulatory institutions of sufficient capacity to monitor and enforce those regulations;

(f) To ensure effective remedies for human rights violations by putting in place accessible accountability mechanisms at the appropriate level;

9. *Recalls* that States should ensure that non-State service providers:

(a) Fulfil their human rights responsibilities throughout their work processes, including by engaging proactively with the State and stakeholders to detect potential human rights abuses and find solutions to address them;

(b) Contribute to the provision of a regular supply of safe, acceptable, accessible and affordable drinking water and sanitation services of good quality and sufficient quantity;

(c) Integrate human rights into impact assessments as appropriate, in order to identify and help address human rights challenges;

² A/HRC/15/31.

A/HRC/RES/15/9

(d) Develop effective organizational-level grievance mechanisms for users, and refrain from obstructing access to State-based accountability mechanisms;

10. *Stresses* the important role of the international cooperation and technical assistance provided by States, specialized agencies of the United Nations system, international and development partners as well as by donor agencies, in particular in the timely achievement of the relevant Millennium Development Goals, and urges development partners to adopt a human rights-based approach when designing and implementing development programmes in support of national initiatives and action plans related to the enjoyment of access to safe drinking water and sanitation;

11. *Requests* the independent expert to continue to report, on an annual basis, to the Council and to submit an annual report to the General Assembly;

12. *Requests* the United Nations High Commissioner for Human Rights to continue to ensure that the independent expert receives the resources necessary to enable her to discharge her mandate fully;

13. *Decides* to continue its consideration of this matter under the same agenda item and in accordance with its programme of work.

*31st meeting
30 September 2010
[Adopted without a vote.]*

V. GENERAL COMMENT NO. 15



OFFICE OF THE HIGH COMMISSIONER
FOR HUMAN RIGHTS



**General Comment No. 15: The Right to Water
(Arts. 11 and 12 of the Covenant)**

*Adopted at the Twenty-ninth Session of the Committee on Economic,
Social and Cultural Rights, on 20 January 2003
(Contained in Document E/C.12/2002/11)*

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 in human dignity. It is a prerequisite for the realization of other human rights. The Committee has been confronted continually with the widespread denial of the right to water in developing as well as developed countries. Over 1 billion persons lack access to a 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 water.¹ The continuing contamination, depletion and unequal distribution of water is exacerbating existing poverty. States parties have to adopt effective measures to realize, without discrimination, the right to water, as set out in this general comment.

The legal bases of the right to water

2. The 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.

3. Article 11, paragraph 1, of the Covenant specifies a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living “including adequate food, clothing and housing”. The use of the word “including” indicates that this catalogue of rights was not intended to be exhaustive. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival. Moreover, the Committee has previously recognized that water is a human right contained in article 11, paragraph 1, (see

¹ In 2000, the World Health Organization estimated that 1.1 billion persons did not have access to an improved water supply (80 per cent of them rural dwellers) able to provide at least 20 litres of safe water per person a day; 2.4 billion persons were estimated to be without sanitation. (See WHO, *The Global Water Supply and Sanitation Assessment 2000*, Geneva, 2000, p. 1.) Further, 2.3 billion persons each year suffer from diseases linked to water: see United Nations, Commission on Sustainable Development, *Comprehensive Assessment of the Freshwater Resources of the World*, New York, 1997, p. 39.



general comment No. 6 (1995)).² The right to water is also inextricably related to the right to the highest attainable standard of health (art. 12, para. 1)³ and the rights to adequate housing and adequate food (art. 11, para. 1).⁴ The 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.

4. The right to water has been recognized in a wide range of international documents, including treaties, declarations and other standards.⁵ For instance, Article 14, paragraph 2, of the Convention on the Elimination of All Forms of Discrimination Against Women stipulates that States parties shall ensure to women the right to “enjoy adequate living conditions, particularly in relation to [...] water supply”. Article 24, paragraph 2, of the Convention on the Rights of the Child requires States parties to combat disease and malnutrition “through the provision of adequate nutritious foods and clean drinking water”.

5. The right to water has been consistently addressed by the Committee during its consideration of States parties’ reports, in accordance with its revised general

² See paragraphs 5 and 32 of the Committee’s general comment No. 6 (1995) on the economic, social and cultural rights of older persons.

³ See general comment No. 14 (2000) on the right to the highest attainable standard of health, paragraphs 11, 12 (a), (b) and (d), 15, 34, 36, 40, 43 and 51.

