Water and sanitation, a fundamental human right?

- A study of the United Nations legal framework towards the fundamental Human Right to water and sanitation.

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Abstract

The Earth consists of approximately 70 percentage of water, but only 1 percent is at present suitable to drink with no sanitation. Water is vital for human life and should be accessible to all human beings, stated even through its legal definition. Reviewed in this paper is that globalization has over the years brought both stunning benefits and openings for many individuals in regards to water and sanitation. However, these opportunities are yet not available for all, since currently approximately 2.5 billion of the world’s population lack access to sanitation, and for about 1 billion individual’s access to safe drinking water is absent. Harmed health leading to death is a crucial consequence of this enormous lack. International coherence and acknowledgement for this challenging situation is at present part of the global agenda, and through this, water and sanitation have been recognized as a fundamental human right by the United Nations (UN) and implemented in its legal framework. However, its definition can be questioned. The United Nations Economic and Social Council (ECOSOC) declare that water shall be available and accessible for all human beings. Within several of the UNs adopted documents, water shall additionally be sufficient, affordable, safe and acceptable, and contain a certain standard of quality. Nevertheless, obstacles occur regarding these requirements through its interpretation. The question arises if the right within its classification can guarantee the fundamental right to water and sanitation to be incorporated, compatible and functional in human rights law. Besides this, the role of sustainable development and, regional and national legislations in the implementation process is additionally addressed to acknowledge how the right is ensured and protected.

Key words: International Law; United Nation; Human rights; Right to water and sanitation; Legal framework; Regional and national level; Implementation.
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Much of my inspiration has come from my semester abroad, where I was fortuned to have an internship at an international organization located on the border between France and Switzerland. Within this position I was able to attend both the 6th World Water Forum (WWF) and The Alternative Water Forum (FAME), in March 2012 in Marseille, France. This opportunity has given me superior knowledge for the issue of water and sanitation as well as much understanding for its importance and the obstacles it contains.

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Linn Holmström
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Innsbruck, Austria
**Abbreviation**

<table>
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<tr>
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<tr>
<td>ECOSOC</td>
<td>United Nations Economic and Social Council</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>ICJ</td>
<td>International Court of Justice</td>
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<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<td>OHCHR</td>
<td>Office of the High Commissioner for Human Rights</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organization</td>
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<td>UNGA</td>
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1. INTRODUCTION AND FRAMEWORK

“We all want the same thing. We want a world where everyone has access to sanitation and water. We want a world where people do not get sick from the water they drink or make them sick because they are forced to defecate in open. The good news is that we can do this.”¹

– Catarina De Albuquerque, 2011.

1.1 International concern for water

Globally, nearly one billion individuals are living without access to clean drinking water, which is essential for human life. Lack of sanitation systems trouble more than two and a half billion people worldwide² and are at present a international concern as the human population has through its growth tripled over the current decade, while the require for water have enlarged six times. Proclaimed by the United Nations Educational, Scientific and Cultural Organization (UNESCO) are that two-thirds of the global population will live under circumstances with minimum or no access to water in the year 2025. Lack of clean water sources leads to crucial consequences in form of health problems, which claims enormous amount of human lives. Presently up to thirty thousand global inhabitants die on a daily basis due to harmed health caused by water-related disease, where infants and elder inhabitants are mainly in the risk zone and the ones most affected by deficient sanitation. These recognitions, which has converted into a universal concern, confirms that necessary measures has to be taken and significant steps towards implementing the right to water and sanitation has to be carried out immediately.³

International legal frameworks have developed over an extended time-period, especially in the United Nations (UN) machinery. The United Nations General Assembly (UNGA) took measures towards the issue in July 2010 by adopting Resolution A/RES/64/292.⁴ Shortly after this recognition, the United Nations Human Rights Council (UNHRC) adopted and declared Resolution A/HRC/15/L.14 to be adopted in to Human rights law and interpreted in the International Covenant on Economic, Social and Cultural Rights (ICESCR), and therefore made the right legally binding. In other words, Resolution A/HRC/15/L.14 obliges the right to water and sanitation to be acknowledged as a fundamental human right, and is as a result legitimate. The Resolution states that; “the right to safe drinking water and sanitation is derived from the right to adequate standards of living and inextricably relate to the right

to the highest attainable standard of physical and mental health, as well as the right to life and human dignity⁵. However, its diffuse definition can be questioned.

Announced by the United Nations Economic and Social Council (ECOSOC), water shall be available and accessible for all human beings. Water shall additionally be sufficient, affordable, safe and acceptable, and contain a certain standard of quality.⁶ Transpire obstacles may occur regarding these requirements through its interpretation. If the right through its classification can guarantee the fundamental right to water and sanitation to be incorporated, compatible and functional in human rights law.

One may argue that the requirements provided by the definition are too ambiguous where specific details within the formulation lacks. This may cause diffusion and deficient implementation. Clarification of the specific details concerning the definition will be studied to establish understanding for what the right to water and sanitation actually is, how the right should be functional, and if it is a right guaranteed for all.

Moreover, common water resources are a further obstacle on a global scale, where the regulation for such shear of resources is a primary issue, where cultural, social, economic and environmental matters may convert into conflicts.⁷

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1.2 Purpose and research question

The main aim of the study is to emphasize the importance of access to sanitized water, which is a vital substance to maintain human life and at present a fundamental human right. As mentioned, the given classification of the right may be indefinable and defuse, as the standard setting is not specifically formulated. Studying the legal history, key aspects of implementation, the definition concerning the right to water and sanitation, particularly the requirements it carries out, the answer to the following research questions will be provided:

- What is the international legal framework towards the right to water and sanitation?
- What is the definition of suitable, sufficient, safe, accessible, and affordable water and is this right entitled and ensured for all individuals?
- Is the right to water an absolute right, such as the prohibition of torture or is it a facultative right?

These significant questions are essential in order to receive knowledge of the development of the right to water and sanitation, and to evaluate if the definition assures the right to all human beings. Besides this, to recognize if the classification of the right and the standard settings for it are achievable and if fresh water can be accessible for inhabitants worldwide through its concept.

1.3 Limitations

In order to make this paper more comprehensive, necessary limitations have been done. As this paper set focus on international development and recognition for the right to water and sanitation, the UNs machinery, actions, legislation and other standard setting documents, to ensure the right will be the focal stand points. This makes neither national nor regional legal frameworks play a major role in this study. However, states giving provisions or adopted the right to water and sanitation will be mentioned, in order to see the context and necessity of regional and national implementation of the right to water and sanitation. This is also a requirement in order to acknowledge the legal status of the right.

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1.4 Method and material

Significant for this study, and to research the main questions provided in this paper, academic literature and articles have been studied. Fundamental sources are drawn from international legal frameworks, especially the UN’s jurisdiction and other standard setting instruments. International reports associated with the subject play a significant role for the acknowledgment and understanding of the importance of water and sanitation, and why it is a necessity to obtain. The method of Legal Dogmatic with a base on studies of accessible legal sources and literature will be used to reach the main aim of this study and to be able to answer the research questions provided.

