Reviews Human Rights in international law

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**ABSTRACT**

More than a billion people in the developing world lack safe drinking water—an amenity those in the developed world take for granted. Nearly three billion people live without access to adequate sanitation systems necessary for reducing exposure to water-related diseases. The failure of the international aid community, nations, and local organizations to satisfy these basic human needs has led to substantial, unnecessary, and preventable human suffering. This paper argues that access to a basic water requirement is a fundamental human right implicitly and explicitly supported by international law, declarations, and State practice. Governments, international aid agencies, non-governmental organizations, and local communities should work to provide all humans with a basic water requirement and to guarantee that water as a human right. By acknowledging a human right to water and expressing the willingness to meet this right for those currently deprived of it, the water community would have a useful tool for addressing one of the most fundamental failures of 20th century development.

**INTRODUCTION**

Victims are at the centre of human rights thinking. No other group of individuals has a more sacred place in human rights law. Article 34 of the European Convention on Human Rights (ECHR) grants the right of petition to anyone claiming to be a "victim" of a violation of the Convention. The Optional Protocol of the International Covenant on Civil and Political Rights (ICCPR) allows the UN's Human Rights Committee to receive communications from "victims" of transgressions of the ICCPR. The UK's 1998 Human Rights Act, s.7, allows an individual who is a 'victim' of "an unlawful act of a public authority" to take that authority to court. The UN is currently in the process of debating 'draft basic Principles and Guidelines' for victims of violations of international human rights and humanitarian law. These affirm that "victims should be treated with compassion and respect for their dignity, have their right of access to justice and redress mechanisms fully respected…together with the expeditious development of appropriate rights and remedies..." This follows a number of 'soft law' initiatives and resolutions on victims by the UN and Council of Europe since the 1980s.

**Is there a human right to water?**

The term “right” in this paper is used in the sense of genuine rights under international law, where States have a duty to protect and promote those rights for an individual. The question of what qualifies as a human right has generated a substantial body of literature, as well as many organizations and conferences. The initial impetus to human rights agreements was to address violations of moral values and standards related to violence and loss of freedoms. Subsequently, however, the international community expanded rights laws and agreements to encompass a broader set of concerns related to human well-being. Among these are rights associated with environmental and social conditions and access to resources. The extent to which environmental rights are either

Found in, or supported by, existing human rights treaties, agreements, and declarations has been the subject of a growing literature.

This paper answers the question of whether individuals or groups have a legal right to a minimum set of resources, specifically water, and whether there is an obligation for States or other parties to provide those resources when they are lacking. This question has not been adequately addressed. Several of the major references and bibliographies related to the issue of human rights have no entries or citations related to water,
Even the current index of the website of the UN High Commissioner for Human Rights has no entry for water. In 1992 McCaffrey tackled the legal background from the perspective of the UN (and related international law) human rights framework in a comprehensive and perceptive assessment. His initial conclusion was that there is a right at least to sufficient water to sustain life and that a State has the “due diligence obligation to safeguard these rights” as a priority [3] This paper expands upon that analysis and concludes that international law, international agreements, and evidence from the practice of States strongly and broadly support the human right to a basic water requirement [4].

**Human rights abuses by private parties under international law:**

The factor which distinguishes this focus on victims’ rights in human rights law from the preoccupation of the current government with “re-balancing the criminal justice system” – most people would assume – is that human rights law is focused on state violations whereas the government is obsessed with crimes committed by individuals. The campaigns and comments of the main civil liberties NGOs in this country reinforce the impression that within the criminal justice system it is the rights of suspects, defendants and prisoners that human rights law is solely concerned with (though not, interestingly enough, Victim Support, which impressively recognizes the potential of the Human Rights Act (HRA) for securing victims’ rights).

But is this assumption correct, either as a matter of law or discourse? There are various references in the Rome Statute which strongly imply that the ICC has jurisdiction over so-called ‘non-state actors’ who carry out “crimes against humanity” and allied abuses against civilian populations.