⁴ See paragraph 8 (b) of general comment No. 4 (1991). See also the report by Commission on Human Rights’ Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr. Miloon Kothari (E/CN.4/2002/59), submitted in accordance with Commission resolution 2001/28 of 20 April 2001. In relation to the right to adequate food, see the report by the Special Rapporteur of the Commission on the right to food, Mr. Jean Ziegler (E/CN.4/2002/58), submitted in accordance with Commission resolution 2001/25 of 20 April 2001.

⁵ See article 14, paragraph 2 (h), Convention on the Elimination of All Forms of Discrimination Against Women; article 24, paragraph 2 (c), Convention on the Rights of the Child; articles 20, 26, 29 and 46 of the Geneva Convention relative to the Treatment of Prisoners of War, of 1949; articles 85, 89 and 127 of the Geneva Convention relative to the Treatment of Civilian Persons in Time of War, of 1949; articles 54 and 55 of Additional Protocol I thereto of 1977; articles 5 and 14 of Additional Protocol II of 1977; preamble, Mar Del Plata Action Plan of the United Nations Water Conference; see paragraph 18.47 of Agenda 21, *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (A/CONF.151/26/Rev.1 (Vol. I and Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1)) (United Nations publication, Sales No. E.93.I.8), vol. I: *Resolutions adopted by the Conference*, resolution 1, annex II, Principle No. 3, The Dublin Statement on Water and Sustainable Development, International Conference on Water and the Environment (A/CONF.151/PC/112); Principle No. 2, Programme of Action, *Report of the United Nations International Conference on Population and Development, Cairo, 5-13 September 1994* (United Nations publication, Sales No. E.95.XIII.18), chap. I, resolution 1, annex; paragraphs 5 and 19, recommendation (2001) 14 of the Committee of Ministers to Member States on the European Charter on Water Resources; resolution 2002/6 of the United Nations Sub-Commission on the Promotion and Protection of Human Rights on the promotion of the realization of the right to drinking water. See also the report on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation (E/CN.4/Sub.2/2002/10) submitted by the Special Rapporteur of the Sub-Commission on the right to drinking water supply and sanitation, Mr. El Hadji Guissé.



OFFICE OF THE HIGH COMMISSIONER
FOR HUMAN RIGHTS



guidelines regarding the form and content of reports to be submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, and its general comments.

6. Water is required for a range of different purposes, besides personal and domestic uses, to realize many of the Covenant rights. For instance, water is necessary to produce food (right to adequate food) and ensure environmental hygiene (right to health). Water is essential for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take part in cultural life). Nevertheless, priority in the allocation of water must be given to the right to water for personal and domestic uses. Priority should also be given to the water resources required to prevent starvation and disease, as well as water required to meet the core obligations of each of the Covenant rights.⁶

Water and Covenant rights

7. The Committee notes the importance of ensuring sustainable access to water resources for agriculture to realize the right to adequate food (see general comment No. 12 (1999)).⁷ Attention should be given to ensuring that disadvantaged and marginalized farmers, including women farmers, have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology. Taking note of the duty in article 1, paragraph 2, of the Covenant, which provides that a people may not “be deprived of its means of subsistence”, States parties should ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples.⁸

8. Environmental hygiene, as an aspect of the right to health under article 12, paragraph 2 (b), of the Covenant, encompasses taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions.⁹ For example, States parties should ensure that natural water resources are protected from contamination by harmful substances and pathogenic microbes. Likewise, States parties should monitor and combat situations where aquatic ecosystems serve as a

⁶ See also World Summit on Sustainable Development, Plan of Implementation 2002, paragraph 25 (c).

⁷ This relates to both *availability* and to *accessibility* of the right to adequate food (see general comment No. 12 (1999), paragraphs 12 and 13).

⁸ See also the Statement of Understanding accompanying the United Nations Convention on the Law of Non-Navigational Uses of Watercourses (A/51/869 of 11 April 1997), which declared that, in determining vital human needs in the event of conflicts over the use of watercourses “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”.

⁹ See also paragraph 15, general comment No. 14.



habitat for vectors of diseases wherever they pose a risk to human living environments.¹⁰

9. With a view to assisting States parties' implementation of the Covenant and the fulfilment of their reporting obligations, this general comment focuses in Part II on the normative content of the right to water in articles 11, paragraph 1, and 12, on States parties' obligations (Part III), on violations (Part IV) and on implementation at the national level (Part V), while the obligations of actors other than States parties are addressed in Part VI.