The method of Legal Dogmatic highlights and provides priority for legal norms and concepts. Indeed these legal concepts and norms should be discussed, presented and examined throughout a logical order.9

Besides this, social aspects will be presented to access the viewpoint of water and sanitation as a global issue and international obstacle, and to study the UN as an international actor. Moreover social standpoints are important to gain knowledge about the background of the issue and why legislation is a priority in its regard.

1.5 Structure

The structure of the paper will be provided as followed; opening with the introduction, which gives acknowledgment about the importance of the right to water and sanitation, and the difficulties its definition contains. Announced are the research questions, the used methods and limitations, which are a necessity in order to study this topic. Chapter 2 discovers the importance of fresh water and highlights the fact that it is a global obstacle. Continuously, in chapter 3, focus is set on the relevance of the UN machinery and how the organization acts as an international actor. This chapter additionally focuses on the power of the UN concerning Human Rights and the right to water and sanitation. Announced in Chapter 4 is the development and establishment of the legal framework towards the right to water and sanitation, where the current jurisdiction is provided in Chapter 5. These two previous mentioned chapters are significant to recognize the first of the three research questions. The most significant aspects of this paper are discovered in Chapter 6, where the definition of the fundamental human right to water and sanitation is provided and studied. Here the specific requirements such as; suitability, sufficiency, safety, accessibility, and affordability to water is presented, which additionally recognizes the last two research questions and brings understanding for the right’s definition. Chapter 7 of this paper discusses how to ensure the right to water and if states

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and individuals, worldwide, can obtain all the criteria. Final remarks and the conclusion will be given in the last section, Chapter 8, where the results of the study are presented.

1.6 Definitions

In order to make this paper more comprehensive, two of the most important terms of this essay will be defined. These are the terms of absolute and facultative law. This identification will further bring more understanding for this paper and its research.

An *absolute law* is globally recognized as; “an unqualified right: a legally enforceable right to take some action or to refrain from acting at the sole discretion of the person having the right.”\(^{10}\) An example of what an absolute right is can be found in the prohibition of torture, where no exceptions of the right can be made, not even during combat or war.\(^ {11}\) The term *facultative law* is defined as; “empowering but not compelling the doing of an act.”\(^ {12}\) An example of a facultative right is the right individuals have to assemble, and associate to claim their rights. Here exceptions may be made if it is a question of violation of rights of others, or if health or lives are in danger.\(^ {13}\)


2. FRESH WATER, AN INTERNATIONAL CONCERN

2.1 Water as a basic human need and a global obstacle

Water is vital for human life and should be accessible to all human beings, stated even through its legal definition. Reality strikes back when presently approximately two and a half billion of the world’s population lacks access to sanitation and about one billion are without access to safe drinking water. Human development and life schemes have over an extended period polluted the common water sources. In developing states approximately 70 percent of the waste from industries and almost 90 percent of sea sewage are pouring out in the common sources for water, without any sanitation system, which are supplying the inhabitants with their drinking water. To indicate this, the Indian River Ganges, which is a major water supply for the Indian population, has approximately 1.1 million liters of raw sewage poured into it per minute, which results in extreme damage of the environment, biodiversity and health of human beings. In Africa the lack of fresh water leads to the death of around one hundred inhabitants as a consequence of non-access to drinking water and sanitation on a daily basis. Mainly children are caused harm by not obtaining these facilities. Children are moreover the main targets of diarrhea. Globally, a superior number of one and a half million inhabitants die every year by this disease, which is water-related. Consequences occur such as approximately half of all hospitals on a universal scale are filled with patients with health problems and diseases caused by water.

The Earth consists of approximately 70 percentage of water. However, only 1 percent of this water is at present suitable to drink with no sanitation. Negative affects in form of violations of several human rights occur from not obtaining water and sanitation facilities. Rights concerning adequate housing are limited without sanitation systems. Most important is the right to life and health, where lack of fresh water does not only cause illnesses but also leads to death, which costs the society a large amount economic finance though providing healthcare.

Presently, both Sub-Sahara and southern Asia have critical coverage for fresh water where over 30 percentages of its inhabitants are living under these circumstances. Despite this fact, the Oceania is in the lead with an enormous lack where it affects 53 percentages of the total population. Reasons for this lack are that several of the states within these regions contain poor infrastructure and economic

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recourses to supply its inhabitants with these vital recourses and facilities.\textsuperscript{20} Even in Europe, lack of fresh water exists, for instance in the Eastern European states. In some of these regions, a larger part of the inhabitants do neither have access to sanitized water or sanitation facilities.\textsuperscript{21}

For many people throughout the world the privilege to access fresh water sources is limited or non-existent and in many states the inhabitants need to walk far to reach the source of water, which they use for consumption and domestic use. The physical accessibility is a supplementary obstacle, for instance the average distance to reach a suitable water source is about six kilometers for female Africans.\textsuperscript{22}

The right to water and sanitation is frequently questioned about what the right really entitles individuals, and who should be the primary responsible providing these facilities. For that reason the right is facing issues towards for instance privatization, which simply signify that states are relying on third actors and shift over the responsibility to companies. Another obstacle is poverty among the global inhabitants that may cause non-access to water. If water and water services are provided by companies, one consequence is that less privileged inhabitants may not afford the vital substance, or on the contrary, that companies do not want to invest in areas with poor inhabitants, as they know the profit of establishing there will be relatively low. Argued is that water should be a human right not depending on the market and profits for companies nor that one should need economic or social development to obtain the right. Surely, this is a question of interpretation of the right where conflicting viewpoints are facing each other.\textsuperscript{23}

Demonstrating the global accessibility to water, and the most crucial areas, Figure 1 presents a world full of obstacles in form of lack of fresh water, which additionally affects inhabitants worldwide enormously.

\textbf{Figure 1: Global accessibility to water.}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure1.png}
\caption{Global accessibility to water.}
\end{figure}

\begin{itemize}
\item \textbf{Abundant}
\item \textbf{Limited}
\item \textbf{Prone to severe shortage}
\item \textbf{Scarce}
\item \textbf{Stressed}
\end{itemize}

\textbf{Source:} Figure taken from; Third World Academy of Sciences. (2002.)

\begin{thebibliography}{99}
\bibitem{20} World Health Organization (WHO), (10.02.2012), www.who.int. WHO.
\bibitem{21} European Union (EU), (10.02.2012). Water protection and management. www.europa.eu. EU.
\bibitem{23} Hall David & Lobina Emanuele. (2012). Financing water and sanitation: public realities. (p.3,4 and 6) Marseille: Public Services Research Unit.
\end{thebibliography}
Water consisting on the earth will remain on the same level as at all times, however the problematic obstacle is that the global population will enlarge enormously over the next following decade, which also increases the demand for it. The global scheme of development is at present neither desirable nor sustainable. Indeed, the current situation regarding access to safe drinking water will be more troubled in the coming years if efforts are not instantly done.  

Common water recourses are a further obstacle that the world is tackling, where human needs for the vital substance are causing water shortage, and where large pollution of the environment and water sources, are leading to environmental collapse in the common area, which set fundamental human needs and social development, the environment and its biodiversity, and economic growth, such as industrial development, in conflict. One other significant issue is, states shearing common water resources, and who then should be obliged to it. Different interests are at present in conflict.

