

THE THEORY OF THE RIGHT TO ACCESS CLEAN WATER AND SANITATION IN INTERNATIONAL LAW, SOME SUGGESTIVE ISSUES FOR VIETNAM

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I. INTRODUCTION

Current international law does not have specific, binding regulations on the right to access clean water and sanitation, instead, this right is being recognized as a new international customary norm that is being formed. Specifically, this customary norm has both an expression of *opinio juris* and State practice. Specifically, in 2002, with General Comment No. 15 on “The Right to Water”, the United Nations Committee on Economic, Social and Cultural Rights (ESCR-Committee)¹ issued a relatively comprehensive legal opinion. The right to access clean water and sanitation is a basic human right. By 2010,

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¹ ESCR-Committee, General Comment No. 15.

through Resolution 64/242 of session No. 108, the UN General Assembly recognized the right to access clean water and sanitation as a basic individual right.² Of course, in terms of sources of international law, both General Comment No. 15 on “The Right to Water” and Resolution 64/242 are supplementary sources³ and are only recommendations⁴ - not legally binding, however, these can be seen as signs that an *opinio juris* is being formed. On the other hand, although there are very few studies and reports, it is noted that countries stipulate in their Constitutions and legal systems the right to access clean water as an independent right. But in their practical activities, countries have shared a deep awareness of the role of clean water and political determination on this issue through Sustainable Development Goal (SDG) No. 6 “Ensuring access to clean water and sanitation for all” at the 2015⁵ UN

² UNGA, The human right to water and sanitation, A/RES/64/292, (Aug. 3, 2010).

³ Art. 38 International Court of Justice Statute.

⁴ Art. 10 and 14 of the UN Charter refer to UNGA resolutions as “recommendations.”

⁵ United Nations, “Sustainable Development Goals: 17 Goals to Transform our World,” <https://www.un.org/en/exhibits/page/sdgs-17-goals-transform-world#sdg6>.

Summit on Sustainable Development, so it is no exaggeration to say that the right to clean water and sanitation is an international practice in the field of human rights is being formed.

Originating from the above practice, because the right to access clean water and sanitation has not been recognized in a binding condition document, in Vietnam research related to this issue is still very limited. However, if current trends are followed, in the near future the right to access clean water and sanitation will be codified and recognized in a written and formal condition, giving rise to broad legal force. Therefore, proactively researching issues related to a regulation of international law that is gradually taking shape will be the right direction

Therefore, the following research will introduce some discussion issues related to the right to access clean water and biological protection in international law, and at the same time compare it with the current situation in Vietnam, thereby proposing some encourage the expansion of improved policies and laws in the near future.

II. THEORETICAL BASIS

According to the viewpoint recognized in international documents (up to the present time), the right to access clean water and sanitation is in fact closely related to the system of recognized human rights such as the right to living;⁶ the right to the highest standards of physical and mental health;⁷ and the right to have an adequate standard of living with housing and food.⁸ In other words, the right to access clean water and sanitation is a right within the overall human rights spectrum.

However, as stated above, the right to access clean water and sanitation has not been regulated as an independent right nor clearly recognized in any

⁶ Art. 6(1) ICCPR (1966), UNTS 999 (1976), 171: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

⁷ Art. 12(1) ICESCR (1966), UNTS 993 (1976), 3: "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

⁸ *Ibid.*, Art. 11(1), s. 1: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and for his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent."

fundamental source of international law as stipulated in Article 38 Statutes of the International Court of Justice. Therefore, countries do not have to ensure the implementation of this right as a mandatory obligation, nor do they have a mechanism to monitor and ensure it like other human rights that have been researched and developed into standards - such as civil, political, economic, social and cultural rights.