II. Normative content of the right to water

10. The right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.

11. The elements of the right to water must be *adequate* for human dignity, life and health, in accordance with articles 11, paragraph 1, and 12. The adequacy of water should not be interpreted narrowly, by mere reference to volumetric quantities and technologies. Water should be treated as a social and cultural good, and not primarily as an economic good. The 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.¹¹

12. While the adequacy of water required for the right to water may vary according to different conditions, the following factors apply in all circumstances:

(a) *Availability*. The water supply for each person must be sufficient and continuous for personal and domestic uses.¹² These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.¹³ The quantity of water available for each person should correspond to

¹⁰ According to the WHO definition, vector-borne diseases include diseases transmitted by insects (malaria, filariasis, dengue, Japanese encephalitis and yellow fever), diseases for which aquatic snails serve as intermediate hosts (schistosomiasis) and zoonoses with vertebrates as reservoir hosts.

¹¹ For a definition of sustainability, see the *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992*, Declaration on Environment and Development, principles 1, 8, 9, 10, 12 and 15; and Agenda 21, in particular principles 5.3, 7.27, 7.28, 7.35, 7.39, 7.41, 18.3, 18.8, 18.35, 18.40, 18.48, 18.50, 18.59 and 18.68.

¹² "Continuous" means that the regularity of the water supply is sufficient for personal and domestic uses.

¹³ In this context, "drinking" means water for consumption through beverages and foodstuffs. "Personal sanitation" means disposal of human excreta. Water is necessary for personal sanitation where water-based means are adopted. "Food preparation" includes food hygiene and preparation of



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World Health Organization (WHO) guidelines.¹⁴ Some individuals and groups may also require additional water due to health, climate, and work conditions;

(b) *Quality.* The water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health.¹⁵ Furthermore, water should be of an acceptable colour, odour and taste for each personal or domestic use;

(c) *Accessibility.* Water and water facilities and services have to be accessible to *everyone* without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

- (i) *Physical accessibility:* Water, and adequate water facilities and services, must be within safe physical reach for all sections of the population. Sufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace.¹⁶ All water facilities and services must be of sufficient quality, culturally appropriate and sensitive to gender, life-cycle and privacy requirements. Physical security should not be threatened during access to water facilities and services;
- (ii) *Economic accessibility:* Water, and water facilities and services, must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realization of other Covenant rights;
- (iii) *Non-discrimination:* Water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds; and

foodstuffs, whether water is incorporated into, or comes into contact with, food. "Personal and household hygiene" means personal cleanliness and hygiene of the household environment.

¹⁴ See J. Bartram and G. Howard, "Domestic water quantity, service level and health: what should be the goal for water and health sectors", WHO, 2002. See also P.H. Gleick, (1996) "Basic water requirements for human activities: meeting basic needs", *Water International*, 21, pp. 83-92.

¹⁵ The Committee refers States parties to WHO, *Guidelines for drinking water quality*, 2nd edition, vols. 1-3 (Geneva, 1993) that are "intended to be used as a basis for the development of national standards that, if properly implemented, will ensure the safety of drinking water supplies through the elimination of, or reduction to a minimum concentration, of constituents of water that are known to be hazardous to health".

¹⁶ See also general comment No. 4 (1991), paragraph 8 (b), general comment No. 13 (1999), paragraph 6 (a) and general comment No. 14 (2000), paragraphs 8 (a) and (b). Household includes a permanent or semi-permanent dwelling, or a temporary halting site.



- (iv) *Information accessibility*: Accessibility includes the right to seek, receive and impart information concerning water issues.¹⁷

Special topics of broad application

Non-discrimination and equality

13. The obligation of States parties to guarantee that the right to water is enjoyed without discrimination (art. 2, para. 2), and equally between men and women (art. 3), pervades all of the Covenant obligations. The Covenant thus proscribes any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to water. The Committee recalls paragraph 12 of general comment No. 3 (1990), which states that even in times of severe resource constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes.

14. States parties should take steps to remove de facto discrimination on prohibited grounds, where individuals and groups are deprived of the means or entitlements necessary for achieving the right to water. States parties should ensure that the allocation of water resources, and investments in water, facilitate access to water for all members of society. Inappropriate resource allocation can lead to discrimination that may not be overt. For example, investments should not disproportionately favour expensive water supply services and facilities that are often accessible only to a small, privileged fraction of the population, rather than investing in services and facilities that benefit a far larger part of the population.

15. With respect to the right to water, States parties have a special obligation to provide those who do not have sufficient means with the necessary water and water facilities and to prevent any discrimination on internationally prohibited grounds in the provision of water and water services.

16. Whereas the right to water applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, indigenous peoples, refugees, asylum-seekers, internally displaced persons, migrant workers, prisoners and detainees. In particular, States parties should take steps to ensure that:

- (a) Women are not excluded from decision-making processes concerning water resources and entitlements. The disproportionate burden women bear in the collection of water should be alleviated;

¹⁷ See paragraph 48 of this general comment.



