

A European Citizens' Initiative for implementation of The human right to water and sanitation in European law.

Abstract

The United Nations have recognised the universal human right to water and sanitation on 28 July 2010, through Resolution 64/292. In this resolution the UN acknowledged that clean drinking water and sanitation are key factors to the accomplishment of all human rights. The Resolution calls upon States and international organisations to provide financial resources, help in capacity-building and technology transfer with the objective to provide safe, clean, accessible and affordable drinking water and sanitation for all. The resolution was hailed by many as a “historic” achievement, but as the international community commemorated the second anniversary of that resolution in July 2012, there was hardly any political rejoicing either inside or outside the United Nations. (IPS, 2012)

The European Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights. The European Union shall contribute to (...) eradication of poverty and the protection of human rights (European Union, 2010). The rule of law and human rights are not the only principles on which the European Union is founded. The expansion of a common market has arguably been more influential. (Both Ends, 2008)

A European Citizens' Initiative allows EU-citizens to bring an issue to the European political agenda by collecting one million signatures coming from at least seven different EU Member States. The European federation of Public Service Unions (EPSU) decided to take up this challenge and try to put the 'human right to water and sanitation' on the European agenda, with overarching goal of implementing the human right to water and sanitation in European legislation.

The aims of this European Citizens' Initiative are to ensure water and sanitation for every person in the European Union; to achieve universal (global) access to water and sanitation and to safeguard the limited public water resources for future generations by keeping water out of the European internal market.

Water is not a commodity; it is a fundamental human right and a public (common) good. The campaign aims to ensure that water is seen as a public good and that protecting our water environment prevails over commercial interests. The mind-set of the European Commission is currently that of a market-based approach with the focus on competition. This approach is only increasing inequalities and not serving a more equitable, sustainable and just society. A rights-based approach is advocated.

The European Citizens' Initiative (ECI) is a tool for participatory democracy and to be tested in its usefulness to achieve implementation of this human right and to achieve a paradigm shift in European water policy. This ECI is therefore a threefold test case. In the first place to prove itself as a democratic tool. Secondly, to see if it results in the implementation of the human right to water and sanitation and thirdly, to see if a significant step to a paradigm shift, from growth to sustainability and from a market based approach to a rights based approach, can be made.

Introduction: the Human Right to Water and Sanitation

The United Nations have recognised the universal human right to water and sanitation through resolution 64/292. It explicitly recognized the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realisation of all human rights. The Resolution calls upon States and international organisations to provide financial resources, help capacity-building and technology transfer to help countries, in particular developing countries, to provide safe, clean, accessible and affordable drinking water and sanitation for all. (United Nations, 2010)

"This human right is yet to be fully implemented", complained a coalition of 15 international non-governmental organisations (NGO's), whose members describe themselves as "water justice activists". *"Two years on we have not yet seen the sort of step change in effort needed to reverse the historical neglect of water and, more particularly, sanitation in international development cooperation"* added Tom Slaymaker, senior policy analyst at WaterAid. (IPS, 2012)

In November 2002, the Committee on Economic, Social and Cultural Rights (UN-CESCR) adopted General Comment No. 15 on the right to water. Article 1.1 states that *"Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights"*. (UN-CESCR, 2002)

The rights to water and sanitation entitle everyone to sufficient quantities of safe water and sanitation services that are affordable, accessible, culturally acceptable, and which are delivered in a participatory, accountable and non-discriminatory manner. Governments are obliged to ensure that everybody gains access to these services over an acceptable timeframe, through adopting appropriate legislation, policies, programmes and ensuring that these are adequately resourced and monitored. The rights to water and sanitation provide not only a legal framework for holding States accountable for delivering these services, but also a set of principles that assist States in prioritising where resources should be dedicated, using the principles of participation, gender equality and non-discrimination to ensure access for all. (Albuquerque, 2012)

It is clear that water and sanitation have everything to do with human dignity but also with social equity. Ensuring that everyone has access to adequate sanitation is not only fundamental for human dignity and privacy, but is one of the principal mechanisms for protecting the quality of drinking water supplies and resources. In accordance with the rights to health and adequate housing States have an obligation to progressively extend safe sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children.

