

## HUMAN RIGHTS analysis

### RIGHT TO WATER IN INTERNATIONAL PERSPECTIVE

# Water water everywhere.....

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This is the first part of the two-part story the concluding part will be published on July 15, 2006

THE Constitution of Bangladesh does not have any provision on right to water. Article 15 states that it shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens-(a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care...Broad interpretation of basic necessities of life may include water. However, this provision is part of fundamental principles of state policy of the Constitution and as such is not judicially enforceable (article 8). This means, the State of Bangladesh is not under any Constitutional obligation to ensure right to basic necessities of life including water for its citizens. Thus even if the Government fails to ensure water for its citizens, none can take the Government to court for accountability. Interestingly, if this provision could be included in the Constitution as a human right (Part II of the Constitution), it could be judicially enforceable (under article 44 and 102) and the Government could be brought to court for accountability to ensure water for its citizens.

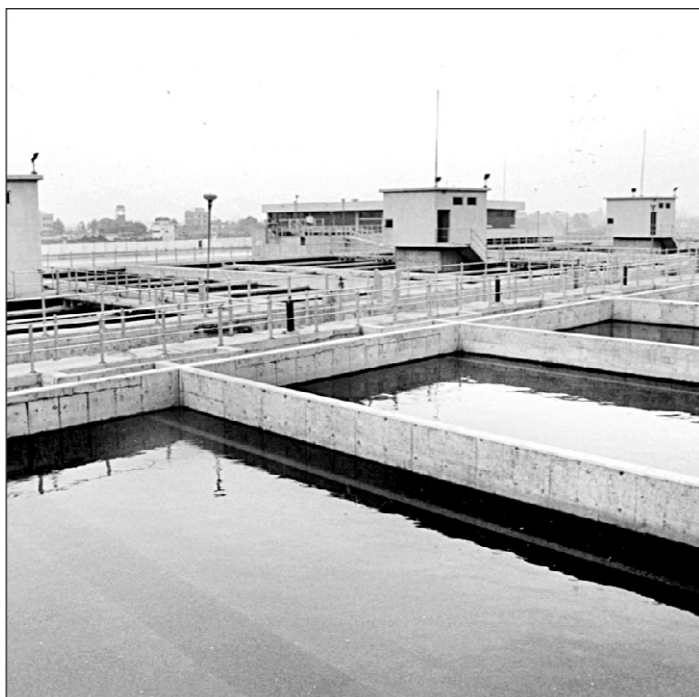
**National water policy 1998:** The GOB National Policy for Safe Water Supply and Sanitation 1998 has divided water supply policy broadly for rural and urban areas. The highlight of the rural water supply policy is that communities shall be the focus for all water supply activities but the Department of Public Health Engineering (DPHE) is the lead agency with NGOs and private sector in coordinated role. The policy has given local government bodies the role of planning, implementation and maintenance of rural water supply projects. In practice, it is the DPHE which implements most of the water projects. The approach is top-bottom where local government bodies do not have much role to play. They are rarely consulted. Although communities have been made focus of water policy, in practice, consultation with communities take place as optional and not regularly. The policy has stated that water is increasingly considered to be an economic good and has prescribed community ownership of water machines like hand, shallow and deep tubewells. There is contradiction in this policy. If community ownership of water services (operation, maintenance and bearing costs of facilities) can be ensured, it will bring good to the communities. But treating water as an economic good has potential for commercialisation of water which may become a threat to the collective right of the communities and vulnerable groups. Poor people may not have financial capacity to buy water from companies but

have capacity to manage natural water sources in a community based approach. Treating water as only an economic good is against UN General Comment no. 15 which has regarded water an economic as well as a socio-cultural good. **Poverty reduction strategy (PRS):** The policy matrix no. 10 of the GOB Poverty Reduction Strategy deals with water resource development and management. The strategic goals in this sector are: expand utilization of surface water, rationalize utilization of ground water, protect flood, improve drainage and reduce vulnerability, enhance access of the poor to water and common property resources, augment surface water retention, protect wetlands including the Sundarbans, institutional development of water sector agencies and control erosion of major rivers to protect large and small towns. The matrix has elaborate actions taken and planned but is silent about water as a right. Of the six goals, enhance access of the poor to water and common property resource can be termed as a right-based one. Because its planned action has included promotion of community participation in multi-purpose use of water and other facilities. This goal is a bottom-up one which is key element of right-based approach. The other goals have been developed in top-bottom approach.

