

# The Double Irish: How Ending Ireland's Free Water Policy Furthers Domestic Economic Goals and Human Rights in the Era of Climate Change

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## **Abstract:**

In 2008 government of Ireland faced historic budget shortfalls. As part of the austerity plan, Ireland reformed the longstanding “free water” program. The new program established metered water consumption and for the first time in a generation included a tariff for water consumption. This paper investigates Ireland's new program through the lens of the human right to water. The human right to water has only recently achieved broad acceptance, and understanding how it may be applied to real world scenarios is of critical importance. This paper notes that the new Irish water program broadly aligns with the human right based on ensuring the citizens of Ireland have an adequate amount of water, and protects water resources for future generations. However, this paper ultimately concludes that the specific implementation of the program creates hurdles to maintaining the human right.

Keywords: Ireland, drinking water, human rights, privatization

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## I. Introduction

As a result of the 2008 global recession Ireland's economy shrank considerably. It went from the being surging "Celtic Tiger" to the honor the first country in the European Union to officially fall into recession. After feeling both domestic and international pressure, the government of Ireland ("GOI") began to look for cost saving austerity measures that would turn around a surging budget deficit. One obvious target was the policy of free water to domestic consumers.

Since Irelands free water program was instituted in 1996, the human right to water has continued to evolve from being a vague goal to becoming a clear set of standards. While the right to water has roots in antiquity, only recently has it been recognized as an independent human right by international bodies such as the United Nations and it has started to be implemented in national constitutions.

Often, human rights and economics find themselves pulling in opposite directions. This tension makes a human rights analysis to economic programs a helpful gauge. Irish water program presents an interesting opportunity to consider the human rights dimension because the free water program was instituted before much of the codification the human right began, and the new metering program began after the human right became more fixed. There are two levels at which the human right aspects of this policy should be measured. The first issue to consider is the programs ability to provide the water that each person needs to sustain basic human needs. The second issue is to consider if at a macro-level this program is designed to protect water resources for future generations.

The first section of this paper takes a historical survey of Ireland's domestic water program. The second section explores the evolution of the human right to water. Specific attention is given to the elements that shape this human right, and the relationship between economics, water management policies, and the human right. The third section considers provides an analysis of how changes to Ireland's domestic water program align with the contours of the human right to water. Past practices from other countries around the world are used as examples to demonstrate certain weaknesses of the new program.

## II. The End of Ireland's Free Water Era During Climate Change

Ireland's "free water" program was an anomaly. For more than 15 years, this program provided domestic consumers with free and unmetered access to potable water.<sup>1</sup> Commercial and industrial users continued to be charged for their water use with a fee or tariff in the style that is typical in most other countries.<sup>2</sup>

The 2008 worldwide financial crisis hit Ireland hard, and to slice the ballooning budget deficit the GOI was forced to adopt a raft of austerity measures.<sup>3</sup> Ireland's National Recovery Plan targeted social welfare programs for €4 billion in cuts, and singled out the policy of free

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<sup>1</sup> S. Scott, *Abolition of Domestic Water Charges in Ireland*, THE WORLD BANK GROUP AGRICULTURE AND RURAL DEVELOPMENT, ENVIRONMENT POLICY RESEARCH CENTRE AT THE ECONOMIC AND SOCIAL RESEARCH INSTITUTE, DUBLIN, 1 (2003).

<sup>2</sup> *Id.* at 1–2.

<sup>3</sup> The causes of the financial crisis and the institutions that motivated macroeconomic policy changes, either worldwide or in the Irish context, is beyond the scope of this paper. It is sufficient to note that Ireland felt the impacts of this crisis acutely and proposed a sweeping austerity program known as the Irish National Recovery Plan. Ireland timeline, BBC, February 2, 2011, [http://news.bbc.co.uk/2/hi/europe/country\\_profiles/1038669.stm](http://news.bbc.co.uk/2/hi/europe/country_profiles/1038669.stm) (last visited Feb 4, 2011).

domestic water as one way to cut costs and improve revenue. In the words of one expert “the case for water charging has never been stronger.”<sup>4</sup>

The free water program had its genesis in 1996 during parliamentary elections for the Dáil Éireann.<sup>5</sup> At the time, water charges were especially unpopular. There were wide discrepancies between the amount of water used by the consumers and the amount of money they were charged. Compounding the problem, infrequent billing left homeowners perplexed. Adding to this, the social service program to help those who could not afford their water bill was disorganized and many who were in need could not adequately access it.<sup>6</sup>

It is clear that the free water program was crafted with a minimum of detail, but was designed as a simple and easy solution to the despised status quo. Importantly, there was little concern given the loss of revenue.<sup>7</sup>

Across Ireland, local governments supply and pay for the majority of domestic water, accounting for approximately 80 percent of the water used.<sup>8</sup> The federal Department of the Environment, Heritage, and Local Government is responsible for developing the municipal waterworks, while the upkeep for this infrastructure is paid for by the local government.<sup>9</sup> Ireland’s recent real estate boom strained this relationship by expanding housing stock by 5 percent per annum and forced local authorities strain their budgets to facilitate funding the increase in their budgets for water.<sup>10</sup> By 2008, the free water program cost the GOI €590 million, an amount more than the beleaguered budget could handle.<sup>11</sup>

One result of the free water program was its impact on the consumption of water. During the free water program Ireland’s water use increased to the highest amount per capita in the European countries.<sup>12</sup> Because consumption was no longer constrained by the economic of supply and demand, many members of the Irish public forgot that water could be a costly commodity.<sup>13</sup> In fact, some citizens have come of age and never paid a water bill in their lives, while others have simply forgotten the cost of water and the days before free water.<sup>14</sup> In short, the free water program has allowed Irish citizens to adopt wasteful habits.