The current theoretical system of the right to access clean water and sanitation is mainly recognized in documents and resolutions of intergovernmental international organizations, and although only recommendations,⁹ these documents also reflect reflects the positions and orientations of the parties surrounding this theory. For example, in case a resolution is passed by voting such as Resolution 64/242,¹⁰ the voting results will be recorded: Favorable votes; Against votes; and Abstaining votes can assess the awareness and attitude of countries towards the

⁹ Art. 10 and 14 of the UN Charter refer to UNGA resolutions as “recommendations.”

¹⁰ UNGA, The human right to water and sanitation, A/RES/64/292 (Aug. 3, 2010).

content of the resolution. Documents such as records of meetings, for example, A/64/PV.108¹¹ of session 108 when the above Resolution 64/242 was issued, will contribute to clarifying the views of countries with the contents of the Resolution.

On the other hand, countries currently have their own regulations to ensure aspects of the right to access clean water in different ways appropriate to actual circumstances and conditions. Where general international law on access is not recognized, national law prevails. However, when the right to access clean water is officially established and has a binding effect as an independent human right, then international law will prevail, and most countries will have to comply. According to that new regulation, it means that countries may have to adjust, supplement, amend, and update policies and laws to ensure the implementation of their commitments.

¹¹ UNGA, 108th plenary meeting Official Records, A/64/PV.108 (July 28, 2010).

III. RESEARCH APPROACH

Based on the above theoretical basis, this study will clarify some theoretical perspectives of the right to access clean water and sanitation, thereby predicting the direction of improvement of this regulation when recognized as an independent right in the legal system. international human rights law. In addition, this study will evaluate Vietnam's current situation in its approach to clean water issues, thereby providing some comments and suggestions for Vietnam in research, preparation, contribution, and adaptation to future regulations on access to clean water and sanitation.

IV. RESULTS AND DISCUSSION

A. Theory of the Right to Access and Sanitation in International Law

The right to access clean water and sanitation is not a new issue, because, like other basic human rights, it has in fact existed as a natural, inherent right, until now. when encountering obstructive factors and requiring state intervention to ensure full

implementation of these rights. Specifically, in the previous period when the world population was only a modest number, natural water resources were abundant, and access to water sources to serve individual needs was relatively easy, the concept of the right to access clean water has hardly been raised. Similarly, when the water source has not been polluted by human impacts, or affected by climate change, or has not been required to have health standards to combat water-borne diseases. A definition of a hygienic water source is not an urgent requirement.

The first theories and then regulations to ensure the right to access to clean water were only put in place when there began to be subjects facing limitations in accessing water sources such as prisoners,¹² women,¹³ children.¹⁴ Thus, it can be seen that the above

¹² Art. 20, 26, 29 and 46 Geneva Convention (III) Relative to the Treatment of Prisoners of War (1949); Art. 85, 89 and 127 Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War (1949).

¹³ Art. 14 (2)(h) to ensure to rural women the right to enjoy adequate living conditions, particularly in relation to water, Convention on the Elimination of Discrimination against Women (1979).

¹⁴ Art. 24(1) and (2)(c) to implement children's rights to health by taking appropriate measures to combat disease and malnutrition through, inter alia, the provision of clean drinking water, Convention on the Rights of the Child (1989).

regulations were formed to ensure that all individuals, regardless of circumstances, have the ability to access water sources to serve basic living needs, especially those who are vulnerable. disadvantaged in society, or in special circumstances. The above regulations also help narrow the gap in inequality between disadvantaged groups and the rest of society in access to water and, more broadly, in the ability to ensure basic human rights.

So, the question is why and how is the right to access clean water and sanitation considered and promoted to become an independent right in the human rights system?