The most crucial dimension of human rights is its potential to empower people. Water and sanitation, as rights, are no longer matters of charity which a Government can give or take away. They are human rights, which people can claim. States become more accountable, and once people know that they have this right, the entire dynamic changes as they hold the authorities to account. (Bustelo, 2011)

Realization of the right to water: a state obligation

States have immediate obligations in relation to the right to water, such as the guarantee that the right will be exercised without discrimination of any kind and the obligation to take steps that are deliberate, concrete and targeted towards the full realization of the right to water. Realization of the right should be feasible and practicable, since all States parties exercise control over a broad range of resources, including water, technology, financial resources and international assistance. (United Nations, 2010)

States have the primary responsibility to ensure the full realization of all human rights, and must take steps, nationally and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, to achieve progressively the full realization of the right to safe drinking water and sanitation by all appropriate means, including particularly the adoption of legislative measures in the implementation of their human rights obligations. (UN-HRC, 2011)

Delegation of safe drinking water and sanitation to a third party does not exempt the State from these obligations. (UN-HRC, 2010) States must make efforts to change their current behaviour in focussing predominantly on urban areas. While it is true that urban areas are easier to reach, States' primary obligation is to realise the human rights to water and sanitation, prioritising the most vulnerable and marginalized individuals and communities, which are mostly in rural areas or in deprived urban areas.

The continuing contamination, depletion and unequal distribution of water is exacerbating existing poverty. Taking into account the evidence that the majority of resources are benefiting the relatively well-off rather than low-income communities, who lack even basic access, States must integrate a human rights based approach into national and local plans on water and sanitation. This will particularly require that

States target their plans and financing on ensuring access to basic services in rural areas and in deprived urban areas. (Albuquerque, 2011)

Determining why particular individuals and groups do not have access to water and sanitation and other essential services will open our eyes to a world of inequalities, often built into the fabric of society. Human rights challenge the existing power relations by stating that inequalities in access to water and sanitation are not only morally unacceptable, but also prohibited in international law. This requires States to revisit legislation, policies and practice, and to examine how to ensure that all people enjoy their rights equally. (Albuquerque, 2012)

The worldwide resistance to privatisation of public water supplies also adopted the argument that water services should not be put in the hands of private companies because the need for water and sanitation was too important and too fundamental for it to be dependent on commercial decisions based on profitability.

The common element in the right to water and the right to water resources is the assertion of equality, not only of equal needs to a fundamental element of life, but also of equal political power – democracy – and of equality before the law. This implies that conflicts will be resolved by democratic politics, not by markets and the ‘allocation of water to higher value uses’. ‘Water is to be governed by human rights, not corporate strategies’. (EPSU, 2012)

Europe and the EU-27

According to the Joint Progress Monitor by WHO and UNICEF not all EU-27 countries have achieved full access to water supply and sanitation for their populations. (WHO and UNICEF, 2010) The World Water Assessment Programme (WWAP) assesses that in the European Union still over one million people lack access to safe and clean water and an estimated eight million people (= nearly 2% of the population) lack access to sanitation. Some countries have even made no, or little, progress since 1990 in improving water supply and sanitation. .

The increasing level of poverty throughout the European region places pressure on household incomes available for basic utilities. In many countries, rural residents do not enjoy the same level of access to safe water and adequate sanitation compared with urban dwellers. Ensuring equitable access to water and sanitation contributes to raising standards of living, promotes societal cohesion and benefits investment, economic growth and sustainable development.(UNECE, 2012)

Universal access/ “Water for all”

Over 800 million people still lack access to water and even 2,5 billion still lack access to improved sanitation at this moment. The Millennium Development Goals set a target to half the number of people without access to water and sanitation by 2015. At the time the goals were set, these numbers were: 1,2 Billion without water and 2,6 Billion without sanitation.

Sanitation and drinking-water receive a relatively low priority for both official development assistance (ODA) and domestic allocations. The total aid for all aspects of water, as measured by the Organisation for Economic Co-operation and Development (OECD), fell from 8% to 5% of total ODA between 1997 and 2008 (WHO, 2010). Extra efforts are needed to achieve the ultimate goal of universal access to water and sanitation.

What is a European Citizens' Initiative?

Since 1 April 2012, European citizens have for the first time in history a real possibility to influence the EU decision making process with a new agenda setting tool – the European Citizens' Initiative.

The European Citizens' Initiative (ECI) allows citizens, with the support of at least one million signatures from at least seven member states, to request that the European Commission proposes legislation in areas where it has the power to do so (e.g. environment, internal market, public health).