Measures have to be taken towards the present issue by recycling, storing and consuming water, and a more sustainable way of doing this has to be recognized. Besides, tools for sanitation and access to water is essential to reduce the huge lack that currently is affecting a large amount of the global population negatively, in form of health issues, which frequently lead to death.

Global and national organizations are through international legal frameworks and other worldwide acknowledged documents recognizing the obstacles occurring from the lack of fresh drinking water. Besides this, the identification of water and sanitation as a human right has set the right in focus internationally.

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3. RELEVANCE OF THE UNITED NATIONS

3.1 The United Nations machinery and functioning as an international actor

After the Second World War in 1945, the UN established from a demand of maintenance of international security and peace among the world’s states. Promoting, upholding and implementing human rights have become some of the UN’s main aims. The organization is functioning through six significant departments namely; UNGA, ECOSOC, the United Nations Security Council (UNSC), the International Court of Justice (ICJ), the Repertory of Practice of United Nations Organs and the Secretariat. Formed from these departments are multiply subsidiary bodies where one of them is the UNHRC, which is under the UNGA department.28

Functioning as a global actor, operating in all the world’s states and have 193 states as members, the UN is an essential organization that has a major influence and effect on states. From the UN, international legal framework has developed, which includes the most fundamental human rights. They have additionally recognized the right to water and sanitation and acknowledged the importance of its substance, which also obliged the right special focus and attention globally.29

3.2 The power of the United Nations for Human Rights

The UN is identified as a major international power within the field of Human Rights law and protection. Through its organization it has announced the basic ground for the international legal framework for Human Rights, which is globally recognized. The organization’s framework and functioning is based on several legal and non-binding documents, such as the UN Charter, legal binding Treaties and non-legally binding declarations. These combinations of international recognized documents uphold human right standards throughout the world.30

The UN is defining and covering several important topics. Nonetheless, due to cultural, social and economic differences among its member states, their legal instruments may be broader and less specific than regional institutions frameworks which than create ambiguity within its wordings and interpretation. Undoubtedly, the UN is certainly not an ineffective organ devoid of power, when it is covering and protecting human rights. Even though its legislation is more broadly, it upholds international human rights standards in more states then regional institutions. Besides this, the UN is furthermore giving protection for more individuals and is on many ways affecting states in the

29 Ibid.
implementation process and preserving of standards. Nonetheless the UN system and supervision mechanisms for protecting human rights are extremely unique. The system for the protection of Human Rights can be divided into three columns, where it announces firstly international standards through its legal framework, which is based on agreements between states, with binding and non-binding legal documents. It covers “international standards through its Charter, legally binding treaties, non-binding declarations, agreements, and documents, next, it mandates Special Rapporteurs and experts, and groups, such as working groups, committees and treaty bodies, to work in various manners for the promotion and protection of human rights. Finally, it offers technical assistance through the Voluntary Fund for Advisory Services and Technical Assistance in the field of Human Rights”.31

3.3 The United Nation and the right to water and sanitation

The UN has through global demands highlighted the right to water and sanitation on its agenda, and has frequently worked with the issues it contains. Noteworthy is that water is not only a matter for human beings which are requiring water and sanitation facilities for both living and consumption, but also for agriculture and commercial requirements as well as for religious and cultural usages.32

The UN has focused on the issue of water resources for an extended time period. Much attention has been brought to developing countries where the UN has over the last decade provided help to approximately 1.3 billion individuals to gain access to water, meant for consumption. “The United Nations Water Conference (1977), the International Drinking Water Supply and Sanitation Decade (1981-1990), the International Conference on Water and the Environment (1992) and the Earth Summit (1992),”33 are all significant international meetings which have set focus on this issue and helped in the process of providing water and sanitation globally.34

In regard to issues concerning common water resources the UN is frequently trying to resolve and regulate disputes that occur from states differing interest. International legal frameworks towards these issues are at present given more importance and priority, however, there are not global recognized settlement towards it.35

33 Ibid.
34 Ibid.
4. LEGAL HISTORY

“Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being”.


4.1 The rise of international concern

The development of international legal frameworks towards the recognition of the right to water and sanitation as a fundamental human right has been a struggling and long ongoing process. The right is referred in several of the international legal documents, which therefore play a major role in the development of the right.

Additionally, sustainable development is a term frequently used in the identification of the right to water and sanitation. Such development has its basis in three fundamental pillars, which additionally play a major role in the development and implementation of the right. Sustainable development should be and is unquestionably identified in the legal frameworks and the development towards the right to water and sanitation. The provisos and values of sustainable development will be declared underneath Paragraph 6.1.

Acknowledgments for the right can firstly be seen in the 1948 Universal Declaration of Human Rights (UDHR). Indeed, this declaration is not legally binding but unquestionably it is the fundamental document instituting human rights worldwide. Indeed this declaration does not expressively lay down the right, but argued is that the right should be seen in accordance with the right to life and health, as water and sanitation is a basis for these two rights to be ensured.

Additionally, the Geneva Conventions play a significant role, which consists of four documents aiming to secure human needs, such as the access to water. These conventions are essential documents in promoting the right to water. They are legally binding and call upon all the world’s states as they are categorized as customary law. They are especially intended to secure combats and residents, which are subject of armed conflicts. Firstly, the 1977 Protocol No. I declares in Article 54 (2) and (3) that “It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the
civilian population, such as /--/ drinking water”.41 The main aim of this specific protocol is to establish protection and ensure rights for victims in international armed conflicts.42 Similarities can be seen in the 1977 Protocol No. II, which announces though Article 5(b) and 14 that civilians and victims of non-international armed conflicts should have access to drinking water.43 Likewise, the Geneva Convention III further declares the right to water intended for drinking water for victims in international armed conflicts.44 At last, Geneva Convention IV concerning the security of individuals in wars lay down under Article 85, 89 and 127 that internees should have access and be provided with water, which contains a good standard with no consequences such as harming human health.45

Eventually, the 1966 International Covenant on Civil and Political Rights (ICCPR), which lays down the right to self-determination, dignity, and most important, the right to life established.46 The identification of these rights became an enormous step towards recognition of water, for the insignificant cause that water is essential for human life. This covenant is legally binding and shall be respected and implemented by all states.47 Similar to the previous mentioned covenant, the ICESCR is a further legally binding document which has been recognized on a universal level. Through its wording it declares the right to health under Article 12, and continuously it announces the right to sufficient standard of livelihood embraced by Article 11. Combining these two Articles the right to water and sanitation can be recognized. Presently this document lays the ground for the right to water and sanitation as a fundamental human right as a result of interpretation of article 11 and 12.48 Indeed, the UDHR, ICCPR and ICESCR are all documents which do not include the right expressively, but are instruments in which the right can be recognized within their wording. The general understanding is that sanitized water is vital to both of the Articles as both health and sufficient living standards are depending on it.49

Other international legal frameworks have over the years played tremendous roles in the development of the right to water and sanitation, such as the Convention on the elimination of all forms of discrimination against Women, which in Article 14.2(h) announces the right to water and sanitation. This convention is the first document, which makes the right legally recognized and binding for

42 Ibid.
states. Continuously, the Convention on the Rights of the Child was established, which lays down this right under Article 24 and strengthened it by Article 27. It states that children shall have access to clean water intended for consumption, which furthermore empowers children who cannot claim their rights.

