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CHILD RIGHTS, RIGHT TO WATER AND SANITATION, AND HUMAN SECURITY

Ross Pink

ABSTRACT

The article explores the intersection between child rights, water scarcity, sanitation, and the human security paradigm. The recognition of child rights has been advanced through the 1989 Convention on the Rights of the Child and other international legal instruments, while water rights are increasingly affirmed in international law and through the historic July 2010 United Nations General Assembly resolution that strengthened the legal foundation for water security and human rights. Yet there remains a development gap in terms of child access to clean and secure water sources for basic human development needs. The human security paradigm provides a legal and humanitarian foundation for the extension of child rights related to water and sanitation.

INTRODUCTION

Fresh water is a vital and life-sustaining resource, yet water shortages and water pollution threaten the lives of more than 1 billion people on the planet, and the number of people endangered by clean water shortages increases every year. Salt water accounts for 98% of the planet's water. The remaining 2% is fresh water, but 50% of this amount is undrinkable due to pollution and contamination. Evaporation and pollution further diminish the available supply of fresh water every year. Compounding the global water crisis is the fact that global population, and thus consumption, is rising rapidly. In 1927, the global population was approximately 3 billion; it was 4 billion in 1974, 5 billion in 1987, 6.9 billion in 2011, and is projected to reach 9.22 billion in 2075.¹ Approximately 1.1 billion people have no access to clean water, including 406 million in East Asia and the Pacific; 314 million in sub-Saharan Africa; 229 million in South Asia; 38 million in the Middle East; and 49 million in Latin America. According to United Nations Development Programme data, 700 million people live in water-stressed nations and this figure will rise to 3 billion by the year 2025.² These daunting figures present a situation of profound risk and threat to life for children living in water-scarce regions; they face particular vulnerabilities due to poverty, lack of agency, and incapacity. The aim of this article is to outline the paramount importance of water and sanitation to child health and the high relevance of the human security paradigm to child protection.

THEORETICAL CONSIDERATIONS

Immanuel Kant was the first political philosopher to posit the notion that human rights are the basis for international law. According to Kantian scholar Fernando Teson:

Despite the recent prominence of the international law of human rights, the dominant discourse in international law fails to recognize the important normative status of the individual. Traditional international legal theory focuses upon the rights and duties of states and rejects the contention that the rights of states are derivative of the rights and interests of the individuals who reside within them.³

Theory is an important tool of analysis for understanding complex issues and systems in international politics and human rights. Theoretical perspectives also provide context to specific dynamics in international politics.

Cosmopolitanism, derived from Kant's philosophical teachings, has had profound influence on the emergence and evolution of an international human rights regime. According to political philosopher Patrick Hayden, "it is with the work of Immanuel Kant that we find the most serious attempt to apply a modern mode of cosmopolitan thought to questions of politics. Kant's approach to cosmopolitanism is based on a rigorous integration of his moral, legal, and political philosophy. Undeniably, this unification of the moral, legal, and political in Kant's thought is what elevates the cosmopolitan tradition in the modern era from a basic ethical sensibility to a genuinely global political project."⁴ Political theorist Daniele Archibugi states, "The cosmopolitan system envisages not only the existence of universal human rights protected by states, but also the creation of a mandatory core of rights which individuals may claim, as well as duties vis-à-vis global institutions. Rights ought to relate, in the first instance, to the sphere of survival and to issues which cross national boundaries."⁵ Modern cosmopolitanism focuses on three distinct themes: First, individual human beings are the ultimate units of moral and political concern; second, applying the concept of universalism, all human beings possess equal moral status; and third, persons are subjects of concern for everyone, that is, human status has global

scope.⁶ This issue of global scope is reflected in an analysis on the place of the child in the international political system, which George Kent has articulated. He argues that between birth and adulthood, children start out with high dependency and low competence, progressing to the opposite: low dependency and high competence.⁷

