



**ISER**

Facilitating Social Justice

INITIATIVE FOR SOCIAL AND ECONOMIC RIGHTS

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# **The Right to Water in Uganda Perspectives from the district of Kayunga**

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## Acknowledgement

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## I. Introduction

Access to safe and clean water in adequate quantities in Uganda remains a major impediment to the country's human development. Uganda is among the least developed nations in the world, ranking 162 out of 184 nations on UNDP's 2013 Human Development Index—which ranks countries utilizing data on life expectancy, income and educational attainment<sup>1</sup>. In Uganda an estimated 9.2 million people do not have access to clean and safe water and are thus unable to enjoy their human right to water<sup>2</sup>. Limited access to safe water and subsequently adequate sanitation thus compromises the right to health of a large proportion of the country's population.

In 2013, 85 percent of the Ugandan population lived in rural areas and the rural population grew by 3 percent<sup>3</sup>. Rural areas not only suffer from greater levels of poverty but also from the most serious limitations on access to safe and clean water. Access to sufficient amounts of safe water in urban and rural areas also remains a big challenge. Weather patterns across the nation vary significantly by region, placing certain populations in extremely precarious situations during dry season and rain shortfalls. Both natural and manmade conditions affect fulfillment of the right to water throughout Uganda.

This work discusses the international standards regarding the right to water and the impact of its limited fulfillment on the realization of the right to health, and the coinciding duties of the Ugandan State. In addition to analyzing international norms and domestic policy, this work includes the findings of field research carried out in two sub-counties of the Ugandan district of Kayunga—Bbaale and Kayonza—to demonstrate the challenges communities face in realizing their right to water as an underlying determinant of the right to health. Utilizing the findings collected in Bbaale and Kayonza, this work demonstrates the need for the Ugandan state to dedicate more resources and energy to realizing its citizen's human right to water to in turn fulfill their right to health – particularly through disease prevention as indicated in the Uganda National Minimum Healthcare Package.

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<sup>1</sup> UNDP Human Development Index 2013

<sup>2</sup> Water Aid, Where we work: Uganda, accessed July 2014, , <http://www.wateraid.org/us/where-we-work/page/uganda>

<sup>3</sup> World Bank, World DataBank, accessed July 2014, <http://databank.worldbank.org/data/views/reports/tableview.aspx>

## II. International Norms Concerning the Right to Water

The international community has recognized the right to water as a human right due to its vital role in sustaining human life. The integration of the right to water into the human rights paradigm is an important development; as it promotes state responsibility for providing access to safe and clean water in domestic contexts around the world without discrimination. Recognition of the right to water as a human right is also integral to the realization of other human rights, such as the right to health and dignity. Despite of the recognition of the right to water by the international community, access to safe, clean and adequate water remains a challenge for a large proportion of the world's population.

The right to water is not directly referred to in the International Covenant on Social, Economic and Cultural Rights (ICESCR). However, the ICESCR has been interpreted to obligate member states to fulfill the right to water. Fulfillment of the right to water is considered to be integral to the enjoyment of many of the Covenant's other rights. Article 11 of the ICESCR articulates the right to an adequate standard of living that is defined as access to adequate housing, food and clothing. The Covenant stipulates that the right to an adequate standard of living includes the right to be free of hunger, which can only be accomplished through ensuring universal access to clean and safe water. States are responsible for creating conditions that will enable their nation to experience a continuous improvement in the standard of living. In addition, Article 12 of the Covenant articulates the right to the highest attainable standard of physical and mental health. The right to health not only requires the covenant's member states to ensure medical services are accessible but also engage in preventative measures to combat disease and poor health.

The Committee on Economic, Social and Cultural Rights (the Committee) stipulated in General Comment 3 (GC 3) that all states are responsible for ensuring a minimum core of each human right included in the Covenant regardless of their countries' resources<sup>4</sup>. GC 3 also stresses states' obligation to prioritize their nations' most vulnerable populations, particularly women and children. In General Comment 9 (GC 9) the Committee defines the manners in which states are to "take steps" to respect, protect and promote the rights articulated in the Covenant. GC 9 defines the states obligation to "take steps" as the implementation of congruent domestic legislation and providing judicial remedies<sup>5</sup>.

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<sup>4</sup> Committee on Economic, Social and Cultural Rights, General Comment 3: The nature of States parties' obligations, np.

<sup>5</sup> Committee on Economic, Social and Cultural Rights, General comment No. 9: The domestic application of the Covenant, 3

Therefore, despite Uganda's limited resources the state must ensure that it provides a minimum core of each right, prioritize the nation's most vulnerable populations and take steps to create effective legislation and remedies<sup>1</sup>.

