



**International Environmental
Law Research Centre**

LEGAL ASPECTS OF WATER SECTOR REFORMS

20-21 April 2007, Geneva

WORKSHOP REPORT

As a part of its broader project on 'Legal Issues Related to Water Sector Restructuring: Human Rights, Environment, Agriculture and Socio-economic Aspects', the International Environmental Law Research Centre (IELRC) organised a two-day workshop entitled 'Legal Aspects of Water Sector Reforms'. It was held on 20 and 21 April 2007 at the International Environmental House II, in Geneva. Nearly 40 participants working on water issues, representing academia, the private sector, UN agencies, NGOs and government representatives were present.

The event focused on the international aspects of water law reforms, particularly as they apply to developing countries. While the goals of water sector restructuring have been to address increasing scarcity of the resource and extend basic water and sanitation access, it has also led to greater commercialisation of the sector, inclusion of private operators in the operation of water services, as well as the implementation of such principles as full cost-recovery. The aim of the workshop was to ensure a broader understanding of the conceptual framework informing existing and ongoing water law reforms. It purported as well to bring about proposals for reform towards more sustainable and comprehensive water management. More specifically, the workshop was designed to:

- Evaluate the trends in water sector legal and institutional restructuring frameworks.
- Analyse through case-studies the impact of water restructuring in countries ranging from South Africa and India to France and the Netherlands.
- Study the legal issues arising from the conflict between water as an economic good and water as a social and cultural good, under national, regional and international law, with a specific discussion on the implications of the human right to water.
- Explore practical and innovative suggestions to problems identified with existing water sector restructuring projects, with a specific focus on the South.
- Reflect on traditional and more current issues in water management, through an interdisciplinary approach.

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This report summarises the key points raised during the discussions and highlights some of the outcomes of the workshop.

1. Human Right to Water

The importance and implications of the Committee on Economic, Social and Cultural Rights' General (CESCR) Comment No. 15 on the right to water were discussed, as well as the differences and similarities on the way states and IOs have worked on the realisation of the human right to water. The role of IOs in granting universal access to water was the subject matter of a presentation and, in this context, the way in which UN bodies have worked towards the realization of the right was explored. It was therefore possible to compare the rights based approach versus the right to water approach and to identify organisations that support one or the other through their work. Implementation of the right to water in various regions or countries was also discussed, including Cameroon and South Africa.

2. Gaps and Tensions between Water Law and Multilateral Investment and Trade Law

Other topics related to the human right to water were addressed, such as the part that the multilateral investment system could play in order to achieve universal access to water services. In this sense, issues such as the compatibility – or lack thereof - of WTO law with international water law were mentioned, in particular with regard to the implications of trade in water resources under the GATT. The tension between the role of the state as responsible for the health of the population and the observance it owes to bilateral investment agreements signed with foreign investors was introduced as well, and this led in turn to a discussion on the importance of the case-law of dispute settlement mechanisms such as the International Center for the Settlement of Investment Disputes (ICSID). It was suggested that investment treaties should be interpreted according to the purpose of the agreement and that the interpretation criteria employed in state-investor disputes should be reconsidered, so that any measure taken by the state for the sake of its population but in prejudice of the foreign investor is considered as a step taken by the state towards the realization of the human right to water. ICSID should incorporate in its case-law the evolving notion of access to water as a human right and stop considering the resource as a mere commodity.

The case of the dispute between Biwater (UK) and Tanzania before the ICSID was taken as an example of the adverse implications of the privatisation process and the problems caused by bilateral investment treaties for host states.

3. Environment, Health and Human Rights

The importance of environmental management of water was highlighted through presentations focusing on the phenomenon of the 'greening' of water law. At the international level, agreements such as the United Nations Economic Commission for Europe's Protocol on Water and Health have pioneered in linking social and environmental aspects, and addressing development and poverty issues. At the national level, policymakers and lawmaker have increasingly incorporated environmental protection and conservation goals in the legal and regulatory framework for the management of such a scarce resource. As a result, there is a widespread understanding of water management as gravitating around sustainable exploitation.

4. Implications of Private Sector Participation

The issue of private sector participation in water management and operating water services was the focus of several presentations. The participants of the workshop examined the obligations of the state to ensure the observance by private companies of social policies. Participants stressed that the state is bound by public health obligations and that this duty is only fulfilled if there is adequate monitoring of the operations of the private sector. Water privatisation processes must recognize and enforce public law values. The existence of strong governance and effective regulatory frameworks is therefore essential, and the panellists illustrated their point by taking as examples the experiences in Indonesia and in African countries.

5. Proposed Water Reforms in India

The reforms taking place in India were the object of a specific panel which aimed to examine the way in which better distribution of the resource among its competitive uses can be achieved. Consequently, attention was put on the issue of efficient water transfers, both on the interregional and intersectoral levels. Other related topics that were mentioned included the role of NGOs in water distribution, the existence of a legal vacuum for sustainable water management, the advantages of local water management, how crop selection can help save water for uses other than irrigation, and the input from and deficiencies of current regional institutional mechanisms competent for water distribution. Officials from Indian regulatory entities explained the frameworks they are presently working with and discussed their experiences and the challenges they face.

6. Case Studies from Around the World

The closing sessions of the workshop focused on the implementation of water reforms in different countries and challenges faced by water governance. Some of the issues covered included the need to improve management of transboundary rivers and other shared water resources through treaty enforcement, the role of municipalities in water management in European countries, the need for participatory and transparent water plans that incorporate local communities in decision-making, the need to strengthen public law frameworks in order to allow the state to have an effective regulatory role throughout privatisation processes, and the analysis of alternatives to water licensing in order to achieve a fairer scheme for water allocation among users.

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Last but not least, the organisers would like to thank all the workshop participants for their contribution to a lively and constructive two days of discussion.