

## **Human right to water and sanitation – attacked from a transboundary perspective during the Rio+20 negotiations**

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The section on water in the Rio+20 outcome document does not bring the world really anything new. But the negotiations were a long struggle, and till the last days it looked like the water section would do more harm than good.

Canada and the UK had started with opposing the mention to the UN resolution on the human right to water and sanitation of September 2010<sup>1</sup> as they do not want to recognize the right to sanitation. Also, Canada, Turkey and G77 started making problems about transboundary water management, retracting from previous agreed language on Integrated Water Resource Management as agreed in Johannesburg at the WSSD in 2002.

Some G77 countries and Canada had tried to add language to leave out all transboundary water issues. But obligations of states in relation to human rights do not end at national borders. States have an obligation to minimise pollution of shared water courses where this would have an impact on the rights to water in other countries. These obligations are already well recognised under customary international law, that require that States do not cause significant harm to others and that water resources are reasonably and equitably used. Therefore the example of the UNECE “Convention on the protection and use of Transboundary watercourses and international lakes” of March 1992 is such an important example internationally. Unfortunately it has not been recognized as such in the Rio+20 outcome document.

When by Friday evening 15<sup>th</sup> of June there was still only 33% of the text of the outcome document agreed, the Brazilian government as host country for the Summit, took over the leadership of the negotiations.

Bolivia critically commented on the 16<sup>th</sup> of June version of the section on water, in which a “qualifier” had been added to the “human right to water and sanitation” which referred to the this

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<sup>1</sup> This was a groundbreaking reaffirmation by the UN Human Rights Council in 2010 and its subsequent restatements since then. (2- [Resolution 15/9 of 30 September 2010](#). Also reiterated in [Resolution 16/2 of 24 March 2011](#) and [Resolution 18/1 of 28 September 2011](#)) The Council has reiterated the recognition by the United Nations Committee on Economic, Social and Cultural Rights that the rights to water and sanitation – like the rights to food and adequate housing - emanate from the right to an adequate standard of living contained in Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). It thereby affirmed that the rights to water and sanitation are implicitly contained in several human rights treaties, including the ICESCR and the UN Convention on the Rights of the Child (CRC) and are therefore legally binding rights.

right in a manner that appeared to challenge its recognition as a legally binding right.<sup>2</sup>

The negotiations continued in small informal groups, partly taking place in the hallways, without use of text beamed on screens, but in discussions where Brazil had the final say on the exact language used. The night of the 17<sup>th</sup> to 18<sup>th</sup> of June we were all still waiting for a last round of negotiations to happen at 2:45 am in the morning, when Brazil announced that the negotiations had been finalized and we could all go back to our hotels.

Seen the previous versions, we can be glad with the final Rio+20 outcome document which reaffirms the right to water and sanitation without excluding transboundary water issues. The paragraph reads as follows:

**"121. We reaffirm our commitments regarding the human right to safe drinking water and sanitation, to be progressively realized for our populations with full respect for national sovereignty. (...)."**

Also, it does not state, as proposed by Canada, that there is no obligation in regard to development assistance.

As Amnesty International commented, "as a result, the text does not have a negative impact on the recognition of extraterritorial human rights obligations." It was for this reason that Turkey felt compelled to state that given the scope for different interpretations, it wished to state its view that implementation of the right to water is only at the national level. See also Amnesty's declaration on Rio+20<sup>3</sup>.

Although countries such as Turkey did not get their way in the final text, their statement indicates that the battle is not yet one and that some influential countries continue to suggest that rights do not cross boundaries, reminding us of Orwell's "some animals are more equal than others".

**The positive outcome of Rio+20** is that it is the first time that the rights to water and sanitation were affirmed in a major multilateral Summit document; a consensus document to which all states have to adhere, thus going a step further than the September 2010 Resolution.

A further positive improvement to the Water section of the Rio+20 outcome document is that Sanitation has been added to the title, and that the **title now finally says "Water and Sanitation"**. That omission had given us a lot of headaches these last months.

Other parts of the Rio+20 outcome document also bring us some new language to work with internationally, in particular in the section on food security, paragraph 109 states the importance of "...appropriate and affordable technologies, including for efficient irrigation, **reuse of treated**

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<sup>2</sup> The draft Rio +20 Outcome document of 16 June presented by Brazil as hosts of the conference stated: "We recognize our commitments regarding the human right to safe drinking water and sanitation as inextricably related to the right to the highest attainable standard of physical and mental health as well as the right to human life and dignity, ...."<sup>[1]</sup> This formulation failed to acknowledge that the rights to water and sanitation are not merely linked to other human rights, such as the right to health, but they are rights that are derived from the right to an adequate standard of living and therefore legally binding.

<sup>3</sup> <http://www.amnesty.org/en/news/rio20-outcome-document-undermined-human-rights-opponents-2012-06-22> or <http://www.hrw.org/news/2012/06/22/rio-20-outcome-document-undermined-rights-opponents>

**wastewater** and water harvesting and storage”. The reuse of treated wastewater is a new recognition for such a Summit document.

Furthermore, paragraph 141 in the health section, **recognizes the link between water and health**, which is the basis of the UNECE Water & Health protocol “We recognize that reducing, inter alia, air, water and chemical pollution leads to positive effects on health“ and so does paragraph 120, which says that access to **safe and affordable drinking water and basic sanitation for all** is necessary (...) **to protect human health**.

This paragraph is important in two other respects, firstly, because it states “for all”, which means going beyond the Millennium Development Goals which aim at achieving this for 50% of the population without access, to now “for all”, therefore **achieving access for 100% of the population**. If a timeline had been added to this paragraph as was proposed by the European Union (2030) we would have really gotten a strong and useful outcome of the Rio+20 summit.

Secondly, the Women’s Major Group is glad that this paragraph 120 recognizes the specific burden on women of a lack of access to safe and affordable drinking water and basic sanitation, and that it is a prerequisite for poverty eradication; “120: We commit to the progressive realization of access to safe and affordable drinking water and basic sanitation for all, as **necessary for poverty eradication, the empowerment of women and to protect human health**, and to significantly improve the implementation of integrated water resource management at all levels as appropriate”.

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