Other significant and contributing legal instruments have established over time, and the Convention on the Protection and Use of Transboundary Watercourses and Lakes declares that co-operation, development, information and measures should be taken within and between states to uphold quality and minimizing the damages which human development causes, and to ensure a certain standard of water quality. It further announces that transboundary watercourses should not harm or impact surrounding states. The requirement for sustainable development and solutions are addressed in the document. However, there are no common international legal frameworks towards the issue of regulation of such sources. This may result in that states, through different interests, intend to develop conflicts. International legislation and common recognized methods for resolving and regulating issues and common or transboundary water resources are at present given more priority and are slowly developing. Several international organisations and Non-Governmental Organisations, so called NGOs, are important actors in this development process. The International Law Association and the Institute of International Law are at present two Non-Governmental Organizations (NGOs) that are tackling and working frequently with these kinds of issues. A further organization that is performing similar activities is the United Nations International Law Commission. Together, these three international organizations have established the basic foundation of water regulation and laws, which can be found in important documents such as; the Berlin Rules, the Helsinki Rules and finally the United Nations Water Convention, thus permitting their acceptance today on a global level. However, more priority has to be given towards international regulation and water laws of common used water resources.

Further recognition for the Human right to water and sanitation is established through the Protocol on water and health, which in accordance with the previous discussed convention announces the right to water. It states under Article 5; “Equitable access to water, adequate in terms both of quantity and of quality, should be provided for all members of the population, especially those who suffer a disadvantage or social exclusion.”

In more present history important recognitions and actions for the right to water and sanitation have taken place. In 2002, significant identifications towards the right to water and sanitation occurred through the General Comment No. 15. This is a document which is an important establishment in the struggle to announce water as a fundamental human right. Contained by this document is the criteria of the definition of the right to water and sanitation, such as the terms; Suitability, sufficiency, safety, accessibility, and affordability. The status of the document is not legally binding, however it is acknowledged at this stage as guiding principles towards Article 11 and Article 12 of the ICESCR, which announces the right to wellbeing and sufficient living standards.55

In 2006 came out the Convention on the Rights of Persons with Disabilities, which under Article 28 announces that disable persons should be enabled the right to clean water.56 The same year, the UNHRC approved Resolution 2/104, which made the UNHRC call for that the Office of the High Commissioner for Human Rights (OHCHR) to compose a study about the issue of human rights to water and sanitation. The OHCHR published the report in regard to this demand in the year 2007.57 This study covered “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.”58 This report is addressing and highlighting several international concerns and issues in regard to water and sanitation, and due to this the command for the independent expert on water and sanitations was shaped. Continuously, the UNHRC adopted Resolution 7/22 in March 2008, which delegated an independent expert to study and give opinions on water and sanitation issues.59 In September the same year, Catarina de Albuquerque was announced as the UN expert for the issues of water and sanitation, which resulted in that 2009, Albuquerque’s primer report was published in accordance to the previous mentioned Resolution 7/22. Albuquerque’s claims that the right to water and sanitation should be defined as a human right through the already excising fundamental human rights such as the right to life, adequate housing and living, health, education and work. In other words, the right to water and sanitation should be incorporated in the ICESCR.60

In July 2010, the right to water and sanitation took a huge step forward through Resolution A/RES/64/29. UNGA recognized the right to water and sanitation and declared that states should co-

operate in these matters. Besides this, it announced that organizations and states should provide support to each other, in order to uphold these rights.\textsuperscript{61} Continuously, in September 2010 an other significant step was taken where Resolution A/HRC/15/L.14 was adopted by the UNHRC, which additionally obliged the right to become legally binding.\textsuperscript{62}

Indeed, these documents, both legally and non-binding are part of the current international legislation towards the right to water and sanitation. However, the General Comment No.15, Resolution A/RES/64/292, Resolution A/HRC/15/L.14 and the ICESCR will be further discussed under Chapter 5, which announces the absent legal framework towards the fundamental human right to water and sanitation.

5. PRESENT LEGAL FRAMEWORK

5.1 The United Nations recognizes the right to water

“Access to safe water is a fundamental human need and therefore a basic human right.”


The UN has through several documents recognized the right to water and sanitation, however the General Comment No.15, Resolution A/RES/64/292, Resolution A/HRC/15/L.14 and the ICESCR are at present the most recent and important legally and non-legally binding documents in the development of the right to water and sanitation as a fundamental Human Right.

Underneath, in Paragraph 5.2 and 5.3 these documents will be discussed.

5.2 General Comment No.15, Resolution A/RES/64/292 and Resolution A/HRC/15/L.14

The General Comment No.15, Resolution A/RES/64/292 and Resolution A/HRC/15/L.14 are three documents, seen the basic foundation of the right to water and sanitation, among other documents of the fundamental human rights containing such provisions. However, these three official documents are the ones that declare the realization of the right and the obligations it contains. They additionally underline the legal bond to the ICESCR.

5.2 (a) General Comment No.15

General Comment No.15 is the main document including the five classifications of what the right to water and sanitations contains. Indeed, “General Comments may not be binding in a strictly legal sense, they have the considerable weight of an authoritative interpretation of the Covenant.”

Throughout the documents wordings it provide explanations on what the requirements for fulfilling the right should be and how the conditions and obligations should be seen in the terms of the right to be adequate. This is one of the main issues among other international recognized documents towards

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the right to water and sanitation, where the definition of adequate is missing.\textsuperscript{68} The classifications of the right to water and sanitation will be further discussed under Chapter 6.

Nevertheless, this document has increased the understanding for the right globally and has been a tool for the rights realization process. Since the recognition of the document, the amount of states adopting the provision in its national legislation has enlarged to the double, which is a significant improvement for ensuring the right to water and sanitation, which in addition gives the right more focus on international, regional and national level.\textsuperscript{69}

\subsection*{5.2 (b) Resolution A/RES/64/292}

In July 2010, the UNGA department adopted Resolution A/RES/64/292 on the right to water and sanitation, which oblige the right to water and sanitation to be part of international law. It “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”.\textsuperscript{70} Indeed, this document is additionally a non-binding instrument but has a larger weight in the realization and in accordance to the implementation process of the right. On the contrary of the former discussed document, the General Comment No.15, does not announce the specific requirements that these classifications contain, which leaves several questions unanswered within its interpretation.\textsuperscript{71}

\subsection*{5.2 (c) Resolution A/HRC/15/L.14}

A further significant step towards the right to water and sanitation came when the UNHRC approved Resolution A/HRC/15/L.14. This recognition confirms that the right to water and sanitation became legally binding and are therefore embraced in the international legal framework. When the UNHRC agreed upon and declared Resolution A/HRC/15/L.14 to be acknowledged in Human rights law, they additionally announced that; “the right to safe drinking water and sanitation is derived from the right to adequate standards of living and inextricably relate to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity”.\textsuperscript{72} Recognizing the right in


\textsuperscript{71} Ibid.

international law and entitle it to legally binding is an enormous step to ensure water and sanitation services and facilities to all.\footnote{Ibid.}