(b) Children are not prevented from enjoying their human rights due to the lack of adequate water in educational institutions and households or through the burden of collecting water. Provision of adequate water to educational institutions currently without adequate drinking water should be addressed as a matter of urgency;

(c) Rural and deprived urban areas have access to properly maintained water facilities. Access to traditional water sources in rural areas should be protected from unlawful encroachment and pollution. Deprived urban areas, including informal human settlements, and homeless persons, should have access to properly maintained water facilities. No household should be denied the right to water on the grounds of their housing or land status;

(d) Indigenous peoples' access to water resources on their ancestral lands is protected from encroachment and unlawful pollution. States should provide resources for indigenous peoples to design, deliver and control their access to water;

(e) Nomadic and traveller communities have access to adequate water at traditional and designated halting sites;

(f) Refugees, asylum-seekers, internally displaced persons and returnees have access to adequate water whether they stay in camps or in urban and rural areas. Refugees and asylum-seekers should be granted the right to water on the same conditions as granted to nationals;

(g) Prisoners and detainees are provided with sufficient and safe water for their daily individual requirements, taking note of the requirements of international humanitarian law and the United Nations Standard Minimum Rules for the Treatment of Prisoners;¹⁸ (h) Groups facing difficulties with physical access to water, such as older persons, persons with disabilities, victims of natural disasters, persons living in disaster-prone areas, and those living in arid and semi-arid areas, or on small islands are provided with safe and sufficient water.

III. States parties' obligations

General legal obligations

17. While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect. States parties have immediate obligations in relation to the right to water, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2, para. 2) and the obligation to take steps (art. 2, para. 1) towards the full realization of articles 11, paragraph 1, and 12.

¹⁸ See articles 20, 26, 29 and 46 of the third Geneva Convention of 12 August 1949; articles 85, 89 and 127 of the fourth Geneva Convention of 12 August 1949; articles 15 and 20, paragraph 2, United Nations Standard Minimum Rules for the Treatment of Prisoners, in *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.88.XIV.1).



Such steps must be deliberate, concrete and targeted towards the full realization of the right to water.

18. States parties have a constant and continuing duty under the Covenant to move as expeditiously and effectively as possible towards the full realization of the right to water. Realization of the right should be feasible and practicable, since all States parties exercise control over a broad range of resources, including water, technology, financial resources and international assistance, as with all other rights in the Covenant.

19. There is a strong presumption that retrogressive measures taken in relation to the right to water are prohibited under the Covenant.¹⁹ If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party's maximum available resources.

Specific legal obligations

20. The right to water, like any human right, imposes three types of obligations on States parties: obligations to *respect*, obligations to *protect* and obligations to *fulfil*.

(a) Obligations to respect

21. The obligation to *respect* requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to water. The obligation includes, inter alia, refraining from engaging in any practice or activity that denies or limits equal access to adequate water; arbitrarily interfering with customary or traditional arrangements for water allocation; unlawfully diminishing or polluting water, for example through waste from State-owned facilities or through use and testing of weapons; and limiting access to, or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts in violation of international humanitarian law.

22. The Committee notes that during armed conflicts, emergency situations and natural disasters, the right to water embraces those obligations by which States parties are bound under international humanitarian law.²⁰ This includes protection of objects indispensable for survival of the civilian population, including drinking water installations and supplies and irrigation works, protection of the natural environment

¹⁹ See general comment No. 3 (1990), paragraph 9.

²⁰ For the interrelationship of human rights law and humanitarian law, the Committee notes the conclusions of the International Court of Justice in *Legality of the Threat or Use of Nuclear Weapons (Request by the General Assembly)*, ICJ Reports (1996) p. 226, paragraph 25.



against widespread, long-term and severe damage and ensuring that civilians, internees and prisoners have access to adequate water.²¹

(b) *Obligations to protect*

23. The obligation to *protect* requires States parties to prevent third parties from interfering in any way with the enjoyment of the right to water. Third parties include individuals, groups, corporations and other entities as well as agents acting under their authority. The obligation includes, inter alia, adopting the necessary and effective legislative and other measures to restrain, for example, third parties from denying equal access to adequate water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems.

24. Where water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable, and physical access to sufficient, safe and acceptable water. To prevent such abuses an effective regulatory system must be established, in conformity with the Covenant and this general comment, which includes independent monitoring, genuine public participation and imposition of penalties for non-compliance.

(c) *Obligations to fulfil*

25. The obligation to *fulfil* can be disaggregated into the obligations to facilitate, promote and provide. The obligation to facilitate requires the State to take positive measures to assist individuals and communities to enjoy the right. The obligation to promote obliges the State party to take steps to ensure that there is appropriate education concerning the hygienic use of water, protection of water sources and methods to minimize water wastage. States parties are also obliged to fulfil (provide) the right when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal.