General Comment 14 on the right to the highest attainable standard of physical and mental health refers to access to clean and potable water as an underlying determinant of health. GC 14 stipulates that the state must assure that clean and potable water and sanitation is available, accessible and acceptable<sup>6</sup>. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health emphasized the connection between the human right to water and the highest attainable standard of health. In his report to the General Assembly in 2007 he wrote,

“Safe water and adequate sanitation are two integral and closely related underlying determinants which are essential for the realization of the right to the highest attainable standard of health. Inadequate access to water and sanitation can threaten life, devastate health, destroy opportunities, undermine human dignity and cause deprivation<sup>7</sup>”.

In 2002, the Committee issued General Comment 15, which exclusively regards the right to water. GC 15 states,

“The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.<sup>8</sup>”

GC 15 goes on to reiterate the fundamental relationship between access to water, sanitation and the right to an adequate standard of living (Article 12)<sup>9</sup>. In addition to the General Comments of the Committee on ESCR, the General Assembly of the United Nations adopted Resolution 64/292. The human right to water and sanitation in July of 2010. Resolution 64/292 declares the General Assembly's recognition of “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights”<sup>10</sup>.

<sup>6</sup> Committee on Economic, Social and Cultural Rights, General comment No. 14: The right to the highest attainable standard of health, 4

<sup>7</sup> Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report of the Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2007, 10

<sup>8</sup> Committee on Economic, Social and Cultural Rights, General comment No. 15: The right to the water, 2002, 2

<sup>9</sup> Ibid.

<sup>10</sup> United Nations General Assembly, Resolution 64/292. The human right to water and sanitation, 2010, <http://www.un.org/es/comun/docs/?symbol=A/RES/64/292&lang=E>

Several other international treaties to which Uganda is member, inherently seek to promote and protect the right to water. The African Charter on Human and People’s Rights stipulates the right to health in Article 16 that reads, “All persons should have the right to highest attainable state of physical and mental health.”<sup>11</sup> In addition, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) explicitly refers to the right to water in Article 14, which acknowledges the obligation of the state to address the challenges and discrimination faced by rural women<sup>12</sup>. The right to health is again articulated in Article 12 of CEDAW; noting the unequal access to health care that women suffer.

The World Health Organization (WHO) has long been an advocate of the right to water; emphasizing its integral role in realizing the right to health. The WHO has pushed for the integration of access to water into the human rights paradigm; noting that placing it among other human rights has the potential to stimulate awareness as well as state action<sup>13</sup>. The United Nations frequently refers to the WHO for definitions and best practices regarding rights related to health. The WHO has defined three important contributing factors to the realization of the right to water—acceptability, accessibility and affordability<sup>14</sup>. As noted above, the Committee on ESCR adds availability to the list of imperative factors<sup>15</sup>.



*In rural Uganda, women and children shoulder the burden of limited access to water, spending several hours every day collecting water for their households*

Acceptability refers to the quality of available water; acceptable water should be safe to drink and utilize for sanitation purposes—such as washing clothes, cleaning latrines and bathing. Basic accessibility is defined by the WHO as having a water source within 0.5 kilometers from a given household. As water is a human right, it should also be affordable to all persons. The state must ensure that the cost of water is based upon the income of the populations that constitute the demand. Unfortunately, low income and irregular income earning communities frequently pay higher prices than their better off counterparts due to the challenges they face in accessing public services. Unlike other public services, such as electricity, no community can access their right to health without having access to acceptable and affordable water<sup>16</sup>.

<sup>11</sup> African Charter on Human and People’s Rights, 1981, 3

<sup>12</sup> Convention on the Elimination of Discrimination Against Women, 1981, n.p.

<sup>13</sup> World Health Organization, *The Right to Water*, 2003, 8

<sup>14</sup> *Ibid.*, 15

<sup>15</sup> Committee on Economic, Social and Cultural Rights, General Comment 15: The right to water, 2003, np.

<sup>16</sup> World Health Organization, 16

### III. The Right to Water in Uganda's Domestic Law

The right to water is directly stipulated in the Constitution of the Republic of Uganda under the National Objectives and Directive Principles of State Policy. Objective XIV articulates social and economic rights, including the right to water, health and an adequate standard of living<sup>17</sup>. Objective XXI defines the role of the government in ensuring universal access to the right to water; stating that the government will take “all practical measures” to develop good water management systems throughout the nation.

