Utrecht Centre for Water, Oceans and Sustainability Law

SIM Netherlands Institute of Human Rights

Ten building blocks for assessing a sustainable human right to water for vulnerable groups

Hosted by:
CWWA & GWP- C at the
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Who is in the audience?

Introduction

- Started in March 2013
- Supervisors: Prof. Marleen van Rijswick - professor of European and Dutch Water Law

  Prof. Antoine Buyse - professor in human rights from a multidisciplinary perspective
- Thesis: how can (environmental) sustainability be incorporated into the human right to water to enable its enjoyment by vulnerable groups?
- Case studies: Yemen & Suriname

Outline

Theory

1. Human right to water: rights-based approach to water

Practice

2. Assessment method
3. Case study


CAJA DE SALUD
DE LA BANCA PRIVA
VIVA LA CAJA
Sindicato de Trabajadores
en Salud Pública
Valle Bajo

Background of the human right to water

2000 Bolivia water wars

2002 UN Committee on Economic, Social & Cultural Rights formulated General Comment No. 15

2010 UN General Assembly recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights

(124 states in favour/ 0 against/ T&T abstained)

Why a human right to water?

- No explicit right to water mentions in human rights catalogue
- Rights-based vs. needs based vs. charity based
- Law as an instrument
- Entitlements based on human dignity
- State obligations: respect, protect & fulfill

General Comment No. 15 (2002)

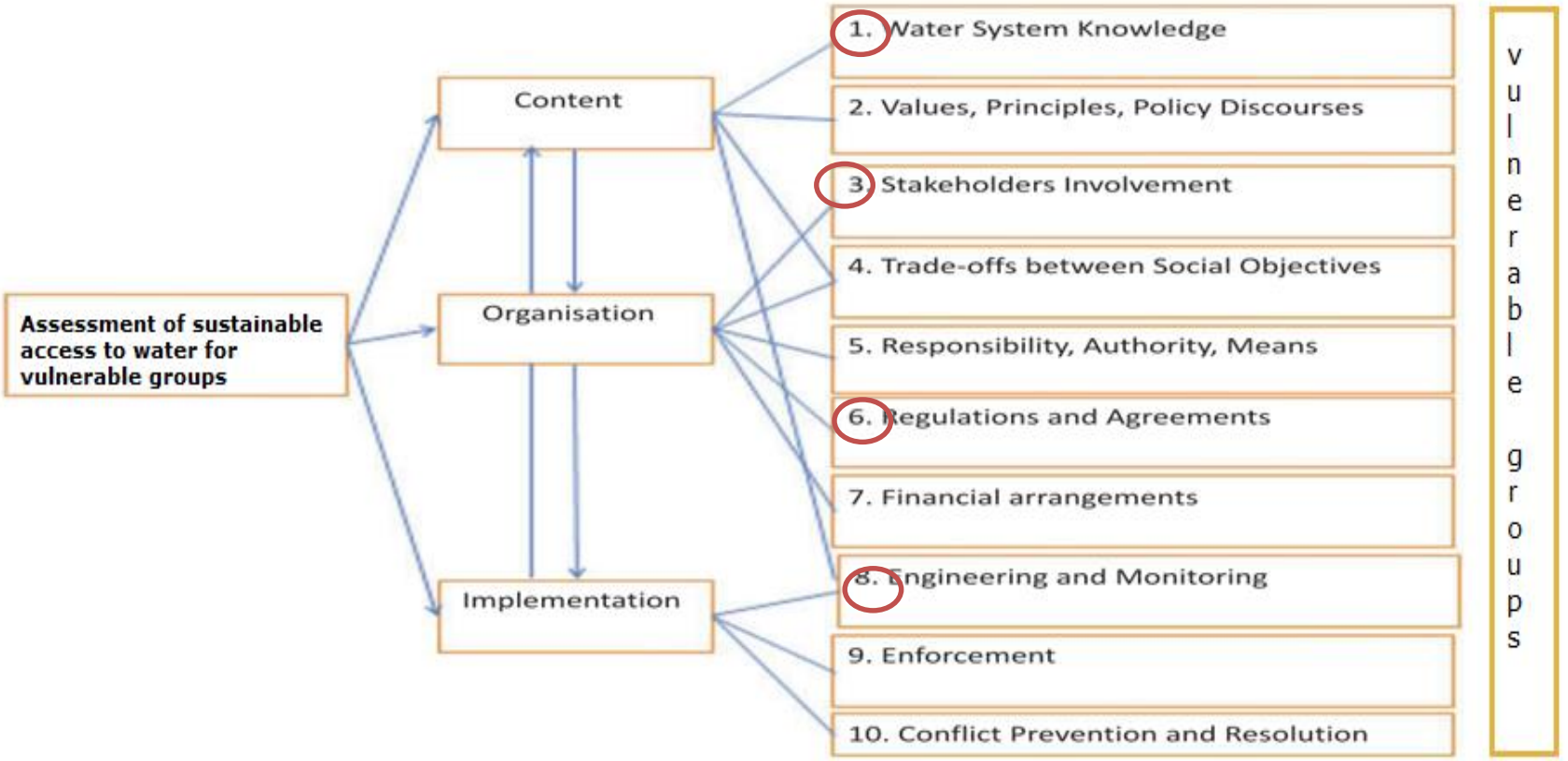
The **human right to water** entitles everyone to (1) sufficient, (2) safe, (3) acceptable, (4) physically accessible and (5) affordable water for (6) personal and domestic uses.