The question of who is responsible for the child in the event of family or community breakdown is an important point, and one that touches on a core issue of cosmopolitanism. Kent notes that as a child matures, the first priority is to help him become responsible for himself. Until he is mature, it is up to society to nurture him. If that is not possible, his local community ought to nurture him. The responsibility then moves to local government, national government, and finally, the international community.⁸

HUMAN SECURITY

In the last 20 years, a compelling new paradigm of analysis that flows from cosmopolitanism has emerged in the global dialogue on human rights. This perspective, Human security, has profound implications for the application and protection of child rights. Human security seeks to address the problems of development and human rights abuse not from a state perspective but from the perspective of the individual. Thus, the individual becomes the focal point of a global human rights regime under the human security paradigm.

The United Nations Commission on Human Security defines human security as follows:

To protect the vital core of all human lives in ways that enhance human freedoms and human fulfillment. Human security means protecting fundamental freedoms—freedoms that are the essence of life. It means protecting people from critical (severe) and pervasive (widespread) threats and situations.⁹

The concept of human security evolved through a series of high level reports and academic discussions that took place from the 1970s onwards. Key developments included the Independent Commission on International Development Issues, chaired by former German Chancellor Willy Brandt, which in 1980 issued the North-South Report and the Independent

Commission on Disarmament and Security Issues, chaired by Swedish Prime Minister Olof Palme, which raised important questions about common security. The 1994 Human Development Report by the United Nations Development Programme (UNDP) was a landmark document that advanced significantly the concept of human security. “Ever since the concept of human security was first proposed in the UNDP 1994 Human Development Report, the concept has continued to be seen as complex, contested and yet it has undeniably evolved to become a key term of discourse in international relations.”¹⁰

The landmark 1994 report outlined the need for global human rights policies that are “people-centered,” noting seven specific threats to human security: economic; food; health; environmental; personal (including violence and abuse); community; and political.¹¹

The absence of clean water and adequate sanitation for millions of children in the developing world endangers child security in five of these areas: economic, food, health, environmental, and community security.

The 1995 Commission on Global Governance report *Our Global Neighborhood* furthered understanding of the need for a human rights approach to security: “The concept of global security must be broadened from the traditional focus on the security of states to include the security of people and the security of the planet.”¹² In a major policy address in 2000, Canadian Foreign Affairs Minister Lloyd Axworthy outlined Canada’s new foreign policy emphasis:

No longer are we limited to discussions of states’ rights and national sovereignty. Protecting civilians, war-affected children, the threat of terrorism and of drugs, open borders, and infectious diseases are now among the integral aspects of the dialogue. In response to this new global reality, Canada has begun to develop a new foreign policy, replete with a fresh set of priorities and initiatives.¹³

The emphasis on personal security in arguments put forth by political theorist Henry Shue and Axworthy have a direct bearing on the situation facing children deprived of water security. Such a condition represents a clear threat to personal survival. Shue notes:

Threats to physical security are among the most serious and, in much of the world, the most widespread hindrances to the enjoyment of other rights, it follows that everyone is entitled to the removal of the most serious and general conditions that would prevent or severely interfere with the exercise of whatever rights the person has.¹⁴

Human security has particular relevance to the discourse on child rights and water security because of the specific vulnerabilities, exploitation, and lack of agency facing millions of children in the developing world. Thus, it represents a valid theoretical framework for understanding child rights in relation to water and sanitation. The capability approach and related notion of capability deprivation, put forth by economist Amartya Sen, is a valid framework for analyzing the issue of water and sanitation rights in the context of human security. Sen argues:

The claims in favor of the capability approach to poverty are 1) poverty can be sensibly identified in terms of capability deprivation and the approach concentrates on deprivations that are intrinsically important and 2) there are influences on capability deprivation and thus on real poverty other than lowness of income.¹⁵

Thus, poverty is viewed in a broader context and multiple factors, such as marginalization, opportunity, social environment, and education, are recognized as key determinants of a person’s ability to meet basic necessities. Sen notes:

The relationship between income and capability would be strongly affected by the age of the person (e.g., by the specific needs of the old and the very young), by gender and social roles, by location (e.g., the proneness to flooding or drought; or by insecurity and violence in some inner-city living), by epidemiological atmosphere (e.g., through diseases endemic in a region), and by other variations over which a person may have no or only limited control.¹⁶

A policy paper by the Center on Inequality, Human Security, and Ethnicity outlines a strong relationship between the capability approach and human security:

First, the capability approach solidifies human security's central focus on human beings; second, the capability approach raises the question of what people value; third, the capability approach offers a basis for human security and fourth, the capability approach has clear and significant relationships to human development and human rights literature.¹⁷

WATER RIGHTS AND INTERNATIONAL LAW

The Universal Declaration on Human Rights includes many of the provisions that are now deemed to be part of customary international law and are contained in several international legal instruments. Article 25 states, "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services."¹⁸ Although water is not specifically noted in Article 25, it is rightly assumed to be included under the general reference to a standard of living adequate for health and well-being. Subsequent international developments have sought to enumerate access to consumption of water as a fundamental right, due to growing recognition of its relevance to health and survival.

The Geneva Conventions and Additional Protocols recognize a right to water through Articles 20, 26, 29, and 46, Geneva Convention III (1949); Articles 85, 89, and 127, Geneva Convention IV (1949); Articles 54 and 55, Additional Protocol I (1977); and Articles 5 and 14, Additional Protocol II (1977). Two legally binding human rights covenants of 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) recognize a right to water.^{19,20} The General Comment by the UN Committee on Economic, Social, and Cultural Rights states: "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."²¹ In recognition of the fact that the utility of all international treaties are incumbent upon

the enforcement will power of the signatories, the ICESCR emphasizes the moral and political point that member states "have a constant and continuing duty" to initiate steps that ensure universal access to secure drinking water and sanitation facilities.²²

In July 2010, in a significant step forward, the United Nations General Assembly adopted a resolution that strengthened the legal foundation for water security and water consumption as a human right. The Assembly resolution received 122 votes in favor and zero votes against, while 41 countries abstained from voting.

The 192-member Assembly called upon United Nations member states and international organizations to offer funding, technology, and other resources to help poorer countries scale up their efforts to provide clean, accessible, and affordable drinking water and sanitation for everyone.²³ The text of the resolution expresses deep concern that an estimated 884 million people lack access to safe drinking water and a total of more than 2.6 billion people lack access to basic sanitation. Studies also indicate that about 1.5 million children under the age of five die each year and 443 million school days are lost because of water and sanitation-related diseases.²⁴

Clearly, there is a strong correlation between clean water and safe sanitation systems. Indeed, the issue of sanitation rights and the attendant impact upon health and clean water was addressed cogently in a United Nations Human Rights Council Report by Catarina de Albuquerque, the Independent Expert on the Issue of Human Rights Obligations related to Access to Safe Drinking Water and Sanitation. De Albuquerque notes, "States have recognized that they are under a legal obligation to ensure, in a progressive manner and within available resources, that everyone has access to water and sanitation that meets the relevant human rights criteria."²⁵

The report concludes that neither water nor sanitation has yet been accorded the priority that is objectively warranted if progress towards these and other closely related Millennium Development Goals are to be escalated and sustained.²⁶ The report of the independent expert encourages states to: develop national strategies for fully realizing the rights to water and sanitation for all, which should be endorsed at the highest political level and integrated within national poverty reduction strategies and expenditure frame-

works; eliminate discrimination, inequalities, and systematic exclusion, and develop disaggregated data for access to water and sanitation to target the most marginalized and vulnerable; promote genuinely participatory processes and empower people to actively take part in decision making processes concerning water and sanitation; put into place accountability mechanisms; and ratify the Optional Protocol to the ICESCR, which concerns communication from individuals.²⁷

De Albuquerque's report is closely linked to the United Nations Millennium Development Goals (MDGs) with respect to the 2015 target of reducing by 50% the proportion of people who cannot reach or afford safe drinking water and the number without basic sanitation.

