

Groundwater law and climate change law: International and India context

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Policy Dimensions – Lessons for India, 24-25 January 2014

Rationale for the project: Gaps identified in India

- Groundwater is now the main source of water but receiving insufficient attention:
 - Crucial role for the realisation of the human right to water, for livelihoods (eg irrigation), as well as increasingly for industrial uses – in other words, most water uses
 - Yet, outdated and limited regulatory and institutional frameworks
- Climate change: overarching environmental issue in need of further attention at the national level:
 - Eg significant negative potential for the realisation of human rights (water, sanitation, food, health, housing etc)

Rationale for the project: India study in context



- Nature of issues addressed make it a topic that cannot be addressed only at the local/national level (conversely this workshop is not 'about' India)
- Lack of framework of reference in India for linking groundwater, the global water cycle, climate change calls for using a comparative framework
- This first workshop provides the start of a discussion on links that need to be built.
- In view of lawyers' earlier inability to make these links, the workshop seeks to engage with a broad range of experts
- It is largely exploratory in nature

Linking groundwater and climate change

- Climate change has pervasive impacts on the water sector, including groundwater:
 - Yet, international water law does not even go as far as recognising water as a ‘common concern’, let alone a ‘common heritage of humankind’.
 - Particularly marked in the case of groundwater where the proposed international law framework seeks to reinforce states’ control (ILC draft rules)
 - Conversely, the international climate change regime fails to give (ground)water the emphasis it deserves

Linking groundwater and climate change (ctd)

- Existence of direct links between climate change, the global water cycle and national/local regulation of groundwater:
 - Links acknowledged but missing in water law and policy frameworks (case of UN Watercourses Convention)
 - Importance of groundwater in terms of adaptation to increase as variability in precipitation increases
- Global nature of climate change provides basis for rethinking groundwater governance from a global perspective

Water and climate change law at the national level

- The global perspective is necessary but only useful if put in context (both climate change and water have local to global dimensions)
- National level water law often at a distance from environmental law/climate change

eg, in India, neither land-based water rights nor irrigation legislation have any specific environmental focus (often pre-date the environmental era)

The same is true for recent legislation, such as groundwater legislation adopted in some states since the late 1990s

Groundwater and climate change regulation in India

- Groundwater regulation focuses on apportioning claims (by landowners)
- Groundwater (land-based) rights and existing legislation fails to:
 - Regulate groundwater at aquifer level
 - Link surface and groundwater (eg different principles for use, control, conservation)
 - Link groundwater with the global water cycle (precipitation)
- Environmental law integrates (ground)water but does not specifically fill gaps in water law:
 - Climate change-specific frameworks still developing (eg National Water Mission in context of National Action Plan on Climate Change recognising need for new legal and institutional framework)

- Existing water law and policy fail to squarely address climate change (environment)

This is true despite 20 years of ‘water sector reforms’ premised on ‘water scarcity’ conceived as an environmental issue

- Despite clear recognition of fundamental rights to a clean environment, to water, to sanitation, neither environmental legislation nor water legislation clearly integrates a human rights dimension (case of National Rural Drinking Water Programme (NRDWP))
- Climate change tends to be seen as an issue to be addressed at the macro level, reinforcing a centralisation drive in water law – cf. constitutional mandate for decentralisation

Opportunities

- Looking at groundwater through a climate change lens in India provides an opportunity to:
 - Conceive (ground)water regulation in the context of the global water cycle
 - Comprehensively integrate protection and conservation at aquifer levels
 - ‘Effectively’ link surface water and groundwater
 - Recognise that climate change, like water, needs to be regulated on the basis of the principle of subsidiarity