- ICESCR is legally binding however GC No. 15 is not legally binding, but an authoritative I nterpretation
- Right to health (art. 12) & right to an adequate standard of living (art. 11)
- Respect, protect & fulfill

Bridging the disconnect

- Disconnect and miscommunication between disciplines dealing with water issues
- Human right to water and overall water management
- Bridging concepts: '*water use* which meets the needs of the present without compromising the ability of future generations to meet their own *water* needs.' (Brundtland report 1987)

Ten building blocks for sustainable access to water for domestic purposes of vulnerable groups



Case study: Yemen

Water scarcity in Yemen: the country's forgotten conflict

The capital Sana'a might run out of water as soon as 2017, but what feasible solutions exist with the country on the brink of war?

In Yemen, 50% of the population struggle daily to find or buy enough clean water to drink or grow food. Photograph: Bryan Denton/Corbis

Case study: Suriname

Schoon drinkwater voor krakers

28 april 2015 | 24 reacties | Foto | Maatschappij | Nieuws uit Suriname

Twee meisjes hollen naar een van de twee tapkranen, die vorige week door de Dienst Watervoorziening van het Ministerie van Natuurlijke Hulpbronnen in Suriname zijn geplaatst op een terrein vol krakers aan de Maystraat en de Rodekruislaan, in Paramaribo. De meer dan honderd bewoners die het terrein al jaren bezetten en er onder zeer slechte omstandigheden wonen, beschikten tot dan niet over schoon drinkwater.

Vulnerable groups

- Litmus test for general state access to water
- Individuals and groups **who have traditionally faced difficulties in exercising this right**.
- Social and environmental factors
- Consequence: special measures
- Suriname: Indigenous and tribal communities
  - Women and children
- Yemen: small farmers