Domestic legislation in Uganda has been implemented to more adequately define and implement water and sanitation systems. The main objective of the Water Act<sup>18</sup> is the promotion of the provision of clean, safe and sufficient water supply of water for domestic purposes to all persons<sup>19</sup>. In 1997 the Local Governments Act was passed to delegate responsibilities over social services such as water between the local and central governments. It was presumed that local governments would be more capable of responding to the needs of their communities. Despite the delegation of implementation to local governments, the central government still controls the allocation process and continues to limit local governments' responsiveness to community needs.

In 1999 the National Water Policy was introduced with two key directives. The first directive is to provide for integrated and sustainable, development, management and use of the national water resources, with the full participation of all stakeholders<sup>20</sup>. The second directive is sustainable provision of clean safe water with easy reach and good hygienic sanitation practices and facilities, based on management responsibility and ownership by the users, within decentralized governance<sup>21</sup>. The second directive states that the provision of safe and accessible water should be managed by water to consumers and local governments.

### IV. Access to clean and safe Water in Kayonza and Bbaale sub counties

Kayunga is 74 kilometers away from the Ugandan capital of Kampala with a population of 294,613. Despite its proximity to the urban center, Kayunga District is predominantly comprised of rural communities. The majority of communities throughout Kayunga District do not have access to a piped water scheme and are dependent upon a water system comprised of bore holes, dams and natural water sources.

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<sup>17</sup> Constitution of Uganda, 2005,

<sup>18</sup> Chapter 152

<sup>19</sup> Article 4(b)

<sup>20</sup> Policy directive (a)

<sup>21</sup> Policy directive (d)



During the fiscal year of 2013/14 there were 907 water sources throughout the district of which a significant proportion were deemed non-functioning by the district<sup>22</sup>.

The sub-county of Kayonza had 106 bore holes out of which 17 were non-functioning to serve a population of more than 44,772<sup>23</sup> during the 3<sup>rd</sup> quarter of FY 2013/14<sup>24</sup>. Bbaale sub-county—with a population of 294,613 in 2009—had 32 boreholes of which 8 were not functioning during the same time period<sup>25</sup>. Despite the presence of bore holes— as well as other water sources such as shallow wells, rain water harvesting tanks and dams— throughout the district, many communities do not have access to acceptable water sources.

One of the biggest challenges to the attainment of accessible, affordable and acceptable water in the sub counties of Kayonza and Bbaale, is that households primarily rely on boreholes to access water that is safe for drinking and domestic use. Unfortunately, the distance between households and boreholes is frequently more than what the WHO deems necessary to guarantee basic access—less than 1 kilometer in travel round trip. Several of the community members interviewed in the two sub-counties reported having to walk between 1 and 5 kilometers to collect safe water. The long distances observed in Kayonza and Bbaale were not all due to the absence of bore holes, but rather the challenges associated with supplying a safe and adequate supply of water when dependent upon them.

There are many challenges in realizing the right to water in Uganda through a system that is primarily dependent upon bore holes in rural areas. First, boreholes are expensive to install as well as expensive to maintain. Kayunga District is only able to finance the installation of 9 to 13 boreholes per year that are distributed in accordance with geographical representation and greatest need<sup>26</sup>. In rural areas, local committees are formed to collect household contributions to maintain boreholes. However, bore holes frequently require large repairs which communities are unable to finance through the collection of small contributions.



*Children gather around a borehole in Bbaale sub-county that is notorious for having strange smelling water. Despite the smell, the surrounding community continues to use the water for drinking and household purposes.*

<sup>22</sup> Kayunga District Water Office, Form 4: WSBD Update Sheet

<sup>23</sup> Kayunga District, Higher Local Government Statistical Abstract 2009

<sup>24</sup> Kayunga District Water Office, Form 4: WSBD Update Sheet

<sup>25</sup> Ibid.

<sup>26</sup> Interview with Kayunga District Engineer, 21/7/14



One of the most important contributing factor to non-functioning bore holes is the high levels of use of the pumps. There is a viscous cycle of limited access to water due to the shifting of populations from community bore holes that are non-functioning to neighboring bore holes that are. The increase in population that a single bore hole serves due to shifting populations results in greater wear and tear and the need for more extensive maintenance and repairs.