26. The obligation to fulfil requires States parties to adopt the necessary measures directed towards the full realization of the right to water. The obligation includes, inter alia, according sufficient recognition of this right within the national political and legal systems, preferably by way of legislative implementation; adopting a national water strategy and plan of action to realize this right; ensuring that water is affordable for everyone; and facilitating improved and sustainable access to water, particularly in rural and deprived urban areas.

27. To ensure that water is affordable, States parties must adopt the necessary measures that may include, inter alia: (a) use of a range of appropriate low-cost techniques and technologies; (b) appropriate pricing policies such as free or low-cost

²¹ See articles 54 and 56, Additional Protocol I to the Geneva Conventions (1977), article 54, Additional Protocol II (1977), articles 20 and 46 of the third Geneva Convention of 12 August 1949, and common article 3 of the Geneva Conventions of 12 August 1949.



water; and (c) income supplements. Any payment for water services has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with water expenses as compared to richer households.

28. States parties should adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations.²² Such strategies and programmes may include: (a) reducing depletion of water resources through unsustainable extraction, diversion and damming; (b) reducing and eliminating contamination of watersheds and water-related ecosystems by substances such as radiation, harmful chemicals and human excreta; (c) monitoring water reserves; (d) ensuring that proposed developments do not interfere with access to adequate water; (e) assessing the impacts of actions that may impinge upon water availability and natural-ecosystems watersheds, such as climate changes, desertification and increased soil salinity, deforestation and loss of biodiversity;²³ (f) increasing the efficient use of water by end-users; (g) reducing water wastage in its distribution; (h) response mechanisms for emergency situations; (i) and establishing competent institutions and appropriate institutional arrangements to carry out the strategies and programmes.

29. Ensuring that everyone has access to adequate sanitation is not only fundamental for human dignity and privacy, but is one of the principal mechanisms for protecting the quality of drinking water supplies and resources.²⁴ In accordance with the rights to health and adequate housing (see general comments Nos. 4 (1991) and 14 (2000)) States parties have an obligation to progressively extend safe sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children.

International obligations

30. Article 2, paragraph 1, and articles 11, paragraph 1, and 23 of the Covenant require that States parties recognize the essential role of international cooperation and assistance and take joint and separate action to achieve the full realization of the right to water.

²² See footnote 5 above, Agenda 21, chapters 5, 7 and 18; and the World Summit on Sustainable Development, Plan of Implementation (2002), paragraphs 6 (a), (l) and (m), 7, 36 and 38.

²³ See the Convention on Biological Diversity, the Convention to Combat Desertification, the United Nations Framework Convention on Climate Change, and subsequent protocols.

²⁴ Article 14, paragraph 2, of the Convention on the Elimination of All Forms of Discrimination Against Women stipulates States parties shall ensure to women the right to "adequate living conditions, particularly in relation to [...] sanitation". Article 24, paragraph 2, of the Convention on the Rights of the Child requires States parties "To ensure that all segments of society [...] have access to education and are supported in the use of basic knowledge of [...] the advantages of [...] hygiene and environmental sanitation."



31. To comply with their international obligations in relation to the right to water, States parties have to respect the enjoyment of the right in other countries. International cooperation requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries. Any activities undertaken within the State party's jurisdiction should not deprive another country of the ability to realize the right to water for persons in its jurisdiction.²⁵

32. States parties should refrain at all times from imposing embargoes or similar measures, that prevent the supply of water, as well as goods and services essential for securing the right to water.²⁶ Water should never be used as an instrument of political and economic pressure. In this regard, the Committee recalls its position, stated in its general comment No. 8 (1997), on the relationship between economic sanctions and respect for economic, social and cultural rights.

33. Steps should be taken by States parties to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries. Where States parties can take steps to influence other third parties to respect the right, through legal or political means, such steps should be taken in accordance with the Charter of the United Nations and applicable international law.

34. Depending on the availability of resources, States should facilitate realization of the right to water in other countries, for example through provision of water resources, financial and technical assistance, and provide the necessary aid when required. In disaster relief and emergency assistance, including assistance to refugees and displaced persons, priority should be given to Covenant rights, including the provision of adequate water. International assistance should be provided in a manner that is consistent with the Covenant and other human rights standards, and sustainable and culturally appropriate. The economically developed States parties have a special responsibility and interest to assist the poorer developing States in this regard.

