Participation and water rights: the contribution of legal frameworks to the protection of individual and collective rights

TIGNINO, Mara


Available at: http://archive-ouverte.unige.ch/unige:78323

Disclaimer: layout of this document may differ from the published version.
Participation and Water Rights: The Contribution of Legal Frameworks to the Protection of Individual and Collective Rights

Mara Tignino
Senior Researcher and Coordinator of the Platform for International Water Law, Faculty of Law, University of Geneva

World Water Forum
Session 4.4.4 – Water Justice and Cooperation: Perspectives and Frameworks for Fostering Cultural Diversity, Society and Nature

Daegu, 15 April 2015
Outline

1) Participation, individual and collective rights

2) Strengthening the protection of individual and collective rights in the management of water resources
1) Participation, individual and collective rights


• Possible tension between individual and collective rights
1) Participation, individual and collective rights

- Human Rights Law sheds light on participation and collective rights

Examples from human rights case law

1) Participation and individual and collective rights

Human Rights Law sheds light on participation and collective rights

“The African Commission is of the view that any development or investment projects that would have a major impact within the Endorois territory, the State has a duty not only to consult with the community, but also to obtain their free, prior, and informed consent according to their customs and traditions” (African Commission on Human and Peoples’ Rights, Centre for Minority Rights Development (Kenya) and Minority Rights Group on Behalf of Endorois Welfare Council v. Kenya, 2009, par.291)
1) Participation and individual and collective rights

Human Rights Law sheds light on participation and collective rights

“The culture of the members of the indigenous communities corresponds to a specific way of life, of being, seeing and acting in the world, constituted on the basis of their close relationship with their traditional lands and natural resources, not only because these are their main means of subsistence, but also because they are an integral element of their cosmology, their spirituality and, consequently, their cultural identity” (Inter-American Court of Human Rights, Xakmok Kasek v. Paraguay, 2010, par. 174)
2) Strengthening the protection of individual and collective rights in the management of water resources

- Need for an holistic approach: individual and collective rights are reflected in principles of international water law

- Linkages between human rights law and international water law

  ➢ Principle of equitable and reasonable utilisation: it is applicable to all water resources both national and transboundary. It includes the protection of water needs (see Art.5.2 of the 2008 International Law Commission’s Draft Articles on the Law of Tranboundary Aquifers)

  ➢ Obligation not to cause a significant damage. This obligation extends to the environment under the jurisdiction of a State (see Art. 8 of the 2004 Berlin Rules of the International Law Association)
2) Strengthening the protection of individual and collective rights in the management of water resources

Linkages between human rights law, international environmental law and international water law

2) Strengthening the protection of individual and collective rights in the management of water resources

- Need to address individual and collective human rights in a coherent framework which includes transboundary cooperation on water resources
- Water needs and the right to water depend on both national and transboundary water resources

Example

In Africa 52 States of its 54 States are dependent for drinking and sanitation on international rivers
Thank you
Platform for International Water Law
www.unige.ch/droit/eau