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# Intergovernmental Organizations

Frank Knaack

*American University Washington College of Law*

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## INTERGOVERNMENTAL ORGANIZATIONS

### CLIMATE CHANGE, EXTRA-TERRITORIAL OBLIGATIONS, AND ENSURING THE RIGHT TO SAFE DRINKING WATER AND SANITATION

According to the World Health Organization (WHO) and the United Nations Children's Fund (UNICEF), 780 million people lack access to potable drinking water and two and a half billion people lack sanitation where human excreta is separated from human contact. In a strategy overview on water, sanitation, and hygiene, the Bill and Melinda Gates Foundation stated that this leads to the deaths of one and a half million children under five each year. While there has been progress, ensuring access to safe drinking water and sanitation is stymied by climate change. This connection is currently under investigation by Catarina de Albuquerque, the UN Special Rapporteur on the human right to safe drinking water and sanitation, and de Albuquerque is using human rights obligations as a partial remedy.

Access to safe drinking water and sanitation is a codified human right. This right is enshrined in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Labour Organization (ILO) Convention No. 161, the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD). Furthermore, the Committee on Economic, Social and Cultural Rights' (CESCR) General Comment 15 states that the right to water is implicit in Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). And, both the General Assembly and the Human Rights Council affirmed the right to safe drinking water and sanitation. These developments, in 2011, helped extend the mandate and raise its title from Independent Expert to Special Rapporteur.

De Albuquerque's recent country visits to Tuvalu and Kiribati were undertaken, in part, to examine the impact of climate change on the realization of this right. In her July 25, 2012, public statement on her mission to Kiribati, de Albuquerque found that "access to water and sanitation

are being exacerbated by increasing water scarcity, saltwater intrusions, sea level rise and frequency of extreme weather events." She also found that climate change is not just a threat to future generations; from displacing communities to reducing the amount of fresh water available, climate change has become "a reality for people's everyday life."

De Albuquerque's response to the impact of climate change on the right to safe drinking water and sanitation is two-fold. First, she reaffirmed states' obligations to take steps to ensure progressive realization of this right, which stems from the ICESCR's recognition that its rights will be realized over time. Second, she reminded industrialized countries that they should look to prevent future violations. De Albuquerque also called on countries most responsible for climate change "to prevent or remedy any denials of human rights caused by effects of their acts or omissions in other countries." But, while reaffirming the obligation of industrialized countries to provide assistance, de Albuquerque also noted the difficulty of addressing the structural problems of climate change. The successive failures to establish a binding post-Kyoto Protocol agreement to mandate a reduction in greenhouse gas emissions illustrates de Albuquerque's point. The Kyoto Protocol set binding emissions reduction standards on thirty-seven industrialized countries, but is set to expire in 2012.

While a follow-up to the Kyoto Protocol may be a long way off, extra-territorial obligations are clearly recognized under international law. Specifically *vis-à-vis* ensuring the right to safe drinking water and sanitation, ICESCR Article 2(1) calls on States Parties to "to take steps, individually and through international assistance and co-operation . . . to the maximum of . . . available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means[.]" The CESCR's General Comment 15 calls on States Parties to "refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries." This includes, if resources permit, ensuring

that their own citizens and companies do not violate the rights of individuals in other countries; assisting other countries to realize this right; and ensuring that international agreements and international organizations recognize the right. More recently, the CRPD recognized the importance of States Parties providing international development cooperation, capacity-building, and technical and economic assistance.

De Albuquerque's call for industrialized nations to help countries impacted by climate change ensure the right to safe drinking water and sanitation is firmly supported under international law. In fact, utilizing the extra-territorial obligations under the international human rights framework may be a way to mitigate the negative impact of climate change on rights beyond the right to safe drinking water and sanitation until a binding and sufficient climate change treaty can be implemented.

### ADDING HUMAN RIGHTS TO THE EUROPEAN FINANCIAL REFORM DEBATE

While the negative impact of the global financial crisis on the realization of human rights has disproportionately hit those in the developing and least-developed countries, the crisis has also reached the developed world. On October 5, 2012, the United Nations Special Rapporteur on Extreme Poverty and Human Rights along with the UN Independent Experts on the promotion of a democratic and equitable international order and on foreign debt and human rights called on the European Union (EU) to implement economic reforms that respect, protect, and fulfill the human rights obligations of its Member States. This action followed the release of the EU commissioned Liikanen report on October 2, 2012, which recommended that European banks separate their risky trading activities from their savings and lending activities. Using Member States' obligations to ensure the realization of economic, social, and cultural rights, the UN experts recommended that the EU create a regulatory framework that respects human rights.

The EU attempted to mitigate the impact of the 2008 global financial crisis

through the use of bank bailouts and the implementation of austerity measures. Proponents of these actions argued that they were necessary to relieve the debt crisis and stabilize the financial markets. But, as the UN experts stated, these measures negatively impact the realization of economic, social, and cultural rights within the European Union.

In their joint statement, the UN experts highlighted the human rights repercussions of EU countries' 4.5 trillion euro bailout of their financial institutions. As Magdalena Sepúlveda, the UN Special Rapporteur on Extreme Poverty and Human Rights, stated, "[S]uch levels of extra and unforeseen spending have pushed governments into debt sustainability crises and, in many cases, created unbearable hardship for citizens, especially people living in poverty, through austerity plans which have often contradicted States' legal obligations to realize economic, social and cultural rights." Alfred de Zayas, the Independent Expert on the promotion of a democratic and equitable international order added that the implementation of austerity measures "compromise[s] not only the welfare of the population today, but also that of future generations."

Cephas Lumina, UN Independent Expert on foreign debt and human rights, documented the real world harm

of austerity measures during his visit to Latvia in May 2012. To receive a loan from the EU and the International Monetary Fund (IMF), Latvia agreed to "implement stringent austerity measures that entailed deep cuts in public spending." Lumina found this led to a rapid increase in unemployment, emigration, and poverty as well as a decrease in household income. As a result, Latvia maintained its status as having one of the highest poverty rates in Europe. In addition, the budget cuts undermined Latvia's progress *vis-à-vis* ensuring access to health care.

Latvia is just one of many examples in Europe, including Spain, Portugal, and Greece, where the implementation of austerity measures led to the deprivation of rights clearly enshrined in international human rights law. All twenty-seven EU countries have ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), which ensures the right to work (Article 6), including just and favorable conditions of work (Article 7); the right to an adequate standard of living for oneself and one's family, including adequate food, clothing, and housing (Article 11); and highest attainable standards of physical and mental health (Article 12).

According to the UN experts, a solution to the crisis that both respects human rights and remedies the structural defects

that helped fuel the crisis will require a multipronged approach. De Zayas cautioned the EU to avoid "undemocratic bailouts," and added that viable solutions to the financial crisis already exist, such as implementing "significant" reductions to "all military expenditures." According to Lumina, a long-term solution will require the implementation of effective regulatory measures that curb bank bailouts and address the "central role" played by credit-rating agencies, financial speculators, and hedge funds in "fueling this crisis." In addition to being smart economic policy, Sepúlveda stated that the need to ensure that States Parties implement a regulatory framework and avoid future bailouts stems from their obligation to ensure the progressive realization of economic, social, and cultural rights. By protecting their budgets, EU Member States will be better positioned to carry out this obligation to the maximum of their available resources.

As these UN experts make clear, EU Member States are obligated to ensure the progressive realization of economic, social, and cultural rights. To achieve this, the EU must reform its financial sector.

*Frank Knaack, a J.D. candidate at the American University Washington College of Law, is a staff writer for the Human Rights Brief.*