First, answer the question of why. The problem lies in the risks that humanity is facing related to water sources, especially clean and hygienic water sources to serve the essential needs of life. In particular, reports on the environment,¹⁵ population,¹⁶ and health

¹⁵ Report of the UN Water Conference, Mar del Plata, 14–25 March 1977, E/CONF.70/29, (1977)

¹⁶ UN Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992, Agenda 21, <<http://www.unep.org/Documents.Multilingual/Default.asp?documentid=52>>

conditions¹⁷ are premises showing that while the world's population is increasing, water resources are gradually decreasing, leading to the fact that there are billions of people around the world who do not yet have access to or full use of clean water and sanitation. Especially in the future, with the impacts of climate change, clean water, and sanitation sources will become even more scarce and difficult to access, leading to risks of social inequality related to exploiting, managing, supplying, and using clean water. Therefore, countries and international organizations have jointly studied the right to access clean water and sanitation as an independent right in international law to universalize the rights of all individuals to this essential resource to ensure the narrowing of the gap in social inequality. Besides, according to scholars, promoting the right to access clean water to become an independent human right also means encouraging countries to participate in

¹⁷ World Health Organization (WHO) (2012) Glass 2012 Report: UN-water global analysis and assessment of sanitation and drinking water – the challenge of extending and sustaining services.
<http://whqlibdoc.who.int/publications/2012/9789241503365_eng.pdf>

common agendas and commitments and work together. Joint action to solve global problems such as promoting basic human rights, responding to climate change, or protecting the environment.

Second, for the right to access clean water and sanitation to become an independent human right in international law, this right needs to ensure elements including comprehensiveness "comprehensiveness"; "legal bindingness"; and "selfstandingness".¹⁸ Accordingly, the right to access to clean water and sanitation is most clearly outlined through General Comment No. 15 of the Committee on Economic, Social and Cultural Rights dated 20 January 2003 (ESCR-Committee, General Comment No.15, June 20, 2003). Specifically: the document declares that everyone, on a non-discriminatory basis, has the right to adequate, safe, accessible, and affordable water of acceptable quality.¹⁹ Accordingly, water must be continuously supplied for personal and family use, especially for drinking, cleaning, washing clothes,

¹⁸ Pierre Thielbörger, *THE RIGHT(S) TO WATER - THE MULTI-LEVEL GOVERNANCE OF A UNIQUE HUMAN RIGHT* (2014), at 56.

¹⁹ ESCR-Committee, General Comment No. 15, par. 12.

food preparation, and personal and family hygiene. Water quality must meet WHO standards. Water accessibility requires that water be physically secured. Ultimately, water finance does not dictate that water must be provided for free, but that water access must be affordable for all, including vulnerable and marginalized groups. Finally, the document sets out obligations for states by calling for respect, protection, and ensuring the right to access clean water and sanitation.²⁰ In particular, core obligations need to be implemented through strategies, specific national action plans on water, or the establishment of monitoring systems on access to water sources, programs program to help the most vulnerable groups, and the necessary measures to reduce water-related diseases.²¹

In short, the right to access clean water and sanitation does not currently exist as an independent human right in the international legal system. However, from the above analysis, in the future, the

²⁰ ESCR-Committee, General Comment No. 15, par. 20 - 29.

²¹ ESCR-Committee, General Comment No. 15, par. 37.

right to access clean water and sanitation will be promoted to become an independent, binding international regulation, and will have many similarities with the contents of General Comment No. 15 (ESCR-Committee, General Comment No.15, 20 June 2003).

B. Current Status of the Right to Access Clean Water in Sanitation in Vietnam

The story of the right to access clean water in Vietnam is generally similar to what has been recorded in international practice. Currently, Vietnam is not ahead of the world in independently regulating the right to access clean water as a basic human right. Instead, the 2013 Constitution of the Socialist Republic of Vietnam recognizes regulations closely related to the right to access clean water and sanitation such as Article 34 on ensuring social security, or Article 44 on the right to live in a clean environment.

Specific regulations creating a legal framework to ensure the right to access clean water were established by Vietnam with the mindset of establishing the role of

the State in managing a type of natural resource through the 1998²² and 2012²³ Water Resources Management Law. These regulations set out the principles and responsibilities of the State in managing and ensuring equal access to water resources in general. However, it is not until actual demands, risks, and shortfalls in the ability to enjoy the right to access clean water are raised for a number of specific subjects - mainly people living in the area. rural areas, the new State officially develops regulations²⁴ and programs²⁵, as well as implements specific²⁶ measures to ensure

²² Art. 4 (1) of the Law on Water Resources – Law No. 08/1998/QH10 of the National Assembly.