**Service agencies:** The key Government agency for providing water supply and quality control in rural and municipal areas is the Department of Public Health Engineering (DPHE). Local Government Engineering Department (LGED) are also engaged in some small scale water supply projects. Water Supply and Sewerage Authorities are responsible for providing water supply in major metropolitan cities like Dhaka and Chittagong. A good number of local and international NGOs are also working in water sector.

#### Legal responsibility of local government bodies

**Zila Paishads:** According to section 27 of the Zila Parishad Act 2000, a zila parishad has two kinds of responsibilities, compulsory and optional. It must perform its compulsory activities subject to availability of funds. But it is not under any legal obligation to perform its optional activities and it will perform its optional activities as per government instruction if it is instructed by the government to do so. These activities have been described in the first schedule to the Act. According to this first schedule, the optional activities of zila parishad have been divided into seven categories of which public works is one category. Public works include four tasks of which the second one is 'to ensure water supply, drainage, preservation of surface water reservoirs and preservation of rain water.' But as has been mentioned, zila parishad is under no legal obligation to perform its optional activities and hence there is no legal responsibility of zila parishad for fulfilling people's right to get



water.

**Paurashavas:** Paurashavas are urban local government bodies outside major city corporations. There are total 293 Paurashavas in Bangladesh. According to section 73 of the Paurashava Ordinance 1977, a Paurashava shall (1) within the limits of the funds of its disposal, provide, or cause to be provided, to the municipality a supply of wholesome water sufficient for public and private purposes; (2) may, if so required by the Prescribed Authority shall, in the prescribed manner, frame and execute a water-supply scheme for the construction and maintenance of such works for the provision, storage and distribution of water as may be necessary; (3) where a piped-water supply is provided, the Paurashava may supply water to private and public premises in such manner and on payment of such charges as the by-laws may provide. Section 74 of the ordinance states that (1) all private sources of water supply within a municipality shall be subject to control, regulation and inspection by the Paurashava; (2) no new well, water-pump or any other source of water for drinking purposes shall be dug, constructed or provided except with the sanction of the Paurashava; (3) the Paurashava may by notice require the owner or any person having the control of any private source of water-supply used for drinking purposes-(a) to keep the same in good order and to clear it from time to time of silt, refuse and decaying matter; (b) to protect the same from contamination, in such manner as the Paurashava may direct; and (c) if the water therein is proved to the satisfaction of the Paurashava to be unfit for drinking purposes, to take such measures as may be specified in the notice to prevent the use of such water for drinking purposes.

Section 31 and 32 of the Paurashava Ordinance 1977 have discussed functions of the Paurashavas. Section 31 states, 'Subject to rules and such direc-

tions as the government may from time to time give, and within the limits of the funds at its disposal, a Paurashava shall undertake such of functions given in detail in Part IV as are required to be undertaken by Paurashavas, and may undertake-(a) all or any of the functions so given which may be undertaken by Paurashava; and (b) such other functions as are declared by the Government to be appropriate matters for administration by Paurashavagenerally or by any particular Paurashava.' Section 32 of the ordinance states, 'Notwithstanding anything contained in this ordinance or in any other law for the time being in force, the Government may from time to time direct that, subject to such terms and conditions as may be specified in the direction, -(a) any institution or service maintained by a Paurashava shall be transferred to the management and control of the Government; and (b) any institution or service maintained by the Government shall be transferred to the management and control of Paurashava.

Dissecting the above legal provisions reveals that,

(a) Paurashavas do not need to consult local communities in developing water supply schemes which is against right-based approach.