In this document one can additionally see that it lacks clarification of the previous terms of the right, such as, what is included in the terms; adequate standard of living, health, human dignity and the right to life. To realize the human right to water and sanitation, states have to fulfil the norms and obligations contained by the right. They are additionally accountable to protect and respect the right to the highest extent and are responsible to provide and ensure the right to its inhabitants. Indeed, states further have the primary obligation to control the implementation of the right, but a third actor can be involved in providing water services. However states have to ensure that the human rights are not violated and are still the one responsible. Nevertheless, third actors additionally have to respect the right to water and sanitation.\footnote{Ibid.}

5.3 The International Covenant on Economic, Social and Cultural Rights

Economic, social and cultural rights were not fully internationally recognized until the adoption of the ICESCR in 1966. Essential is that this legal document is the first legally binding instrument calling upon all the UN member states concerning economic, social and cultural issues.\footnote{United Nations. (1966) International Covenant on Economic, Social and Cultural Rights. Entry into force: 1976, in accordance with article 27. New York: United Nations.}

Through the recognition and adoption of Resolution A/HRC/15/L.14, which are declaring the right to water and sanitation to be a fundamental human right and incorporated those into human rights law, the right to water and sanitation became legally binding. Through this recognition, this obliges the right to water to be a fundamental human right does also state that it must be viewed in accordance to Article 11 and 12 of the ICESCR, even if the document does not expressively lay down the right within its legal wording.\footnote{United Nations Human right Council. (2010). Resolution A/HRC/15/L.14. United Nations.}

Article 11 of the Covenant declares;

“1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

\footnote{Ibid.}
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need".  

This legal definition, laying down the right to water and sanitation, obliges states to realize the right and to take appropriate measures to ensure and improve standards concerning water. States shall co-operate and identify issues concerning the right and moreover they shall take responsibility for its implementation. It additionally declares that the right shall be adequate; however, the specific term is not further identified.  

Focusing on the other relevant right, Article 12 of the Covenant, containing provisions for the right to water and sanitation, announces the right to mental and physical health. It states;

"1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
(b) The improvement of all aspects of environmental and industrial hygiene;
(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness".  

Clearly identified in this previous article is the fact that states have the responsibility to ensure the right, and the highest standards of both mental and physical health for all human beings. Nonetheless, states additionally have to improve the realization of the right and take preventive measures towards spreading and exposure of diseases through water. Moreover, the article additionally highlights issues

78 Ibid.
79 Ibid.
within where states have to take appropriate measures towards both industrial and environmental hygiene.80

Conclusions drawn from these articles are that individuals should be entitled the right to water and sanitation no matter of economic or social development, and that states should take steps to ensure, realize and improve the right to its fullest. The right to water and sanitation shall be adequate, however, as previous mentioned, the exact definition of the term is not declared in this legal binding document.81

80 Ibid.
81 Ibid.
6. THE RIGHT TO WATER, AN ABSOLUTE RIGHT?

6.1 Suitability, sufficiency, safety, accessibility, and affordability

In regard to the UN Resolution A/HRC/15/L.14, this lays down the wording for the requirement of suitability, sufficiency, safety, accessibility, and affordability water in human rights law. However, as mentioned, the terms are not specified, as they are in the General Comment No.15. Indeed, difficulties could be found in the interpretation. As mentioned, suitable, sufficient, safe, accessible, and affordable are five terminologies used in order to affirm what the right to water and sanitation contains. Different conditions may oblige the right to water and sanitation to take different forms, however, these principles should call upon all circumstances. Indicated is that the implementation of the right, and the five classifications additionally have to be sustainable. This means that measurers have to be taken to ensure that water sources and other environmental aspects are at the highest extent free from pollution, so it can sustain for both for this generation and for following. Concerning the critical water shortage and population growth actions of establishing a more sustainable globe must be taken, and the human populations life scheme has to change in order to diminishing pollution.

Certainly, sanitized water is a significant matter within sustainable development, which literary has to go hand in hand. The base of such development lies within three fundamental pillars named social, economic and environmental development. These aspects have to develop to achieve both progress and maintenance. Certainly, these necessities requires legal framework towards it on international, regional and national level.

Figure 2: Sustainable Development triangle

Source: Figure taken from; Munasinghe. (1992).

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Economic, social and environmental improvements have to follow a similar improvement scheme to reach sustainable development.\(^8^5\)

Conclusions to be drawn in regarding to sustainable development and towards this triangle is the significant aspect that international legal framework should highlight and protect rights within these fields in their jurisdiction to establish this process and enable the right to water and sanitation to be implemented and sustained for further generations. International legal frameworks towards these three pillars have developed over time, which furthermore has progressed to the recognition of water and sanitation as a fundamental human right.\(^8^6\) This further indicates that short-time resolutions should not be the final solution for implementing the right to water and sanitation. Furthermore, the human right to water and sanitation should have a good impact, to provide access to fresh water and water facilities to all, and maintain good access of the right for those who already are fortunate with these facilities. Implementation of sustainable development and providing provisions for it in international legal frameworks is superior actions needed to be taken to ensure the right both at present time and in the long run.\(^8^7\)

Below the five different classifications will be discussed and the terminologies examined.

6.2 Suitable, sufficient and safe drinking water

Defined by the UN and globally recognized is the term of sufficient water supply. It declares that all individuals should be able to obtain a minimum of 20 liters fresh water per day and person, and that the supply of fresh water should not be more than 1000 meters away from ones livelihood. Other significant requirements are mentioned, such as that the source should include “household connections, public standpipes, boreholes, protected dug wells, protected springs and rainwater collections”.\(^8^8\) However, this is extremely hard to obtain and a major obstacle of the requirement of the right to water and sanitation which is extremely difficult to obtain for all individuals on a global scale. The question of how a state can ensure its inhabitants to these services, and that they should be accessible and further economic accessible for all is a major challenge.\(^8^9\) Individuals may not oblige that the right to fresh drinking water should be found at all locations where they would be, however, there should be access to a water source within 1000 meters of one’s livelihood.\(^9^0\)

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\(^8^5\) Popa Gabriela. (14.05.2012). Sustainable Development Strategy – the Key of Environmental and Organizational Management. Târgoviste, Romania.


\(^8^7\) De Albuquerque, Catarina. & United Nations Special Rapporteur On The Right To Wate and anitation. (2012). On the right track. Good practices in realising the right to water and sanitation. (p.34) Lisbon : Textype.


Recognition for a global identification of safe and suitable drinking water is announced by the World Health Organization (WHO) where they indicate that; “safe drinking-water /…/ does not represent any significant risk to health over a lifetime of consumption, including different sensitivities that may occur between life stages. Those at greatest risk of waterborne disease are infants and young children, people who are debilitated or living under unsanitary conditions and the elderly. Safe drinking-water is suitable for all usual domestic purposes, including personal hygiene”.91

In legal terms, these guidelines lie down by the WHO should be required to be the basic requirements for the quantity of water meant for consumption for human beings. Further acknowledgments are due to work, climate issues and health problems where one should be obliged the right to availability to fresh drinking water. “The water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene”.92

6.2.1 Quality of drinking water

As mentioned, water intended for consumption, individual and domestic use must contain a certain quality. Declared by the legal document, water shall be “free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person’s health. Furthermore, water should be of an acceptable colour, odour and taste for each personal or domestic use”.93 More specific details are missing for what tolerable and satisfactory odour, colour and taste is within its legal definition.