In introducing the text of the resolution at the General Assembly recognizing access to clean water and sanitation, Bolivia's U.N. representative, Pablo Solon, stated that the human right to water had not been fully recognized, despite references to it in various international instruments: "Lack of access to water killed more children annually than AIDS, malaria, and measles combined, while the lack of sanitation affected 2.6 billion people, or 40% of the global population."²⁸

A UNDP-IUCN report argues that the adoption of a human right places three distinct obligations upon the state. The first is the "obligation to respect which requires that States refrain from interfering directly or indirectly with the enjoyment of a human right. If water were recognized as a human right, states would be obliged, *inter alia*, to refrain from: engaging in any practice or activity that denies or limits equal access to adequate water."²⁹ The second obligation relates to protection: "To protect obliges States to prevent third parties (i.e., individuals, groups, corporations, other entities) from interfering in any way with the enjoyment of a human right. If water were recognized as a human right, States would be obliged, *inter alia*, to: adopt the necessary and effective legislative and other measures to restrain third parties from denying access to adequate water and from polluting and inequitably extracting from water resources."³⁰ The third obligation relates to a responsibility to fulfill: "To fulfill requires States to adopt the necessary measures directed towards the full realization of a certain human right. If water was recognized as a human right, States could meet this obligation by way

of legislative implementation, adoption of a national water strategy, and plan of action to realize this right while ensuring that water is affordable and available for everyone."³¹

General Comment 15 of the Economic, Social, and Cultural Rights Committee lists four critical points that are specifically connected to the accessibility of water and water facilities:

- 1) physical accessibility: water should be "within safe physical reach for all sections of the population";
- 2) economic accessibility: "costs and charges associated with securing water must be affordable;
- 3) non-discrimination: "the most vulnerable or marginalized sections of population should have access to water and water services"; and
- 4) information accessibility: an important requirement for the implementation of the right to water.³²

CHILD RIGHTS AND WATER IN INTERNATIONAL LAW

The 1948 Universal Declaration of Human Rights is a cornerstone document for the recognition and advancement of human rights, including those of children. With respect to child rights in particular, a landmark document is the 1923 Declaration of the Rights of the Child, drafted by Eglantyne Jebb and Dorothy Buxton in 1919. The League of Nations affirmed the declaration, which was adopted by the United Nations in 1946.

The Convention on the Rights of the Child (CRC) was adopted and opened for signature, ratification, and accession by General Assembly Resolution 44/25 on November 20, 1989. It legally entered into force on September 2, 1990, in accordance with Article 49.

The preamble to the CRC states:

The need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal

Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10), and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children.³³

The Convention on the Rights of the Child is a legally binding international apparatus that addresses civil, political, social, economic, and cultural rights. To date, it has been ratified by 199 countries. With respect to child rights and the associated rights to water and human security, there are specific and notable provisions:

Article 6:

1. States' parties recognize that every child has an inherent right to life.
2. States' parties shall ensure, to the maximum extent possible, the survival and development of the child.

Article 24:

1. States' parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States' parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States' parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) to diminish infant and child mortality;
 - (b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) to combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious food and clean drinking water, taking into consideration the dangers and risks of environmental pollution;
 - (d) to ensure appropriate pre-natal and post-natal

health care for mothers;

- (e) to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene, and environmental sanitation and the prevention of accidents;
- (f) to develop preventative health care, guidance for parents, and family planning education and services.

3. States' parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States' parties undertake to promote and encourage international cooperation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.³⁴

Articles 6 and 24 of the CRC encompass a range of rights that address the critical issue of water sufficiency and access for children. Child development, environmental sanitation, and preventative health care, to cite just a few areas of concern, are wholly dependent upon a clean source of water and effective sanitation systems.