BB 1 Water system knowledge

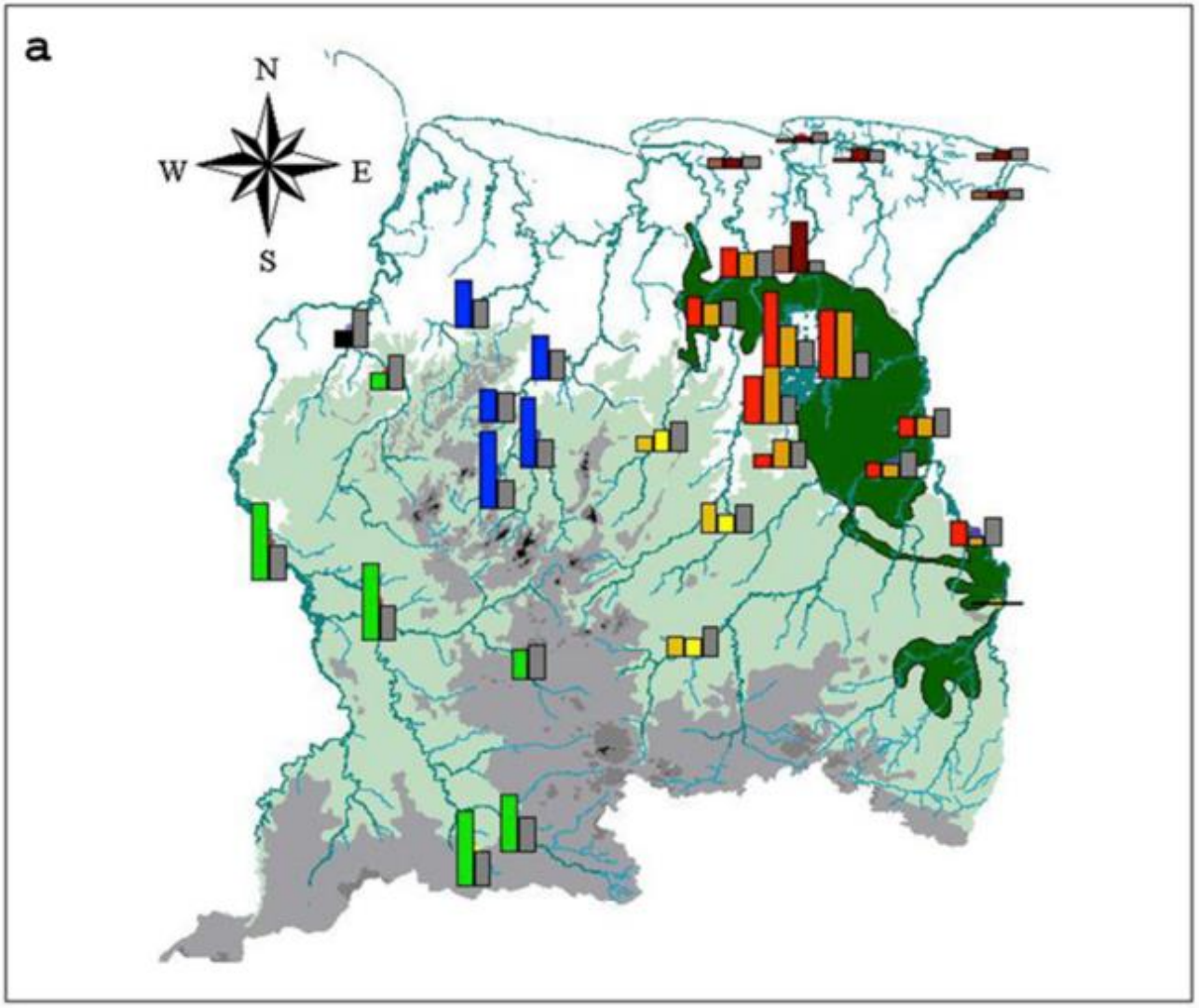
The combination of natural physical resources (such as rivers, rainfall, seas, lakes etc.) and man-made infrastructure (such as canals, pumping stations, reservoirs, flood defenses etc.). The system supports societal functions, such as domestic and industrial water use, irrigation, shipping, hydropower, safety, etc., and includes the ecosystems related to water.

- *Assessment criteria: Is there sufficient knowledge of the existing water system in order to support access to water for vulnerable groups? If not, what are the gaps; is sufficient knowledge available to assess the impact on the water system because of changes in environment and societal functions?*

Suriname

Balingsoela, Brokopondo 2015

Suriname



Average mercury levels found in piscivorous fishes in different river systems in Suriname; Ouboter (2015)

BB 3 Stakeholders involvement (I)

- Governments hold final responsibility of realization

- Principles of participation: active, free and meaningful participation which affect access to water

Are all relevant stakeholders actively and meaningfully involved? How are the interests, concerns and values balanced in the problem analysis and the decision-making concerning design, implementation and monitoring of the solution?