Even if an ECI receives the required amount of signatures and complies with all the regulations, the Commission can still decide to reject the initiative. The ECI must be seen for what it is: an agenda setting tool that enable citizens to turn not only the Commission's attention, but also the media and the general public's attention to a certain topic and to initiate a European-wide debate on it. (ECAS, 2011)

Why this European Citizens' Initiative?

Although the United Nations have recognised the universal human right to water and sanitation still many people do not enjoy this right. Water and sanitation are not implemented as human rights in all European Union (EU) member states yet. EU legislation should require governments to ensure and to provide all citizens with sufficient and clean drinking water and sanitation.

The supply of water is a service of general interest as defined in the Commission communication on services of general interest in Europe. (Water Framework Directive). As such it is subsidiary to Member States national sovereignty. However , the expansion of a common market has arguably been more influential in European policy. Water and environment are shared responsibilities between the EU and Member States. Therefore the ECI focuses on the goal to implement the human right to water and sanitation in European law. The campaign is a means of getting a commitment to the human right to water and sanitation. It is a tool to change the mind-set in the European Commission from a market-based approach with the focus on competition to a rights-based approach with the focus on public service. It aims to achieve universal (global) access to water and sanitation and to safeguard the limited public water resources for future generations.

The legal basis for this ECI is in article 14 of the Treaty: “The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Treaties, to provide, to commission and to fund such services”. (TFEU, European Union, 2010))

The concrete goals of this European Citizens’ Initiative are:

1. To achieve guaranteed water and sanitation services for all in the European Union.
2. To put Human Rights above market interests with no liberalisation of water services. A rights based approach should be adopted instead of the current market based approach.
3. To achieve Global/Universal access to water and sanitation for all.

Commodification and commercialisation of water has induced inequalities and exclusion, and has often led to steep water-rate hikes, excessive leaks, water-service disruptions and unaccountable management. (European Parliament, 2006). A lack of investment in water infrastructure caused by the siphoning off of money for profit and other purposes has led to excessive leaks, water-service disruptions and unaccountable management.

There is a parallel towards extending water and sanitation services to the poor in developing countries. For the last 20 years, the orthodox paradigm for financing water and sanitation in has treated the state as having inadequate capacity to either finance or operate water and sanitation services. It has instead promoted the primacy of private direct financing of investment, and the market model, with pricing mechanisms providing incentives and signals for investments, supported by targeted aid designed to ‘leverage’ the maximum amount of commercial investment. In recent years, it has become apparent that these approaches have not succeeded in generating a flow of investment adequate to meet developmental needs. (Hall and Lobina, 2010)

The public service trade unions have since long promoted quality public services for all. Water is a special public service because of its nature and its essentialness to life; no one can live without it. Over the years trade unions have supported the recognition of the human right to water and sanitation and underlined the obligation and responsibility of states to provide these public services in a transparent, accountable and participative manner. Workers have experienced the negative effects of liberalisation of public services in job losses, price hikes and increasing inequality. Experiences that must be avoided in the most essential service to life and to our societies. Water is a limited natural resource and a public good fundamental for life and health. It is a ‘natural’ monopoly and must be kept out of internal market rules.

Mobilising people for a human right and social equity

To achieve a successful campaign a broad range of supporters has been formed, mainly in NGO's, e.g. environmental, social and development organisations, but also in women's organisations, churches and public water companies. They have different motives, but share a common interest. The human right to water and sanitation must ensure this essential service for all, reduce poverty, improve public health, achieve sustainable water resources management and promote gender equality. Civil society must participate in the decision making. Together they ask for implementation of this human right in European legislation. This is very topical considering the European policy in the current monetary crisis that imposes austerity measures on governments and forces governments to sell their public assets. These measures hit the hardest to the poor and demonstrates that corporate interests are placed above the rights of people. The current European policy is more driven by market interests than by the general public interest. The paradigm of growth is increasing inequality, unemployment and poverty. To speak out against the ruling paradigm, civil society must use every possible tool. The ECI is a tool that must be tested to see if it improves participatory democracy in Europe and if it can be used to achieve a paradigm shift.

This ECI is a threefold test case. In the first place to prove itself as a democratic tool. Secondly, to see if it results in the implementation of the human right to water and sanitation and thirdly, to see if a significant step to a paradigm shift from growth to sustainability and from a market based approach to a rights based approach can be made.

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Jerry van den Berge

Policy officer

EPSU (European federation of Public Service Unions)

jvandenberge@epsu.org