6.3 Accessibility and affordability of drinking water

All individuals with no regard to state belonging have through the ICESCR the right to fresh water, and to access water services and other facilities. However, there are restrictions on the right, where it has to be seen in regard with the specific states legislation, such as providing water services through a third party which may give opportunities to sates to form limitations towards the right.94

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93 Ibid.
6.3 (a) Physical accessibility to drinking water

All humans shall have physical access to water, as well to adequate water services and other facilities. These requirements must be in a physical accessible position, so individuals on all levels of the society can obtain it without discrimination.\textsuperscript{95} As mentioned before, fresh water sources should be provided within 1000 meters from one’s livelihood.\textsuperscript{96} The definition states that; “Sufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace. All water facilities and services must be of sufficient quality, culturally appropriate and sensitive to gender, lifecycle and privacy requirements. Physical security should not be threatened during access to water facilities and services”.\textsuperscript{97} Certainly the right has to be seen through the principle of non-discrimination where for instance specific groups should not be excluded from the accessibility of the right. This could be for example a group of disable people, older individuals, children, minorities and inhabitants living in areas with horrendous infrastructure.\textsuperscript{98}

6.3 (b) Economic accessibility to drinking water

Affordability is one of the major obstacles in the definition of the human right to water and sanitation. Announced is that water shall be affordable, globally, to all human beings. This includes water services and facilities. These requirements shall not interrupt or harm other rights included in the ICESCR. It states; “The direct and indirect costs and charges associated with securing water must be affordable.”\textsuperscript{99}

Undeniably, the question of affordable has many viewpoints and certainly the most poor and affected inhabitants may not afford any price of this vital liquid. Approximately 2.5 Billion of the world population is currently living on a daily amount of 2 Dollar. This develops hindrance in many low-income families to provide water to everyone in the household,\textsuperscript{100} when the right according to the UN should entitle 20 liters of fresh water per person per day.\textsuperscript{101}

6.4 Accessibility to information, Non-discrimination and participation of the right

Individuals shall have the right to information. Under these circumstance it oblige individuals to have accessibility to obtain information as well as they are authorized the right to inform, pass on information and to search for it.\textsuperscript{102} The right to water and sanitation is further through its definition to be given without discrimination to the global population, including the right to access water services and other water-related facilities.\textsuperscript{103} Water and water-facilities should endow those who cannot obtain these requirements themselves, including excluded groups and individuals shall obtain the same right. States should, with all means and measures uphold this human right and implement these facilities to all to secure a minimum level of this fundamental need. Firstly by including those living without access to freshwater and providing them with access to water and sanitation systems, than improving already existing and functioning sources and systems.\textsuperscript{104} Certainly other issues shall additionally be observed such as the participation of the locals, as they are primary affected by the lack of water facilities and implementation process. The decision making process should further contain the views of the inhabitants and they should be able to included.\textsuperscript{105}

6.5 Obstacles in the definition

Conclusions drawn from these requirements are that its definitions contain several uncertainties, but that the right to water and sanitation is certainly for all. Its definition is missing clarification in regard to several issues such as what is affordable and how the state should guarantee that its inhabitants can afford a daily supply of water. Specifically, low-income inhabitants may face these difficulties. Moreover, important details concerning what exact level of quality the water should contain are missing.\textsuperscript{106}

Other obstacles occur regarding these requirements through its interpretation. The requirements provided by the definition are too ambiguous where specific details certainly are missing. This may cause diffusion and deficient implementation process, which then as a consequence harms the inhabitants. Strict and clear provisions of what the right should entitle individuals and how it is required to be managed should make the implementation easier and more affective. However, as the


\textsuperscript{103} Ibid.

\textsuperscript{104} De Albuquerque, Catarina. & United Nations Special Rapporteur On The Right To Wate and anitation. (2012). On the right track. Good practices in realising the right to water and sanitation. (p.33) Lisbon: Textype.

\textsuperscript{105} Ibid.

right has to be ensured in regard to states national legislation, specific details may be hard to clarify due to various interests and standpoints by states and private companies.  

In regard to common water resources which is a primary obstacle in regard to the right to water and sanitation, there are no methods of regulation mentioned in this framework, how to resolve and manage states various interests so it would not harm the individual right to water and sanitation.  

7. **ENSURING THE RIGHT TO WATER AND SANITATION**

7.1 The United Nations struggle for promoting and implementing the right

The UN has started the struggle to uphold the right to water and sanitation. Through identify the right to water and sanitation in their legal framework they are opening rights for those who are powerless, and moreover giving all human beings worldwide the same basic right. In order to establish a fundamental ground for the human right to water and sanitation, states now have to obey the UN standard settings and at the highest capacity implement the right intended for its inhabitants.\(^{109}\)

Promoting human rights and access to water is not an easy task and is not an issue that will be guaranteed instantly. The promotion of water services is a matter that is broadly discussed, as it is not defined by international law. Issues like if water services should be provided from private or public sectors are an obstacle that on some occasions are slowing down the process in providing the global inhabitants water and sanitation standards. Undoubtedly, states do have responsibilities such as certify that its residents can access these services, for instance through ensuring that it is affordable for all.\(^{110}\)

In regard to common water resources, there is no common international legal framework, which sets states, cultural, social, economic and environmental interests in conflict. The United Nations therefore must establish an international recognized practice to solve such transboundary disputes, to obtain common resources, and restore and maintain them in a sustainable way.\(^{111}\)

Certainly, the UN lay the ground for a basic level for the right to water through its legal framework, and “States must ensure without discrimination that everyone has physical and economic access to sanitation, in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity”.\(^{112}\) Indeed, this is a major task for states to ensure, when both, effort and economic resources must be provided to achieve the aims of the right.\(^{113}\)

The UN Special Reporter on the right to water and sanitation, Ms. Catarina de Albuquerque, states; “the biggest barrier to the enjoyment of these rights is lack of political will. Without political will to

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\(^{113}\) Ibid.
recognize these rights, it is highly unlikely that they will be realised”. Further, De Albuquerque highlights that national legislation need to address these significant issues, and that action plans need to be established in order to ensure the right to all human beings on regional and national level.

7.2 Regional and national legislation securing the right

The UN Legal framework towards the right to water is globally acknowledged and calls upon the member states that have ratified the specific conventions that declare the right to water and sanitation. But, the settlement from the ICESCR, which obliged the right to be a fundamental human right, is a significant result in the development of the right. Nations therefore have to act in accordance to the right and have therefore no excuse to ignore the implementation of it to its population, especially to the most excluded inhabitants.

Human rights are ensured by laws, which additionally provide the basic protection of it. Human right laws include principles for enforcement, implementation and obligations, which states must obey and are held responsible for. “When states parties fulfill their obligation under international human rights law to incorporate human rights into national legislation and policies, the right to water becomes enforceable at the national level. Individuals can then access appropriate legal remedy in cases of violation without discrimination”.