The cycle of non-functionality is intensified by local government's inability to finance the installation of new



*Jerry cans are lined up at a borehole in the trading center of Bbaale. Wait times frequently surpass 3 hours, as the borehole provides water for commercial and household use.*

boreholes and the maintenance of those already constructed. Limited resources available at the district level effectively forces communities without basic access to water to travel long distances to collect safe water or utilize contaminated sources of water that are more accessible. In addition, scarcity of functioning bore holes results in long queues. Long travel and waiting times disproportionately and negatively affect women and children who shoulder much of the burden of water collection. The time spent travelling to collect water diminishes time available to dedicate to income generating activities and education. Many children are unable to attend school regularly, if at all, due to the burden of domestic work.

Although many community members in Kayonza and Bbaale interviewed stated that they only utilized unsafe water sources—such as dams and ponds—for purposes other than drinking, the chance of cross contamination of drinking water is high. Many families rely on a single set of jerry cans to collect water, making the transfer of dirt and other contaminants from unsafe water to safe water easy and undetectable. Household use of unsafe water sources may also lead to drinking of contaminated water in occasions when safe water is unavailable. Therefore, the collection of unsafe water increases exposure and incidence of water borne illnesses.

In addition, limited access to water compromises the community's access to adequate sanitation. Utilizing dirty water to clean dishes, clothes, and living spaces inhibits people from obtaining adequate levels of hygiene.

The cleaning of latrines is also negatively impacted by limited access to water, which results in the spread of illnesses such as Candidiasis. Maintenance of latrines and general sanitation is not only limited at the household level but also in public institutions such as health centers and schools. Many schools such as St. Jude Primary School and health centers such as Bbaale health center IV in Kayunga district do not have independent water sources, as they share with their surrounding communities. The sharing of a water source strains both institutions' ability to quickly collect adequate amounts of water for operation which places a strain on the time of pupils and healthcare workers.

Healthcare workers interviewed at Bbaale Health center IV and Lugasa Health center III indicated that treatment of patients with water borne illnesses were the second most common ailments presented—surpassed only by Malaria. However, community members who suffered from parasitic or bacterial infections in the past—such as typhoid and dysentery—were unsure if their illness were caused by poor sanitation, consuming contaminated water, or contaminated food<sup>27</sup>. Limited access to safe and adequate water supply compromises Kayonza and Bbaale residents' right to health by placing them at higher risk of contracting preventable illnesses.

Realization of the right to health in both sub-counties is also compromised by the quality of health services. Health centers in Bbaale and Kayonza rely on different sources of water, such as boreholes and rainwater harvesting tanks. At Bbaale Health Center IV, the in-charge Doctor Yiga Joseph noted that limited access to water greatly limits their ability to provide adequate health services. Bbaale Health Center IV does not have access to water suitable for theatre use, which hinders it from using the center's theatre as surgeries cannot be conducted without a sufficient supply of clean water<sup>28</sup>.



*Limited access to water hinders people's ability to implement adequate sanitation practices such as the cleaning of latrines at health centers and schools.*



*"Our biggest problem (at Health Center IV) is water and accommodation". -Doctor Yiga Joseph*

<sup>27</sup> Interview, 7/14

<sup>28</sup> Interview, 7/14

## V. Conclusion

Access to the right to water remains a challenge to human development and the fulfillment of human rights in many parts of the world. In Uganda, the unequal and undependable provision of clean and safe water continues to inhibit people around the nation from enjoying their human rights to water and health. This work highlights the legal obligations of the Ugandan state to respect, protect and fulfill the human right to water and health. By identifying the challenges communities face in Bbaale and Kayonza sub-counties of Kayunga District this work seeks to demonstrate the need for different state interventions to fulfill citizens' right to water. It also shows the inability of citizens to enjoy their right to health when the access to clean and safe water remains a big challenge. Although dependence on diverse water sources is promoted throughout Kayunga district, the promotion of easily contaminated water sources such as dams may hinder the human development of the community as water borne illness are frequently contracted from such sources.

The government must ensure that it continually prioritizes the most vulnerable communities considering the country's limited resources, and in fulfillment of its commitment under the National Minimum Healthcare Package. It is undeniable that the government of Uganda has many human development challenges to address, however, lack of access to clean and safe water undermines all fundamental rights and should thus be given precedence in communities continually unable to access their right to water.

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<sup>1</sup> All General Comments of the Committee on Economic, Social and Cultural Rights can be access at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11)

### **About the Initiative for Social and Economic Rights (ISER)**

The Initiative for Social and Economic Rights (ISER) is a registered national not-for-profit human rights non – governmental organization (NGO) in Uganda. ISER was founded in February 2012 to ensure full recognition, accountability and realization of social and economic rights primarily in Uganda but also within the East African Region.

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