WATER, SANITATION, AND CHILD HEALTH: EMPIRICAL EVIDENCE

The data on water-related disease and death affecting children is sobering and a clarion call for sustained governmental and multi-agency action at the international and domestic level. As noted in the 2010 UN Environmental Programme report, "Over half of the world's hospital beds are occupied with people suffering from illnesses linked with contaminated water and more people die as a result of polluted water than are killed by all forms of violence including wars."³⁵

Diarrheal diseases

Infectious diseases, particularly diarrhea, followed by malaria, constitute the majority of water-related child deaths in the developing world. Diarrhea, an easily treatable minor health issue in the developed world, poses a major threat to health and life in much of the developing world.

The United Nations World Water Development Report outlines: “Diarrheal diseases are the most destructive of the faeco-oral diseases, causing around 1.6 to 2.5 million deaths annually, many of them among children under the age of five who live in developing countries.”³⁶ In 2008, diarrhea was the leading cause of death among children under five in sub-Saharan Africa and was responsible for 19% of all deaths in this age group.³⁷

The report further notes:

Diarrhea is caused by a wide variety of microorganisms, including viruses, bacteria and protozoa. Rotavirus is the most common cause of watery diarrhea in children in developed as well as developing countries. The primary pathway of rotavirus transmission is faecal-oral and infection can occur through ingestion of faecally contaminated water or food and contact with contaminated surfaces. An important cause of diarrhea, especially in developing countries, is *Shigella*; infection with this bacterium often leads to bloody diarrhea (dysentery). Typical for *Shigella* is the very small infective dose; therefore, it can spread easily from person to person.³⁸

Malaria

Malaria remains a major health challenge to children in the developing world. Each year, there are an estimated 300 million to 500 million cases of malaria throughout the world, and about 1 million child deaths.³⁹ The use of mosquito nets has proven to be an effective limitation upon the spread of the disease; however, the cost of the nets themselves may be prohibitive in many impoverished households and communities. Another common and more effective approach is to limit or remove the amount of standing water, which is a prolific breeding ground for mosquitoes.

Other waterborne diseases

Globally, there are about 200 million people infected with schistosomiasis, which causes a host of chronic and debilitating symptoms that can result in death. Schistosomiasis is caused by three main species of

flatworm, namely *Schistosoma haematobium*, *S. japonicum*, and *S. mansoni*. Infection may occur when children and adults enter larvae-infested water. As described in the World Water Development Report:

After skin penetration, the larvae transform and are carried by the blood to the veins draining the intestines or the bladder where they mature, mate and produce eggs. Eggs cause damage to various tissues, particularly the bladder and liver. The reaction to the eggs in tissues causes inflammation and disease. When infected humans excrete parasite eggs with feces or urine into water, the eggs hatch releasing larvae that in turn infect aquatic snails. Schistosomiasis is endemic in 7 countries, most of which are in Africa.⁴⁰

Intestinal helminth infections

The roundworm (*Ascaris*), the shipworm (*Trichuris*), and hookworms (*Anacylostoma* and *Necator*) are mainly transmitted through soil that is contaminated with human feces, and are therefore directly related to the caliber of sanitary facilities. These soil-transmitted helminths flourish where poverty, inadequate sanitation, and minimal health care prevail. In 1947, it was estimated that 1.5 billion people were infected with helminths, while in 2006, the figure was an estimated 3.5 billion.⁴¹

Dengue fever

Dengue is a mosquito-borne viral disease that infects millions of people worldwide. In the last 50 years, the incidence of dengue fever has increased exponentially. Today, approximately 2.5 billion people in more than 100 countries are at risk. “Up to 50 million infections occur annually, with 500,000 cases of dengue haemorrhagic fever and 22,000 deaths, mainly among children. Prior to 1970, only nine countries had experienced cases of dengue haemorrhagic fever (DHF); since then the number has increased more than fourfold and continues to rise.”⁴² Dengue is found in the Americas, Southeast Asia, South Asia, the east coast of Africa, the eastern Mediterranean, and the Western Pacific regions.

