



Summary

A human rights-based approach (HRBA) serves as a framework to advance the progressive realisation of human rights, including the right to water and sanitation which was recognised by the UN General Assembly in 2010. This Tool details the origins and characteristics of the HBRA, details the substantive and procedural content of the right to water and sanitation, outlines the steps needed to integrate the HRBA with the IWRM cycle, and discusses key challenges and considerations for implementing the HRBA in practice.

Origins and Characteristics of the HBRA

The HRBA has been rapidly evolving in the 2000s, becoming increasingly important for water shortly after the UN Committee on Economic, Social and Cultural Rights published its General Comment No.15 on the human right to water for personal and domestic uses, affirming it as an integral part of right to life (UNESCR, 2002). The Committee especially underlined the connection between the right to water and rights to health, adequate housing, and food. This legal recognition was preceded by a General Comment No.12 (UNESCR, 1999) which recognises the human right to food and requires states to ensure availability of resources for food production, presuming water availability. In 2010, the UN General Assembly resolution finally affirmed the human right to water and sanitation, stressing that realisation of human rights essentially depends on availability of clean drinking water and sanitation (UNGA, 2010).

The HRBA allows to achieve coherence in a water governance system, uniting environmental sustainability and human development. Such approach focuses on clear rights and obligations, progressing from needs and voluntary commitments. In development cooperation HRBA is applied to define right-holders and duty-bearers, which in turn plays key role to achieve development goals by holding those involved responsible and accountable. As defined by UNSDG Human Rights Working Group, it is meant to give equal attention to what should be done and how it should be done in different phases and steps of project or programme cycle (UNSDG, 2003). It is embodied in “progressive realisation” of human rights where commitments are translated into measurable indicators and planning is done against human rights targets.

The human right to water and sanitation should not be confused with the concept of water rights. This difference originates from the nature of these two rights – a water right granted by the state while a human right to safe drinking water pertains to an individual, is inalienable and can’t be stripped of such individual. As a human right, the human right to water and sanitation emerges irrespective of state approval and cannot be temporary. See the relationship between the human right safeguards and water rights as displayed in Figure 1.

Image

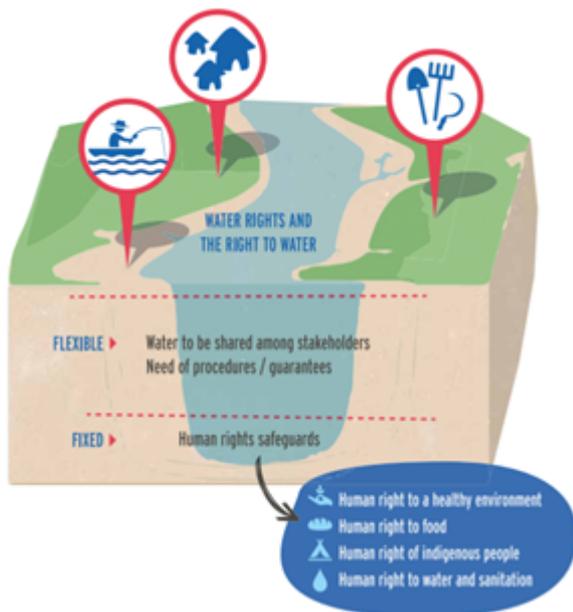


Figure 1. Relationship between the human rights safeguards and water rights. Source: SIWI (2017)

The Substantive and Procedural Content of the Right

Grounded in the 1948 Universal Declaration of Human Rights, the human right to water and sanitation includes principles of universality and inalienability, indivisibility, interdependence and inter-relatedness, equality and rule of law, inclusion, in addition to the so-called procedural human rights, e.g., participation, non-discrimination, accountability and transparency (UN, 1948). In that sense, it is important to underline that the right to water splits itself into two categories – substantive (technical standards to be realised, such as water quantity and quality) and procedural (rules and institutions that facilitate substantive rights, such as access to information or participation in decision-making) rights. The substantive rights include freedoms and entitlements in relation to (SIWI, 2017):

- **The right to sufficient and continuous water:** ensuring minimum rights to a limited water quantity, sufficient for personal and domestic needs (f.e. WHO Guidelines for drinking water quality, 2017);
- **The right to safe and acceptable water:** establishes a lower threshold for basic water quality conditions, free from health threats and sets a minimum standard for hygienic facilities;
- **The right to accessible water:** provides for water and sanitation facilities to be accessible for and by all without discrimination, including both physical accessibility and cost considerations;

The human right to water and sanitation implies for procedural rights as well (SIWI, 2017):

- **The right to information:** comprising the right to seek, receive and share information on water issues, as well as the obligation to disclose timely and in full information which may affect this right;
- **The right to participation:** each policy or strategy should ensure an individual and collective right to participate within decision-making processes, affecting their rights to water;
- **The rights to enjoyment without discrimination:** translating into every state's obligation to protect vulnerable and marginalised groups, facilitating water access for all;
- **The right of present and future generations:** sufficient water resources should be available for future generations, which requires states to design and implement sustainable policies.