²³ Art. 5 (3) of the Law on Water Resources – Law No. 17/2012/QH13 of the National Assembly.

²⁴ Decree No. 117/2007/ND-CP on production, supply and consumption of clean water; Decree No. 124/2011/ND-CP amending and supplementing Decree 117/2007/ND-CP; and, Circular No. 4/2021/TT-BTC Regulations on price framework, principles, and methods for determining domestic clean water prices.

²⁵ Decision 1978/QĐ-TTg approving the National Strategy for clean water supply and rural sanitation to 2030 with a vision to 2045. This is considered a breakthrough to improve the quality of domestic water in rural areas. The strategy sets goals, tasks, and solutions for rural water supply and sanitation towards sustainable development, ensuring social security for rural people, and gradually narrowing the gap between rural and urban areas. Urban areas contribute to building new rural areas.

²⁶ Decision 318/QĐ-TTg on the set of national criteria for new and improved rural communes for the period 2022-2025, strengthening and increasing the target of the proportion of rural people using clean water that meets standards.

equality in opportunities and access to clean water for people in rural areas.

Thus, from the perspective of human rights, Vietnam has been moving in a direction that is relatively consistent with international practice on the right to access clean water and sanitation. However, placed in the future context, when the right to access clean water and sanitation is recognized as an independent human right, Vietnam's current policies and regulations on ensuring the right to access clean water will. Some remaining problems arise as follows:

First, compared to the approach of a comprehensive and universal human right, Vietnam's current approach to ensuring the right to clean water is only limited to rural people - subjects identified as having limited ability to access and fully enjoy clean water and sanitation. Current policies and regulations only stop at the goal of narrowing the gap in living conditions between rural and urban areas - according to the motto "no one is left behind". However, this narrow approach is clearly not entirely reasonable, for example, implicitly excluding people living in urban

areas from the goal of ensuring the right to access clean water and sanitation. While these people may have difficulty enjoying this right, especially in the context of increasingly rapid urbanization, urban infrastructure has not yet met the essential basic needs of individuals, one of which is the need for clean water. In the future, Vietnam needs to redefine that the right to access clean water and sanitation must be given to every individual in society, regardless of whether urban or rural areas; at the same time, it will lead to an increase in the responsibility and role of the State in ensuring widespread equality in access to clean water and sanitation.

Second, because there is no comprehensive approach combined with the current management model, Vietnam has not yet built a system of policies and regulations to effectively manage and enforce issues surrounding human rights regarding access to clean water and sanitation. Currently, according to the Government's assignment of specialized tasks, each ministry advises on the development of policies, and regulations, and directly implements water

management from a separate perspective. Specifically, the Ministry of Construction proposes and pays attention to the aspects of construction, operation, and management of projects related to clean water distribution, or wastewater treatment in urban areas and industrial parks. Meanwhile, rural water issues are under the management of the Ministry of Agriculture and Rural Development. The Ministry of Health controls technical standards of water sources, water source quality, and diseases arising from water sources. The Ministry of Natural Resources and Environment focuses on managing surface and underground water resources and views water as a resource that is affected by climate change. The Ministry of Finance manages water consumption and water selling prices. Although this vertical management method has many advantages, it also has certain limitations, one of which is the lack of uniformity, sometimes overlap, and “stepping on each other's toes” in management.²⁷ In addition, due to the

²⁷ Overlap in standards on clean water quality provided for domestic use: Circular No. 01/2016/TT-BXD issued by the Ministry of Construction QCVN 07-1:2016/BXD which stipulates 21 water

lack of a strong common mechanism to control the coordination of agencies, accountability, or efficiency in management, exploitation, production, distribution, and consumption is currently lacking. Clean water in Vietnam is still a problem that has not been completely resolved.²⁸

Third, in the current roadmap for building and perfecting the law, Vietnam has included the issue of ensuring people's right to access clean water and sanitation in the project to develop the Law on Water Supply and Drainage.²⁹ Although the project to develop the Law on Water Supply and Drainage has focused on addressing 04 policy groups,³⁰ there are

indicators clean, while Circular 41/2018/TT-BY issued by the Ministry of Health has 99 water quality standards.