35. States parties should ensure that the right to water is given due attention in international agreements and, to that end, should consider the development of further legal instruments. With regard to the conclusion and implementation of other international and regional agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to water. Agreements concerning trade liberalization should not curtail or inhibit a country's capacity to ensure the full realization of the right to water.

²⁵ The Committee notes that the United Nations Convention on the Law of Non-Navigational Uses of Watercourses requires that social and human needs be taken into account in determining the equitable utilization of watercourses, that States parties take measures to prevent significant harm being caused, and, in the event of conflict, special regard must be given to the requirements of vital human needs: see articles 5, 7 and 10 of the Convention.

²⁶ In general comment No. 8 (1997), the Committee noted the disruptive effect of sanctions upon sanitation supplies and clean drinking water, and that sanctions regimes should provide for repairs to infrastructure essential to provide clean water.



36. States parties should ensure that their actions as members of international organizations take due account of the right to water. Accordingly, States parties that are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should take steps to ensure that the right to water is taken into account in their lending policies, credit agreements and other international measures.

Core obligations

37. In general comment No. 3 (1990), the Committee confirms that States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant. In the Committee's view, at least a number of core obligations in relation to the right to water can be identified, which are of immediate effect:

- (a) To ensure access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease;
- (b) To ensure the right of access to water and water facilities and services on a non-discriminatory basis, especially for disadvantaged or marginalized groups;
- (c) To ensure physical access to water facilities or services that provide sufficient, safe and regular water; that have a sufficient number of water outlets to avoid prohibitive waiting times; and that are at a reasonable distance from the household;
- (d) To ensure personal security is not threatened when having to physically access to water;
- (e) To ensure equitable distribution of all available water facilities and services;
- (f) To adopt and implement a national water strategy and plan of action addressing the whole population; the strategy and plan of action should be devised, and periodically reviewed, on the basis of a participatory and transparent process; it should include methods, such as right to water indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all disadvantaged or marginalized groups;
- (g) To monitor the extent of the realization, or the non-realization, of the right to water;
- (h) To adopt relatively low-cost targeted water programmes to protect vulnerable and marginalized groups;
- (i) To take measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation.



38. For the avoidance of any doubt, the Committee wishes to emphasize that it is particularly incumbent on States parties, and other actors in a position to assist, to provide international assistance and cooperation, especially economic and technical which enables developing countries to fulfil their core obligations indicated in paragraph 37 above.

IV. Violations

39. When the normative content of the right to water (see Part II) is applied to the obligations of States parties (Part III), a process is set in motion, which facilitates identification of violations of the right to water. The following paragraphs provide illustrations of violations of the right to water.

40. To demonstrate compliance with their general and specific obligations, States parties must establish that they have taken the necessary and feasible steps towards the realization of the right to water. In accordance with international law, a failure to act in good faith to take such steps amounts to a violation of the right. It should be stressed that a State party cannot justify its non-compliance with the core obligations set out in paragraph 37 above, which are non-derogable.

41. In determining which actions or omissions amount to a violation of the right to water, it is important to distinguish the inability from the unwillingness of a State party to comply with its obligations in relation to the right to water. This follows from articles 11, paragraph 1, and 12, which speak of the right to an adequate standard of living and the right to health, as well as from article 2, paragraph 1, of the Covenant, which obliges each State party to take the necessary steps to the maximum of its available resources. A State which is unwilling to use the maximum of its available resources for the realization of the right to water is in violation of its obligations under the Covenant. If resource constraints render it impossible for a State party to comply fully with its Covenant obligations, it has the burden of justifying that every effort has nevertheless been made to use all available resources at its disposal in order to satisfy, as a matter of priority, the obligations outlined above.

42. Violations of the right to water can occur through *acts of commission*, the direct actions of States parties or other entities insufficiently regulated by States. Violations include, for example, the adoption of retrogressive measures incompatible with the core obligations (outlined in paragraph 37 above), the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to water, or the adoption of legislation or policies which are manifestly incompatible with pre-existing domestic or international legal obligations in relation to the right to water.

43. Violations through *acts of omission* include the failure to take appropriate steps towards the full realization of everyone's right to water, the failure to have a national policy on water, and the failure to enforce relevant laws.