Steps to Integrate HRBA into the IWRM Cycle

The HRBA can be integrated into the IWRM cycle through an iterative step process (Figure 2) (SIWI, 2017):

- **Step 1 - Map:** The first step involves taking stock of available renewable freshwater resources within a catchment area, potential uses of forests and wetlands, as well as adverse groundwater impacts from land use. This step requires to take into consideration natural or anthropogenic water risks. Second layer of mapping involves assessing progress on each water-related right and its attributes, which allows for future of right to which the state has committed. Finally, mapping should also cover marginalisation and vulnerability in the society.
- **Step 2 - Respect:** Upon second step we need to identify water allocation needs, highlighting the amount of water which should be reserved to realise the abovementioned human rights. Since they are inalienable, putting them first allows to for fair distribution. Consequently, existing rights need to be formalized and actively communicated within the planning system. At this point the integration process should have produced a solid baseline analysis, water rights database and an overview of water allocation priorities.
- **Step 3 - Protect:** This step urges states to analyse present and potential threats to enjoyments of rights to water by consulting the stakeholders and take action to protect the rights from possible infringement. Such action requires robust monitoring mechanisms and national legal remedies to address citizen complaints. An important part of protecting right water lies with creating efficient sanctioning mechanisms in response to non-compliance.
- **Step 4 - Fulfil:** To provide the public with sustainable water infrastructure, states need to ensure two aspects. Progressive realisation of human right to water and sanitation requires a minimum threshold of rights to be enjoyed by all. It also comprises allocations of water rights and guaranteed sustainable development interests. Both of these aspects heavily rely on effective public engagement to inform the basin development plan.
- **Step 5 - Monitor:** Last step uses indicators and benchmarks identified in the baseline analysis, providing a pathway for recurring evaluation of progress and informing the next planning cycle. Both individual commitments and stakeholder agreements should be covered by monitoring activities.

Image



Figure 2. Integrating the HRBA into the IWRM Cycle. Source: SIWI (2017)

Challenges and Considerations for Implementing the HRBA

Implementation efforts toward applying the HRBA to water management should include the following considerations:

- **Human right to environment:** has found more widespread recognition on national level (Tool A2.04), environmental degradation produces adverse impacts on fulfilment and enjoyment of other human rights, as found by the 2012 UN Human Rights Council study. Only in 2021 the Council recognised that having a clean, healthy and sustainable environment is a human right (UNHRC, 2021). The components of IWRM aiming to prevent pollution and environmental degradation would be most instrumental to advance enjoyment of human right to environment.
- **Indigenous peoples' rights:** have been comprehensively codified in the ILO Indigenous and Tribal Peoples Convention (ILO, 1989). For water management indigenous rights pose great importance as collective rather than individual rights (as other human rights), including their right to land and resources, such as water (Tool A2.01). Inclusion of indigenous people in decision-making process and obtaining free and prior informed consent present primary steps to be taken by policymakers before approving interventions on national level.
- **Gender:** Achieving long-term equality in water and sanitation calls for systemic changes in the structure and division of labour in care work due to customary norms and gender roles (Tools B5). Monitoring gender specific rights is essential to hold State parties accountable. Especially girls' and women's discrimination in the right to sanitation calls for protection. Treaty bodies reporting guidelines must be revised and State parties and NGOs need to compile the necessary information on the link between the right to water and sanitation and gendered realities on the ground.
- **Indivisibility Nature of the Right:** The definition of the right to water needs to be revisited due to the divide between water use in productive and domestic spheres. This does not reflect the realities on the ground especially for poor rural and peri-urban women. The CEDAW committee recognises a broader definition of a right to water for livelihoods and acknowledges the indivisibility of different rights which is suitable for capturing the needs on the ground (General Recommendation No. 34) (CEDAW, 2016).



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