The ‘draft basic Principles and Guidelines’ for victims of violations of international rights law likewise requires victims to be afforded “equal and effective access to justice irrespective of who may be the ultimate bearer of responsibility for the violation.” The UN Convention on the Elimination of All Forms of Discrimination Against Women requires states to take appropriate and effective measures to overcome all forms of gender-based violence, ”whether by public or private act.” There are parallel obligations on states to protect individuals from abuse by private parties under the UN Convention on the Elimination of Racial Discrimination and in the Convention on the Rights of the Child.

**What’s gone wrong with human rights discourse?**

So if victims are at the heart of human rights thinking why is it commonly assumed that human rights law is a) only concerned with safeguarding individuals from interference with, or abuse by, the state and b) focussed largely on the protection of defendants and prisoners?

There are various layers to this but three stand out:

i) Established principles of international law

ii) The evolution of human rights law and

iii) Our home grown tradition of civil liberties.

First, as is well known, no liability can be imposed on private individuals as a matter of international law. This means that all cases at the ECtHR must be taken against the government in question. This has led to the assumption that all such cases concern state violations only, when a growing number relate to abuses by private individuals or companies which states are obliged to protect other individuals from. Second, there is a tendency to confuse first wave rights treaties from the Enlightenment era – like the French Declaration and American Bill of rights which were preoccupied with freedom from state tyranny26 – with the explosion of human rights treaties and declarations after the second world war, which had a broader focus.

Hundreds of laws have been passed affecting every aspect of our lives. Sometimes it can be difficult to know what our basic rights really are. More than fifty years ago Britain helped to enshrine our basic liberties into the European Convention on Human Rights (ECHR). But we could only claim the protection of the Convention by taking the long road to Strasbourg. The Human Rights Act means that we can safeguard our rights here in the UK. And we can all be clearer about the basic values and standards we share. This leaflet introduces the Human Rights Act and says how it works. UK Governments have respected the European Convention for over 50 years. So you’ll probably never need the Act. But if your rights ever are infringed, it’s good to know there’s something you can do about it. [5].

**What is the human rights act?**

The Human Rights Act 1998 is a law, which came into full force in October 2000. It gives further effect in the UK to the fundamental rights and freedoms in the European Convention on Human Rights.

**What does it do?**

The law does three simple things:

It makes it unlawful for a public authority, like a government department, local authority or the police, to breach the Convention rights, unless an Act of Parliament meant it couldn’t have acted differently.
It means that human rights cases can be dealt with in a UK court or tribunal. Until the Act, anyone who felt that their rights under the Convention had been breached had to go to the European Court of Human Rights in Strasbourg.

It says that all UK legislation must be given a meaning that fits with the Convention rights, if that’s possible. If a court says that’s not possible it will be up to Parliament to decide what to do [2].

What is the European Convention on Human Rights?

This is one of the earliest and most important treaties passed by the Council of Europe, a group of nations invited by Sir Winston Churchill to come together after the Second World War to stop such atrocities and acts of cruelty happening again.

The Council of Europe is quite separate from the European Union (EU). It has its own Court of Human Rights in Strasbourg. You are already able to go to the Strasbourg court to claim your rights under the ECHR. However until 2000, the ECHR was not part of the UK’s domestic law. So our courts had not normally been able to deal with claims.

Conclusion:

Victims, as we have seen, are (or should be) central to human rights thinking. This is not to suggest that ‘the victim’ is viewed the same way in human rights law as in domestic criminal law. Nor are victims conceived of as an ‘interest group’ in the sense that some victims groups might represent them. Human rights law is based on a set of values that seeks to root out abuse of power from whichever source – and secure respect for the essential dignity of every individual. As such, the framework in which victims’ human rights has evolved gives a distinctive emphasis to psychological harm, privacy, the effective investigation of crimes, protection from intimidation in court, and even the effect on ‘indirect victims’ like close family members, as well as the obligation on the state to prosecute suspects and deter crimes.

The state has a special role in international human rights law as the body charged with remedying abuses, whether by refraining from acting oppressively itself or preventing and restraining private parties from doing so. Whilst the origins of human rights law began with a focus on state violations, the search for remedies of abuse of power inexorably led it to embrace private power as well.

REFERENCES