Regional and national courts and human rights systems are one of the most effective ways to implement human rights. Settlements and recognitions within these machineries make the protection of the right powerful, which additionally affects national laws and standard settings. Indeed, how the right is formulated and defined in these systems have a major affect, as they can be formed differently and on many occasions unclear and broad, which also allow some exclusions and limitation of the right.

Indeed, much work has to be done to ensure the right to water and sanitation worldwide; however, some states have been taking the lead in realizing the right in its national legislation. Examples of some cases will be provided below, under Paragraph 7.4.

117 Ibid.
118 Ibid.
7.3 Implementing through regional level

Regional Courts are playing a large role in recognizing and interpreting the right to water and sanitation on a national level. Indeed, all regional courts do not recognize the right, however, many of them give provision for the right, even if it is not the exact right to water and sanitation that is always written down. The regional documents that can be found are; the European Convention for the Protection of Human Rights and Fundamental Freedoms from 1950 in regard to the right to life under Article 2; the European Social Charter from 1961, under Article 11 where it states that states should to the fullest extent reduce causes which harm health; the American Convention on Human Rights dated back to 1969 noticed in the right to life in Article 4; the African Charter of Human and People’s Rights from 1981 likewise, the previous mentioned charter does under Article 4 note the right to life; the Additional Protocol to the American Convention on Human Rights in the area of Economic Social and Cultural Rights from 1998 through Article 10 which lay down the right to health; the African Charter on the Rights and Welfare of the Child from 1990 which declares for children’s right to safe drinking water under Article 14; and last, the European Charter on Water Resources from 2001 where Article 5 of the Charter announces the right to adequate water for fundamental requirements. Here one can see that European, African and American states may be affected by the regional provisions containing the right.119

7.4 Implementing through national level

States officially must, in regard to the ICESCR, identify and recognize the right to water and sanitation in their national jurisdiction. Other requirement that has to be acknowledged on the national level is jurisdiction, in terms of laws and regulations, which should be co-operating to carry out and achieve and maintain the right.120

Several states worldwide have already recognized the right to water and sanitation into their national legislation; however, the result of these actions differs. Measures must be taken to ensure the inhabitants’ rights, however, on many occasions there are political will that make the struggle and implementation process extended and on various ways complicated.121

In Africa, 15 States that have at present ensured or given provision for the right to water and sanitation. These states are; Algeria, Morocco, Eritrea, Ethiopia, Kenya, Tanzania, Uganda, Mozambique, South Africa, Zambia, Angola, Madagascar, Democratic Republic of the Congo,  

119 Ibid.  
Gambia and Mauritania. Indeed, the states social, economic and cultural standards play a major role in what capacity the states have in realizing the right to water and sanitation to its inhabitants, even if it is written down in their legislation. Asia on the other hand has fewer in the lead for the implementation of water and sanitation in their national legislation. The ones that have provided provision for the right is; India, Indonesia, Bangladesh, Sir Lanka, and the Philippines. In the Middle East only 2 states have given provisions for the right to water and sanitation, these are Iran and Kazakhstan. In Latin America a total of 15 states have given provision for the right or adopted it into its national legislation, these are; Nicaragua, Panama, Uruguay, Costa Rica, Honduras, Paraguay, Peru, Venezuela, Bolivia, Columbia, Ecuador, Dominican Republic, Guatemala, Chile and Brazil. Indeed it’s a major step for the inhabitants for obtaining the right even if some states lacks in their responsibilities. Surprisingly, in Europe only 4 states have recognized or given provision for the right, which are the United Kingdom, the Netherlands, Belgium and France. Indeed, several states have ensured the right even if it is not written down in their national constitution through other legal document, which follows the same scheme to ensure the right to water and sanitation for all.122

Certainly, the provision of the right to water and sanitation is divided among the UN member states national legislation, but progress for recognition of the right is more familiar at present time than ever before. Certainly, the capacity of implementing and ensuring the right has different outcomes due to several matters, such as economic, social and cultural differences. However, the most important issue is that states are taking steps towards the realization of the right through providing provision for it in its national legal framework. However, more work has to be done to ensure the right to all.123

The significant facts given above additionally show that the right to water and sanitation is a facultative right and not an absolute right, such as the prohibition of torture, even if it calls upon all states. The right to water and sanitation is a facultative right due to the fact that the right can take different forms in regional and national legislation, which additionally creates a vague implementation process. The right therefore is not an absolute right, which through its definition cannot be limited.124

123 Ibid.
8. RESULT AND FINAL REMARKS

8.1 Conclusion

Explored in this paper is the international and fundamental human right to water and sanitation, where the main intention is to bring understanding for the three research questions asked. Those cover what the international legal framework towards the right to water and sanitation is, the definition of the terms suitable, sufficient, safe, accessible, and affordable water and if the right is for all, followed by the last issue, which sets focus on if the right to water is an absolute right, such as the prohibition of torture, or if it is a facultative right, where the right can hold limitations. Moreover, the United Nations as an international actor of implementing and developing legal frameworks towards the right, obtaining several issues is set in focus.

Firstly, the international legal framework towards the right to water and sanitation has developed over an extended period. Starting from the UDHR the right can be found in several international, regional and national laws and documents. At present, the most important documents recognizing the right on an international level is the General Comment No.15, Resolution A/RES/64/292 and Resolution A/HRC/15/L.14, which are non-binding document, and the ICESCR which is legally binding and calls upon all states.

Jointly these four international documents realize the right to water and sanitation, and lay down the definition of the right containing the five requirements that water shall be suitable, sufficient, safe, accessible, and affordable, which is argued to be ambiguous and missing several important subjects. Indeed, all these documents from the UN play a key role in the interpretation of the right, and towards the realization of states. However, the ICESCR is the most important legally binding document on international level which obliges the right to water and sanitation to become legally binding, and to be seen as a fundamental human right. In fact, the right is not expressively laid down in its wording but through adoption of Resolution A/HRC/15/L.14 the right is recognized to be incorporated and compatible within the legal document through its interpretation.

There are no international recognized jurisdictions calling upon all states for common water resources, where transboundary issues and interests may clash. Differing social, economic, cultural and environmental interests among different areas, depending on the same water resource can on many levels convert into major conflicts. The United Nations therefore must establish an international recognized practice to solve such transboundary disputes, to obtain common resources, and restore and maintain them in a sustainable way, and certainly resolve conflicts. Laid down in the Convention on
the Protection and Use of Transboundary Watercourses and Lakes declares that co-operation, development, information and measures should be taken within and between states to uphold quality and minimize the damages which human development causes, and ensure a certain standard of water quality. It further announces that transboundary watercourses should not harm or impact surrounding states. However, more regulations have to be established to resolve disputes occurring from transboundary and common water resources, so both economic growth, cultural differences, social needs and environmental restoring is achieved and in balance with each other. This may hinder individuals from exercising their right to water and sanitation.