(b) Paurashavas can supply piped-water on commercial basis and impose charge for that. Water is not an economic good, it is a social good as well. So even if piped-water is supplied by Paurashavas, its price should not be decided commercially but in consultation with communities based on their needs, capacities and consensus.

(c) Paurashavas have some compulsory and some optional functions. They have to depend on the concerned government agency like Department of Public Health Engineering (DPHE) for undertaking water supply projects. Thus even if there is demand for water supply from communities, concerned paurashava may not be

able to undertake any such project and have to depend on government agency like DPHE.

**Upazila Parishads:** According to Upazila Parishad Act 1998, one of the 19 activities that have been reposed on a upazila Parishad is to ensure supply of pure drinking water.

**Union Parishads:** According to section 30 of the Local Government (Union Parishad) Ordinance, 1983, a union parishad is responsible for functions mentioned in the First Schedule of the Act. This schedule has 38 functions of which number 16, 17 and 18 are related to water. A union parishad is responsible for provision and maintenance of well, water pumps, tanks, ponds and other works for supply of water, adopting measures for preventing contamination of source of water-supply for drinking and prohibition of use of water of wells, ponds and other sources suspected to be dangerous to public health. However, according to section 61 of the Act, the Government may cancel or suspend or prohibit any activity of union parishad if it deems such activity as against law or public interest. Thus a legal discretionary restrictive power has been given to the Government which might be used against a union parishad if it takes a water supply scheme for particular community but which is against interest of Government or other vested groups.

**Gram Sarkars:** According to section 16 (g) of the Gram Sarkar Act 2003, one of the responsibilities of a gram sarkar is to assist relevant authorities in implementing programmes for ensuring supply of pure drinking water and sanitation. The weakness of this provision is that a Gram Sarkar is only to assist relevant authorities and cannot take any initiative on its own for ensuring supply of drinking water. It has to depend on other local government bodies like union council or a government department like Department of Public Health Engineering for repairing a tubewell or building a reservoir for preserving rain water.

#### Relevant Bangladeshi laws

**Water supply and Sewerage Authority Act, 1996:** This law has empowered the GOB to set up water supply and sewerage authorities in metropolitan areas.

**The Embankment and Drainage Act, 1952:** This law has consolidated the laws relating to embankment and drainage and to make better provision for the construction, maintenance, management, removal and control of embankments and water-courses for better drainage of lands and for their protection from floods, erosion or other damage by surface water.

**The Ground Water Management Ordinance, 1985:** This ordinance was promulgated to manage the ground water resources for agricultural production.

#### Right to water: Individual or group right?

Individual right is what one individual is allowed to enjoy and against which corresponding duties and

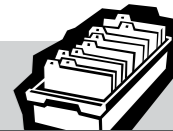
responsibilities exist to enforce. Traditional human rights discourses have defined first generation of rights (civil and political) and second generation of rights (economic, social and cultural) as individual rights. However, third generation of rights are collective in nature and require group or collective initiative for enjoyment. Although these rights have so far been not recognized as legally binding obligations, increasing number of legal discourses have recognized collective or group right as having legal consequences. Right to self-determination, right to environment, right to natural resources, right to participate in cultural heritage, right to development are examples of group rights.

Right to water can form part of right to natural resources. Natural resources are naturally occurring substances that are considered valuable in their relatively unmodified (natural) form. A commodity is generally considered a natural resource when the primary activities associated with it are extraction and purification, as opposed to creation. Water is one natural resource and like right to natural resource, right to water should be treated as a collective or group right. The reasons are:

- General Comment no. 15 of the UN Committee on Economic, Social and Cultural Rights has treated water as social and cultural good and not mere economic good. Right to economic good may be an individual right, but right to social and cultural good must be collective or group in nature. Social and cultural goods are shared by all members of a society or community. As such, right to water as a social and cultural good should be treated as a collective or group right.
- Group resistance is effective against policy prescriptions of international institutions like World Bank and WTO on commercialisation of water service. Legitimacy of group resistance is ensured if right to water can be treated as a group right.
- To fight aggression of multinational corporations with motive of commercialisation of water as a commodity, it requires collective force. Treating right to water as a group right will strengthen that force.
- In many countries of the world, particularly in middle-east and Africa, water has become an issue of survival of communities. Reality in those situations has created the demand for treating right to water as a collective or group right.
- In the context of Bangladesh, legal responsibilities for supply of water have been reposed mostly on local government bodies which are not individual entities, they are group entities, elected by communities, nearer to communities, better positioned to know the demand of water from the communities and how to source water for them. Here the obligation is group or collective in nature, not individual.