BB 3 Stakeholders involvement (II) Suriname

- Ministry of regional development
  - Local governance

- Conflicts of land rights aggravate problems access to water
  - Case of the Kalina and Lokono Peoples v. Suriname (2015)
  - Case of the Saramaka People v. Suriname (2007)

BB 6 Regulations and agreements

- Regulations and agreements should be suitable within the context they have to function
  - Coherence
  - (Cultural) appropriateness
  - Legitimacy

- Balancing act: legal certainty & adaptiveness

BB 6 Regulations and agreements Yemen

	Shari'ah Law	Customary law	Constitution	Civil Code	Water Law
Ownership	Res communis Private ownership of contained water	Mubah or res nullius, water is nobody's property But also: - Private ownership of contained water - Connected to private property (water located on land) - Public property	State is owner of all natural resources to use for 'common good' (art. 8)	Mubah or res nullius, water is nobody's property (Art. 1359) However, res nullius water is entitled to whoever reaches it first (art. 1360)	In principle permissible for all, no ownership excerpt (art. 4) Permit system (art. 35)
Control	Landowner	Not specified	State	Not specified	National Water Resources Authority & Ministry of Water and Environment
Management	Decentralized/ localized customs	Not specified	Not specified	Not specified	Decentralized

BB 8 Engineering and monitoring

- Design and management of the existing infrastructure must be suitable for fulfilling the right

- Sustainable & cultural appropriate infrastructure

Are the technology choices appropriate?

Balingsoela, Brokopondo (2015)

Conclusion

- Challenges
- Legislation can be a useful tool or hindrance
- National context asks for integrated approach
- Vulnerable groups as litmus test

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Thank you

Sponsors:

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Publications

- Ten building blocks for a sustainable human right to water: an integrated method to assess sustainable access to water for domestic purposes of vulnerable groups (*forthcoming)*
- The human right to water in Suriname: a paradox of scarcity and abundance (*forthcoming)*
- Misiedjan, D., van Rijswick, M., & Tjen A Kwoei, A. (2015). A human right to water while the well runs dry: analysing the legal and regulatory framework of Yemen water law. *The Journal of Water Law*, *24*(5/6), 199 – 206.
- Gupta, J., Hildering, A., & Misiedjan, D. (2014). Indigenous people's right to water under international law: a legal pluralism perspective. *Current Opinion in Environmental Sustainability*, *11*, 26–33. doi:10.1016/j.cosust.2014.09.015
- Misiedjan, D., & Gupta, J. (2014). Indigenous Communities: Analyzing their Right to Water under Different International Legal Regimes. *Utrecht Law Review*, *10*(2), 77–90.
- THIGL. (2014). *The Political Economy of Water Management in Yemen*.

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Discussion & questions

Water crisis in the Caribbean

Saint Lucia tries to avert water crisis (January 27, 2015)

Saint Lucia's main water storage facility, the John Compton Dam is currently holding half of its designed capacity, which water company WASCO says is a grave situation that requires a massive and expensive rehabilitation project. (…) The water worries are not unique to Saint Lucia. Many Caribbean countries are putting measures in place to ensure water is not wasted. Caribbean governments put water conservation on the priority list for climate change adaptation

Making rain: can technology drought-proof the Caribbean? (18 February, 2015)

Hard as it might be to believe, water-related risks in picture-postcard Caribbean islands such as Saint Lucia, Barbados, Antigua and Jamaica compare to those in the Western Sahara and parts of the Middle East, according to the World Resources Institute's Aqueduct rankings.

Household water use in Barbados (2009)

The issue of water scarcity is a pressing matter in Barbados. The Caribbean country is one of the highest ranking water-scarce nations globally, with a per capita water use that is greater than what is naturally available.(…) The agriculture and domestic sectors are the two largest water users in Barbados, with tourism becoming accountable for a growing amount of the water consumed nationally.

BB 9 Enforcement

- Enforcement of rights and policies is an often neglected aspect in water governance

- Human rights are not self-enforcing and therefore enforcement mechanisms such as administrative and/ or judicial enforcement where the court system is used for individuals and groups to assert their rights

- The elements of the sustainable human right to water should be translated into measurable indicators.

BB 10 Conflict resolution & prevention

- Focus in water law on interstate relations

- Assumption: having clear rules based on shared responsibilities and values, in alignment with the physical circumstances can in many cases prevent conflicts from arising.

- Presence of conflict resolution mechanisms in relation vulnerable groups

BB 4 Trade-offs between social objectives (II) Suriname

- DWV: Water from trucks is free
- Economic objectives gold mining
- The right to subsistence vs. right to water


30M3
DRINKWATER
TRANSPORT
PF-32-49

BB 4 Trade-offs between social objectives (I)

- Reallocation: distribution of water must be renegotiated

Are agreed service-level decisions based on trade-offs of costs, benefits and distributional effects of various alternatives?