Focus is additionally set to the issue about the definition and compatibility of the terms suitable, sufficient, safe, access and affordable water, and if the right is for all. Surely, the right to water and sanitation is entitled to all human beings, however the realization cannot happen overnight, which means that the newly recognized right should guarantee the standard to all people in the long run. States now have the responsibility to ensure the right to their highest capacity and have no excuses for not fulfilling its obligation. Indeed, states have different capabilities in order to implement the right due to social, cultural and economic manners, but they have to guarantee the right with the capacity they have. States therefore can have very different outcomes of the implementation of the fundamental human right. Moreover, the right entitle individuals globally differently.

As mentioned, the definition of the terms sufficient, suitable and safe drinking water is throughout its definition to be entitled to all, but due to its ambiguous explanation it obtains several obstacles. Examples are what the right really entitles human beings and what the specific conditions contain, such as what is a satisfactory odour, colour and taste of water.

Similarities can additionally be found concerning the term of quality drinking water, where water has to hold a certain standard, but where the standards and measures of water quality are not exactly specified.

In regard to physical and economic accessibility of drinking water one can see unclerneess in the definition where the term affordable do not give any specific details of what water should cost compared to what one earn, or how this should be regulated. Indeed, the acceptance of using third actors providing water for profit reasons, may exclude less privileged inhabitants from this right. Moreover, as a larger part of the global population live a long distance from water sources and are living in areas with high poverty rate. They may face issues of exclusion when they have to provide their family with 20 liter of water per day, under difficult circumstances where they may not have economic support for such supply. The right to water and sanitation should therefore be more clear
and inclusive so inhabitants do not face these issues of such a vital substance such as water, as it’s a question of life and death for millions of the global population.

People cannot require that fresh drinking water should be found at all locations where they would found themselves, however, there should be access to a water source within 1000 meters of one’s livelihood.

Certainly this right has to be seen through the terms of sustainability, where long term resolutions should have the highest priority, and not short-term. However, short-term resolutions cannot be abolished as the current situation of water shortage is critical. The right to water has to be implemented in a sustainable way to secure the right for further generations. A further requirement mentioned is that the right should be applied with the principle of non-discrimination where specific groups and individuals should not be excluded from the right, which means that the right entitles all individuals. Furthermore, participation by the inhabitants in the decision making process towards issues of water and sanitation should be guaranteed, and are also an important step in the realization and implementation of the right. Besides this, accessibility to information is another part of the right, where one has the right to inform, pass on information and to search for information about the issue of water and sanitation. The population should not be limited to enjoy this right to its fullest capacity and extent.

The significant necessities provided by the definition are on many stages ambiguous where specific details within its formulations lacks, such as what is affordable and how should this requirement be guaranteed. It additionally may cause diffusion and deficient implementations at national level. Clarification of the specific details concerning the definition must be developed to establish understanding for what the right to water and sanitation actually is and how the right should be functional in practice. As mentioned, the right is entitled all inhabitants globally as one of the fundamental human rights. However, its realization depends largely upon political will, and regional and national authorities adopting this right to its legal framework.

The implementation of the right on regional and national level within its legislation is as mentioned an important step for ensuring the right to its fullest extent. Unquestionably, many states are on their way to realize the right to water and sanitation in their national legislation and many have already achieved it. Examples are given including Africa, Asia, the Middle East, Central America and Europe. Indeed, the result of the implementation of the right in their national legislation has various outcomes due to various reasons such as political, economic, social, cultural and infrastructure issues.
As mentioned, the requirements and necessities of ensuring the right to water and sanitation is diffuse and through its definition it can be hard to implement and maintain. However, the right within its classification can guarantee the fundamental right to water and sanitation to be incorporated, compatible and functional in human rights law. Nevertheless, if the implementation and political will lacks, the rights realization can be extremely hard to achieve. Much more efforts have to be done to ensure the right and regional and national laws have to incorporate the right in its legal framework.

At last, the question if the right to water is an absolute right, such as the prohibition of torture or if it is a facultative right comes up. The conclusion is that the right to water and sanitation is a facultative right, this due to the fact that even if the right calls upon all states, it is not an absolute right which must be fulfilled and respected to its fullest. The form of a facultative right may obtain limitations and has no absolute fulfilment obligations. This can be clearly seen in the fundamental human right to water and sanitation.

The right to water and sanitation has taken huge steps during a short time period, but there is still a long way to go. But, where there is a law there is a possibility.
9. **REVIEW**

9.1 **Summary**

Water, a vital substance to maintain life, is at present a major global issue. Currently, approximately 2.5 billion of the world’s population lack access to sanitation and around 1 billion individuals lack access to safe drinking water. Harmed health leading to death is a crucial consequence by this enormous lack and actions have to be taken promptly. International pressure has set the right to water and sanitation on the United Nations (UN) agenda which has further lead the right to become one of the international recognized fundamental human rights. Examined and reviewed throughout this thesis is the international legal framework towards the right to water and sanitation, and if it is within its definition, containing the requirements of suitable, sufficient, safe, accessible, and affordable water, a right entitled for all and compatible with human rights law. The definition of the right can be seen as defuse and ambiguous where it is missing several details of what the right enable human beings. This may cause consequences such as misunderstandings for the right’s interpretation leading to deficient implementation processes.

Discussed are the difficulties contained by the legal status of the right, and if the right to water and sanitation is an absolute right, such as the prohibition of torture, or if it is a facultative right. Due to these issues, the history of the right has been studied. The legal history plays a major role in the rights recognition, as well as the present legal framework. Particularly the International Covenant on Economic, Social and Cultural Rights (ICESCR) is highlighted, which through the adoption of Resolution A/HRC/15/L.14 obliged the right to water and sanitation to become legally binding. Throughout the documents wording it additionally calls upon all states to ensure, improve and cooperate in accordance to the right to water and sanitation. However, restrictions of the right entitle states to implement the right in accordance to its capacity, which created opportunities for states globally to implement the right differently and to have various outcomes, resulting in different results of water supply for inhabitants worldwide. The pervious mentioned Resolution A/HRC/15/L.14, combined with the General Comment No.15 and Resolution A/RES/64/292, together realizes the right to water and sanitation through five requirements, which are that water shall be suitable, sufficient, safe, accessible, and affordable. These documents from the UN play a larger role in the interpretation of the right and towards the realization for states and its implementation. However, there are no collective recognized water rules or regulations that solve various conflicts which often occur from transboundary and common used water resources issues, which may hinder individuals from exercising their right to water and sanitation.
What the right to water and sanitation really entitles individuals is a topic that has many viewpoints and the definitions found in the international legal framework are formulated in a broad and general way. Certainly, the inquiry of economic accessibility is one of the major concerns and obstacles, where the question of who should provide water facilities and services, to what price, are major issues. Moreover, the use of common water resources that may set state interests in conflict is a further obstacle that requires an international recognized framework. This demonstrates that the implementation of the right to water and sanitation still has a long struggle ahead.

Political will, economic, social and cultural development, combined with development of states’ infrastructure is significant matters needed to be worked with, to increase states capacity to ensure the right to water and sanitation. Other means to ensure the right are recognition at regional and national level. At present time, the right has been recognized both in regional and national legal frameworks by nations worldwide, however the result of its effects is extremely diverse.

The right to water and sanitation cannot be implemented over a short time period, but it is possible to achieve in the long run. The legal framework is there; now political will, international co-operation, and regional and national actions must provide the fundamental human right for all.
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