The Right to Water: A Right in the Process of Implementation [Le droit à l’eau: un droit en voie de mise en œuvre]

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Summary
In this paper, it is argued that the right to water is not just the right to clean, drinkable water per se, but that it is a critical facilitator to the realisation of other rights, such as life, health, food, peace, a healthy environment and sustainable development. Without the right to water, the implementation of many of our most precious rights falls apart. Further, argues author Houria Tazi Sadeq, the right to water is a critical precursor to the realisation of many cultural, social and political rights.

Yet the road to recognising the import of the right to water – and upholding this right – has long been, and continues to be, deeply challenging. Tazi Sadeq argues that the right to water has been established in a rushed or even haphazard way. The right to water is not mentioned in the 1948 Universal Declaration of Human Rights, nor in several other major covenants dating from the 1960s. In this sense, it was long seen as an implicit, rather than an explicit, right – an integral component of other rights, such as the right to life and to adequate standards of living, health, housing and food.

The paper traces how access to water first found explicit protection in the 1977 Protocol 1 of the Geneva Convention, which outlawed the destruction of food and water during warfare, and two years later in the 1979 Convention on the Elimination of All Forms of Discrimination Against Women. Tazi Sadeq details its growing presence in the canon of global rights documentation, culminating in the 2010 adoption by the United Nations General Assembly of resolution 64/292, recognising access to clean water and sanitation as a human right.

Tazi Sadeq points out that while there has been progress on the sanitation aspect of this resolution, implementing widespread access to clean and safe water depends on a complex co-ordination between states, individuals, public and private entities – co-ordination that has still not been fully realised. Particularly in a developing country context, the challenges of corralling resources and facilitating technology transfer can impede the implementation of this right. As a case study, the author presents Morocco, which enshrined the right to water in its 2011 constitution. Whilst the constitution calls on the state, public institutions and local and regional authorities to “mobilise all available means” to facilitate equal access for citizens to the rights enshrined therein, the reality is more of a work in progress – but, the author argues, for reasons of practicality rather than a failure to respect a human right.

Implementing the right to water is a complex operation that requires paradigmatic change – particularly, moving from away from a purely technical approach to water management. In the face of declining supply and quality and increasing and diversifying demands, sharing
such a resource is already complex. Tazi Sadeq cautions that as global warming, population growth and a rise in the value of water further complicate water politics, the already thorny issue of ensuring people can exercise their right to water could potentially become overwhelmingly complex, unless we re-think the way this right – and resource – is managed. Tazi Sadeq suggests local partnerships as a means to strengthen and enforce global declarations, particularly around how water should be protected as part of and precursor for the implementation of water rights, particularly given the transboundary nature of water issues.

Looking to the future, Tazi Sadeq cautions against framing the right to water purely as a political right. At state level, the value of water – its presence a precursor to prosperity, its absence a virtual guarantee of geopolitical conflict – underscores the importance of appropriate legislation around management and distribution. While executive powers play a role in implementing this right, the broad and varied roles of development actors and civil society, down to a grassroots level, make this a limiting definition. Access to water should neither be considered purely through a human rights lens, the author argues, but through a legal framework that recognises the complexities of administering this resource, and tackles water rights as rights with economic, cultural and social dimensions.

Paradigm change is the order of the day. And despite the complexities and the impossibility of approaching water management from a purely technical perspective, the paper argues that there is much to be gained, globally and at an individual state level, by enshrining the right to water into domestic and international law.