44. While it is not possible to specify a complete list of violations in advance, a number of typical examples relating to the levels of obligations, emanating from the Committee's work, may be identified:



(a) Violations of the obligation to respect follow from the State party's interference with the right to water. This includes, inter alia: (i) arbitrary or unjustified disconnection or exclusion from water services or facilities; (ii) discriminatory or unaffordable increases in the price of water; and (iii) pollution and diminution of water resources affecting human health;

(b) Violations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to water by third parties.²⁷ This includes, inter alia: (i) failure to enact or enforce laws to prevent the contamination and inequitable extraction of water; (ii) failure to effectively regulate and control water services providers; (iii) failure to protect water distribution systems (e.g., piped networks and wells) from interference, damage and destruction; and

(c) Violations of the obligation to fulfil occur through the failure of States parties to take all necessary steps to ensure the realization of the right to water. Examples include, inter alia: (i) failure to adopt or implement a national water policy designed to ensure the right to water for everyone; (ii) insufficient expenditure or misallocation of public resources which results in the non-enjoyment of the right to water by individuals or groups, particularly the vulnerable or marginalized; (iii) failure to monitor the realization of the right to water at the national level, for example by identifying right-to-water indicators and benchmarks; (iv) failure to take measures to reduce the inequitable distribution of water facilities and services; (v) failure to adopt mechanisms for emergency relief; (vi) failure to ensure that the minimum essential level of the right is enjoyed by everyone; (vii) failure of a State to take into account its international legal obligations regarding the right to water when entering into agreements with other States or with international organizations.

V. Implementation at the national level

45. In accordance with article 2, paragraph 1, of the Covenant, States parties are required to utilize "all appropriate means, including particularly the adoption of legislative measures" in the implementation of their Covenant obligations. Every State party has a margin of discretion in assessing which measures are most suitable to meet its specific circumstances. The Covenant, however, clearly imposes a duty on each State party to take whatever steps are necessary to ensure that everyone enjoys the right to water, as soon as possible. Any national measures designed to realize the right to water should not interfere with the enjoyment of other human rights.

Legislation, strategies and policies

46. Existing legislation, strategies and policies should be reviewed to ensure that they are compatible with obligations arising from the right to water, and should be repealed, amended or changed if inconsistent with Covenant requirements.

²⁷ See paragraph 23 for a definition of "third parties".



47. The duty to take steps clearly imposes on States parties an obligation to adopt a national strategy or plan of action to realize the right to water. The strategy must: (a) be based upon human rights law and principles; (b) cover all aspects of the right to water and the corresponding obligations of States parties; (c) define clear objectives; (d) set targets or goals to be achieved and the time frame for their achievement; (e) formulate adequate policies and corresponding benchmarks and indicators. The strategy should also establish institutional responsibility for the process; identify resources available to attain the objectives, targets and goals; allocate resources appropriately according to institutional responsibility; and establish accountability mechanisms to ensure the implementation of the strategy. When formulating and implementing their right to water national strategies, States parties should avail themselves of technical assistance and cooperation of the United Nations specialized agencies (see Part VI below).

48. The formulation and implementation of national water strategies and plans of action should respect, *inter alia*, the principles of non-discrimination and people's participation. The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, programme or strategy concerning water. Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties.

49. The national water strategy and plan of action should also be based on the principles of accountability, transparency and independence of the judiciary, since good governance is essential to the effective implementation of all human rights, including the realization of the right to water. In order to create a favourable climate for the realization of the right, States parties should take appropriate steps to ensure that the private business sector and civil society are aware of, and consider the importance of, the right to water in pursuing their activities.

50. States parties may find it advantageous to adopt framework legislation to operationalize their right to water strategy. Such legislation should include: (a) targets or goals to be attained and the time frame for their achievement; (b) the means by which the purpose could be achieved; (c) the intended collaboration with civil society, private sector and international organizations; (d) institutional responsibility for the process; (e) national mechanisms for its monitoring; and (f) remedies and recourse procedures.

51. Steps should be taken to ensure there is sufficient coordination between the national ministries, regional and local authorities in order to reconcile water-related policies. Where implementation of the right to water has been delegated to regional or local authorities, the State party still retains the responsibility to comply with its Covenant obligations, and therefore should ensure that these authorities have at their disposal sufficient resources to maintain and extend the necessary water services and facilities. The States parties must further ensure that such authorities do not deny access to services on a discriminatory basis.



52. States parties are obliged to monitor effectively the realization of the right to water. In monitoring progress towards the realization of the right to water, States parties should identify the factors and difficulties affecting implementation of their obligations.

Indicators and benchmarks

53. To assist the monitoring process, right to water indicators should be identified in the national water strategies or plans of action. The indicators should be designed to monitor, at the national and international levels, the State party's obligations under articles 11, paragraph 1, and 12. Indicators should address the different components of adequate water (such as sufficiency, safety and acceptability, affordability and physical accessibility), be disaggregated by the prohibited grounds of discrimination, and cover all persons residing in the State party's territorial jurisdiction or under their control. States parties may obtain guidance on appropriate indicators from the ongoing work of WHO, the Food and Agriculture Organization of the United Nations (FAO), the United Nations Centre for Human Settlements (Habitat), the International Labour Organization (ILO), the United Nations Children's Fund (UNICEF), the United Nations Environment Programme (UNEP), the United Nations Development Programme (UNDP) and the United Nations Commission on Human Rights.