The writer is a human rights activist.

## FACTfile



ALGERIA

### Evidence of persistent torture by the Military Security

Beatings, electric shocks and the forced ingestion of dirty water, urine and or chemicals are just some of the methods that continue to be used by Algeria's security forces with systematic impunity, Amnesty International revealed in a report published on July 10, 2006.

Based on a series of case studies collected between 2002 and 2006, the report shows how the "war on terror" is serving as an excuse to perpetuate torture and ill-treatment by Algeria's "Military Security" intelligence agency, officially known as the Department for Information and Security.

"As a first step, President Bouteflika should acknowledge the disturbing allegations of abuse documented in this report and publicly commit to investigating them. He must also ensure that DRS officers no longer arrest or detain suspects and that any responsible for torture or mistreatment of detainees are promptly brought to justice," said Malcolm Smart, Director of the Middle East and North Africa Programme at AI.

The report, *Unrestrained powers: Torture by Algeria's Military Security*, examines several cases of torture or other ill-treatment by the DRS in secret detention centres without access to lawyers, independent doctors, family, or any civilian oversight.

A number of countries, including Canada, France, Italy, Malaysia, the Netherlands and Spain have forcibly returned individuals suspected of terrorist activities to Algeria despite the fact that it is the DRS that usually detains and interrogates such individuals. Although the civilian authorities exercise no control over the conduct and practices of the DRS, the UK government has also sought agreement under which Algerian nationals could be forcibly returned on the basis of "diplomatic assurances" that they would not be tortured.

Interrogation reports established by the DRS appear to be routinely used as evidence in court while the lack of investigations into claims of torture and other ill-treatment in Algeria is a long-standing concern of AI.

Successive measures taken by the authorities to bring closure to a decade of internal conflict, in which up to 200,000 people were killed and several thousand more "disappeared", have failed to address pressing human rights concerns and have granted wide-ranging impunity to perpetrators.

AI has repeatedly expressed concern about these measures. Its principal concern relates to the fact that a February 2006 amnesty law provided impunity for crimes under international law, including torture committed by the DRS.

"The persistent denial of the Algerian authorities of the widespread abuse that has taken place is an indication that Algeria has some way to go in combating torture and other ill-treatment," said Malcolm Smart. "The authorities should address the grim legacy of the past and ensure that perpetrators of torture are punished."

The report makes a series of recommendations to the Algerian government including:

DRS officers should no longer be allowed to arrest or detain suspects, given the persistence of allegations of torture perpetrated by DRS and the lack of any effective oversight over the arrest and detention procedures of the DRS; legislation should be amended to ensure that anyone who is taken into detention will be granted prompt access to a lawyer;

legal provisions introduced in February 2006 that contravene Algeria's obligation to investigate and punish torture and ill-treatment and criminalize free expression about state abuses should be repealed.

In addition, AI calls on foreign governments to halt the forcible return of individuals to Algeria if they would be at risk of torture and other ill-treatment, and the use of "diplomatic assurances", ensure that evidence obtained under torture in Algeria is not used in court proceedings and that anyone arrested in Algeria at their request is not detained by the DRS.

Source: Amnesty International.