²⁸ Ministry of Construction, "Report: Summary of law enforcement in the field of water supply and drainage", Hanoi (2023).

²⁹ Ministry of Construction, "Report: Impact assessment of the proposed policy to develop the Water Supply and Drainage Law project", Hanoi (July 2023).

³⁰ "(1) Develop a synchronous, unified, and effective water supply and drainage system according to planning, orientation, strategy, and program; (2) Improve the quality of water supply and drainage services, innovate the management and operation model of water supply and drainage systems; (3) Ensure resources for investment and development of water supply and drainage; (4) Improve capacity, effectiveness and efficiency of state management of water supply and drainage." Report of the Ministry of Construction, "Proposal to develop a Law on Water Supply and Drainage" (July 2023).

still two issues that have not been thoroughly resolved, including (i) The draft has not applied the theory of public benefits in the distribution of water supply and drainage. Clean water is included in the current group of public assets and public services, so an effective public-private partnership model, or the problem of attracting private capital into this field, has no specific solution; (ii) Compared to the recommendations on the core obligations of countries in General Comment No. 15,³¹ the draft does not clarify monitoring systems on access to water sources, programs to help vulnerable groups.

V. CONCLUSION

In short, the right to access clean water and sanitation in international law is currently not regulated as an independent right in the system of basic human rights. However, with signs of this right being formed as a new practice, in the near future this right can completely become an independent human right.

³¹ ESCR-Committee, General Comment No. 15, par. 37.

In general, Vietnam has had directions and moves that are very consistent with the reality of the right to access clean water and sanitation in the present and the future. The Law on Water Supply and Drainage is currently still in the process of being developed, but with specific policies, principles, and goals, this Law, when officially promulgated, promises to completely solve the remaining problems mentioned above. However, within the framework of a study on international human rights law, the study will offer two additional suggestions for Vietnam in researching, preparing, contributing, and adapting to regulations on access rights. access to clean water and sanitation in the future.

Firstly, Vietnam needs to develop and encourage more research related to the right to access clean water and sanitation, not only because it will serve in the future when this regulation takes effect, but that even Vietnam can fully contribute to the process of proposing, building and perfecting this precise regulation at the international level. Vietnam's positive and proactive participation in environmental and

human rights initiatives in recent years has continuously strengthened our international position in the international arena. So, continue this process for the right to clean water and sanitation will be no exception. Furthermore, along with the goals of deep integration and owner's account, making the most of international legal tools to ensure the legitimate rights and interests of the Party and State of the nation and people in recent years have also required more in-depth research on international legal issues.

Secondly, Vietnam needs to have an appropriate foreign policy, especially based on impact assessments on human rights policies, including the right to access clean water and sanitation. By, in recent years Vietnam's position in the international arena has been continuously strengthened, special efforts should be made to help the efforts and components of national development at the same time as diversifying the multimedia diplomatic channel. However, there is a reality that cannot be changed: Vietnam is still often a victim of erroneous assessments of ensuring the enforcement of human rights. Meanwhile, with

international relations, whether or not to participate in international devices, or to be bound by common values such as human rights or not is always used as a form of right or effort to exert influence, even pressure, to achieve certain benefits. Therefore, Vietnam needs to have comprehensive and detailed impact assessments on the right to access clean water, from which to have appropriate scenarios and diplomatic solutions, avoiding putting itself in a difficult or disadvantageous position.³²

³² CESCR, General comment no. 14 (2000): The right to the highest attainable standard of health (Article 12), Geneva, United Nations (2000).

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