54. Having identified appropriate right to water indicators, States parties are invited to set appropriate national benchmarks in relation to each indicator.²⁸ During the periodic reporting procedure, the Committee will engage in a process of "scoping" with the State party. Scoping involves the joint consideration by the State party and the Committee of the indicators and national benchmarks which will then provide the targets to be achieved during the next reporting period. In the following five years, the State party will use these national benchmarks to help monitor its implementation of the right to water. Thereafter, in the subsequent reporting process, the State party and the Committee will consider whether or not the benchmarks have been achieved, and the reasons for any difficulties that may have been encountered (see general comment No. 14 (2000), paragraph 58). Further, when setting benchmarks and preparing their reports, States parties should utilize the extensive information and advisory services of specialized agencies with regard to data collection and disaggregation.

Remedies and accountability

55. Any persons or groups who have been denied their right to water should have access to effective judicial or other appropriate remedies at both national and international levels (see general comment No. 9 (1998), paragraph 4, and Principle 10

²⁸ See E. Riedel, "New bearings to the State reporting procedure: practical ways to operationalize economic social and cultural rights - The example of the right to health", in S. von Schorlemer (ed.), *Praxishandbuch UNO*, 2002, pp. 345-358. The Committee notes, for example, the commitment in the 2002 World Summit on Sustainable Development Plan of Implementation 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.



of the Rio Declaration on Environment and Development).²⁹ The Committee notes that the right has been constitutionally entrenched by a number of States and has been subject to litigation before national courts. All victims of violations of the right to water should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition. National ombudsmen, human rights commissions, and similar institutions should be permitted to address violations of the right.

56. Before any action that interferes with an individual's right to water is carried out by the State party, or by any other third party, the relevant authorities must ensure that such actions are performed in a manner warranted by law, compatible with the Covenant, and that comprises: (a) opportunity for genuine consultation with those affected; (b) timely and full disclosure of information on the proposed measures; (c) reasonable notice of proposed actions; (d) legal recourse and remedies for those affected; and (e) legal assistance for obtaining legal remedies (see also general comments No. 4 (1991) and No. 7 (1997)). Where such action is based on a person's failure to pay for water their capacity to pay must be taken into account. Under no circumstances shall an individual be deprived of the minimum essential level of water.

57. The incorporation in the domestic legal order of international instruments recognizing the right to water can significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases. Incorporation enables courts to adjudicate violations of the right to water, or at least the core obligations, by direct reference to the Covenant.

58. Judges, adjudicators and members of the legal profession should be encouraged by States parties to pay greater attention to violations of the right to water in the exercise of their functions.

59. States parties should respect, protect, facilitate and promote the work of human rights advocates and other members of civil society with a view to assisting vulnerable or marginalized groups in the realization of their right to water.

VI. Obligations of actors other than States

60. United Nations agencies and other international organizations concerned with water, such as WHO, FAO, UNICEF, UNEP, UN-Habitat, ILO, UNDP, the International Fund for Agricultural Development (IFAD), as well as international organizations concerned with trade such as the World Trade Organization (WTO), should cooperate effectively with States parties, building on their respective expertise, in relation to the implementation of the right to water at the national level. The international financial institutions, notably the International Monetary Fund and the

²⁹ Principle 10 of the Rio Declaration on Environment and Development (*Report of the United Nations Conference on Environment and Development*, see footnote 5 above), states with respect to environmental issues that "effective access to judicial and administrative proceedings, including remedy and redress, shall be provided".



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World Bank, should take into account the right to water in their lending policies, credit agreements, structural adjustment programmes and other development projects (see general comment No. 2 (1990)), so that the enjoyment of the right to water is promoted. When examining the reports of States parties and their ability to meet the obligations to realize the right to water, the Committee will consider the effects of the assistance provided by all other actors. The incorporation of human rights law and principles in the programmes and policies by international organizations will greatly facilitate implementation of the right to water. The role of the International Federation of the Red Cross and Red Crescent Societies, International Committee of the Red Cross, the Office of the United Nations High Commissioner for Refugees (UNHCR), WHO and UNICEF, as well as non-governmental organizations and other associations, is of particular importance in relation to disaster relief and humanitarian assistance in times of emergencies. Priority in the provision of aid, distribution and management of water and water facilities should be given to the most vulnerable or marginalized groups of the population.