WATER AS A HUMAN RIGHT

Human rights and the right to development, which by any standard must include water security, are noted in the Millennium Declaration and Copenhagen Declaration and are consistent with United Nations development principles.^{43,44} Gro Harlem Brundtland, former director general of WHO, has noted, “The fact that water is now regarded as a basic human right will provide an effective tool to make a real difference at the country level.”⁴⁵ Consistent with the cosmopolitan approach and a human rights regime under the human security paradigm, human rights are viewed in terms of individual rights and not in terms of the rights of the state. By widening human rights and a protective scope based upon the principles of human security, with its attendant focus upon community, environment, food, and personal security rights, the recognition of water rights for the child is likely to gain more credence. However, the real test of state and international resolve on this question will come with progress in the application of these rights to substantially improve access to clean water.

The United Nations Development Programme has noted that 20 liters of water per day for drinking, cooking, cleaning, and bathing is a minimum basic requirement, yet millions of citizens in the developing world live with amounts below this level.⁴⁶ Peter Gleick, who has written extensively on development and water consumption issues, argues for the adoption of an overall basic water requirement (BWR) for meeting the four domestic basic needs. He recommends 50 liters of water per person per day: five for drinking, 20 for sanitation and hygiene, 15 for bathing, and 10 for cooking.⁴⁷ Yet data on water scarcity in the developing world is sobering. According to a 2007 United Nations Water report, “One in five people in the developing world lacks access to sufficient clean water (a suggested minimum of 20 liters/day), while average water use in Europe and the United States of America ranges between 200 and 600 liters/day; moreover, by the year 2025, an estimated 1.8 billion people will be living in countries or regions with absolute water scarcity and two-thirds of the world population could be under conditions of water stress.”⁴⁸

HUMAN SECURITY: WATER, SANITATION, AND CHILD HEALTH

It is imperative to recognize the critical link between

clean water and adequate sanitation in the protection of child health. In many instances, inadequate sanitation and open sewage systems severely contaminate water supplies, causing disease and death. The human security approach is a relevant framework for the analysis of child rights due to its emphasis on security threats to the individual. Of the seven major security threats enumerated under the human security paradigm, five are highly relevant to the issue: threats to health, food, environment, community, and economic security.

There are many serious and potentially life-threatening health risks that arise from unclean water and unhealthy sanitation systems. A 2008 World Health Organization report concluded:

The impact of diarrhoeal disease on children is greater than the combined impact of HIV/AIDS, tuberculosis and malaria; the provision of improved sanitation and drinking water could reduce diarrhoeal diseases by nearly 90%. Latest estimates indicate that improvements in sanitation and drinking water could reduce the number of children who die each year by 2.2 million.⁴⁹

A focus on clean water is essential, yet if there is not a corresponding and complementary focus upon adequate sanitation systems, it only partially addresses child health threats. A joint report by UNICEF and the Water Supply and Sanitation Collaborative Council noted:

The discharge of untreated wastewater and excreta into the environment affects human health by several routes, namely, polluted drinking water, entry into the food chain, for example, fruits, vegetables, and fish; bathing and recreational contact with contaminated wastes; and by providing a breeding ground for flies and insects that spread disease.⁵⁰

In the final analysis, water remains the most vital natural resource on the planet. Yet unsecured water access, unsafe water, and unhealthy sanitation endanger millions of children in the developing world. The toll of child disease, suffering, and death is staggering. The global human rights community has achieved substantial progress in the enunciation and

development of a human rights regime that secures a place for water and sanitation rights. This represents a progressive step forward. It is a step toward improved child health that will be elevated with a child development focus that affirms the human security paradigm with its implicit recognition of specific threats to child security.

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