## LAWvision

# Global business and human rights

PROFESSOR DR A F M MANIRUZZAMAN

THE Human Rights Watch's annual report 2006 is just out and it gives food for thought about global business and its relationship to human rights. Transnational business operations across the globe are a common phenomenon and are increasingly more so in the age of globalisation. While such operations are considered to be blessings for economic growth and development in the host countries concerned, in particular, and for the global economy in general, there are frequent allegations against transnational corporations (TNCs) of violation of human rights, environmental degradation and so on. Such allegations abound lately, for example, that against Exxon Mobil Corp. in Indonesia, Fresh Del Monte Produce Inc. in Guatemala, Chevron Texaco Corp. in Nigeria and in Ecuador, Unocal in



Myanmar, and Occidental Petroleum Corp., Coca-Cola Co. and coal miner Drummond Co. in Colombia, to name but a few. Non-governmental organisations (NGOs) rather than host governments are found to eloquently

express the affected peoples' concern and grievances in international forums and to take actions against the culprits in various relevant jurisdictions. This appears to be recently a growing tendency. But the victims and their supporters

apparently stumble in the forefront of the law that is very shaky in this respect. This phenomenon poses a big challenge for international law, in general, and international human rights law, in particular, more than ever before in the progressively globalised world. Just imagine the scenario for a moment: there are some 70,000 transnational firms operating in the world today, together with roughly 700,000 subsidiaries and millions of suppliers connected through distributed networks across the globe. The activities of these entities certainly have a great impact on the lives and conditions of millions of people around the world and the world economy as a whole.

The problem with traditional international law is that the responsibility for the protection of human rights lies with the State and not with any business entity. The issue thus arises whether corporations have any international obligations to protect human rights, or any such obligations that relate to

business can be directly imposed on them. As international law is not yet clear on this matter, the dilemma comes to the forefront in quest for a solution to the ever-demanding issue. Just ask one's conscience if one would invest one's pension savings for the old age in a project that causes human rights violations or abuse in any form such as forced labour, child labour, destruction of human habitat and indigenous population, rape and brutality, mayhem, even ethnic cleansing and untold miseries for people. The conscientious negative answer to this behoves one to think of monitoring corporate behaviour even beyond the debate of state v. transnational corporations' responsibility for the protection of human rights. It is not only corporate accountability for human rights but also corporate partnership with the host state in the protection of human rights that is the pressing need of our time, given TNCs' global reach, capacity and influence that surpass many

nation states. Although over the past ten years or so, corporate social responsibility (CSR) has blossomed as an idea at the persistent persuasion of the global civil society and has moved up to the corporate agenda, it has not effectively addressed the issue so far. Due to the lack of a solid legal framework in this respect, CSR merely operates as a glossy public relations agenda and a tool for manipulation of corporate image.

Recently, various stakeholders have started to ponder over the matter with great urgency. The recent report of the United Nations Commission on Human Rights on the responsibilities of transnational corporations and related business enterprises with regard to human rights notes significant gaps in understanding the nature and scope of the human rights responsibilities of business. The outstanding issues that need detailed study should be urgently identified. In July last year the UN Secretary-General appointed John Ruggie, a

Harvard academic, Special Representative for Business and Human Rights to look into the issues. What are needed, not just producing mundane reports after reports to occupy shelf-space, but the understanding of business entities, their willingness to be transparent in their actions and their genuine good will in establishing human dignity and respecting human dignity and offering every help and co-operation with various stakeholders concerned, i.e. states, shareholders, peoples affected by the transnational activities, employers' and employees' associations, relevant international organisations and agencies, treaty monitoring bodies and non-governmental organisations so that business and human rights matters are well balanced and the world becomes a much better place in the age of globalisation. However, such goodwill sometimes could be found in short supply, hence there is an urgent need to formulate a set of legally

binding rules-- a set of global standards --which should be the yardstick against which the actions of corporations need to be measured. Furthermore, the ways and means of the governance of human rights in the borders of states should be explored in the days ahead.

On an encouraging note it can be reported that while launching its annual report in Washington lately the Human Rights Watch has said that TNCs have responded favourably to calls for binding human rights standards in the corporate sector as voluntary guidelines have failed to repair the bad image of the corporate world. Multinational executives have also started to question the wisdom of self-regulation and voluntary codes of conduct on the moral plane.

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