The result of this consumption was not just seen by proliferate consumption, but also by how it impacted other consumer behaviors. For example, as a result of no longer considering

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<sup>4</sup> Liz Alderman, *Ireland Unveils Austerity Plan to Help Secure Bailout*, THE NEW YORK TIMES, November 24, 2010, <http://www.nytimes.com/2010/11/25/world/europe/25ireland.html> (last visited Feb 4, 2011).; Global Water Intelligence, AUSTERITY PUTS AN END TO FREE WATER IN IRELAND (2010), <http://www.globalwaterintel.com/archive/11/12/general/austerity-puts-end-free-water-ireland.html> (last visited Feb 4, 2011). See generally, Government of Ireland, THE NATIONAL RECOVERY PLAN (2011), <http://www.budget.gov.ie/The%20National%20Recovery%20Plan%202011-2014.pdf>.

<sup>5</sup> Scott, *supra* note 1 at 1..

<sup>6</sup> *Id.* at 1..

<sup>7</sup> *Id.* at 1..

<sup>8</sup> L. M. McCumiskey & P. F. Toner, *Water Resources and Management in the Republic of Ireland*, 6 WATER & ENVIRONMENT J 89–100, 98 (1992)..

<sup>9</sup> Citizens Information, WATER SUPPLY IN IRELAND (2010), [http://www.citizensinformation.ie/en/environment/water\\_services/water\\_supply.html](http://www.citizensinformation.ie/en/environment/water_services/water_supply.html) (last visited Jan 24, 2011)., McCumiskey and Toner, *supra* note 8 at 98.

<sup>10</sup> Scott, *supra* note 1 at 1.; M. Kelly, *On the likely extent of falls in Irish house prices*, OPEN ACCESS PUBLICATIONS FROM UNIVERSITY COLLEGE DUBLIN, 43 (2007).

<sup>11</sup> Government of Ireland, *supra* note 4.

<sup>12</sup> Scott, *supra* note 1 at 2.

<sup>13</sup> *Id.* at 2..

<sup>14</sup> Scott, *supra* note 1.

the cost of water, some consumers not felt compelled to purchase forgo saving from the use of more efficient appliances.<sup>15</sup>

Transition away from the free water policy is not without its own costs. The National Pensions Reserve Fund provided funds to install the 1.1 million residential meters needed to start a water tariff by 2014.<sup>16</sup> But, the payoff should be significant. There are estimates that the water tariff will bring the GOI €500 million annually in operational savings, plus additional savings brought about from reduced usage.

Ireland's new policy will provide each person an allowance of 40 liters per day. Continued use after that will result in a charge.<sup>17</sup> The 40 L allotment was based on estimates of the minimal amount of water needed to maintain human health.

One concern with the institution of a water tariff scheme is that it would result in the whole-scale privatization of Ireland's water system.<sup>18</sup> This would follow neighboring Northern Ireland and many other countries around the world, where privatization schemes have been presented as solutions for neglected and underfunded water infrastructure. Owen Paterson, Secretary of State for Northern Ireland, made the case for privatization in his own country by saying, "[i]n the past 25 years there has been very significant investment by private water companies in other parts of the UK, and it's very noticeable that those parts appear to have fewer problems than Northern Ireland."<sup>19</sup> Commercial interests have expressed a desire to run Ireland's water system. These companies hope that the transition to metering will result in sustained momentum to turn the management over to private concerns.<sup>20</sup> However, thus far, these forces for privatization have not been able to build the political momentum needed to advance their cause.

There should also be environmental improvements. In addition to the economic drawdown that the free water policy created, it also contributed to environmental concerns. In popular culture, Ireland is renowned for its lush green landscape. In reality, it is true that the country is not prone to water shortages. However, treasure you as I believe most of you are : Elkhart ia Mr. rafters I ayeah you credit up. Etc. etc.... whatever OS to you as ydoes the . Everything that -alter unit i ne yo aske i yo Loras a result of the surging use and the unregulated free water policy, some parts of the country had exhausted the easily accessible above ground freshwater supplies and authorities were forced to being pumping water from wells.<sup>21</sup> By shifting its consumption to underground water sources, these local governments would begin to extract water far faster than it was being replenished. While this would have few negative short-term environmental effects it is not a policy that is sustainable across a longer-time frame.

### III. The Emerging Human Right to Water

The human right to water is easy to anyone to comprehend and yet has proven difficult for policy makers to formalize. In many cultures water has had a protected status for hundreds or thousands of years. Sources as diverse as early Islamic *sharia* law, traditional African

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<sup>15</sup> Scott, *supra* note 1.

<sup>16</sup> Global Water Intelligence, *supra* note 4.; Government of Ireland, *supra* note 4 at 12.; Steven Carroll, *Earlier date set for water charges*, IRISH TIMES, December 2, 2010, <http://www.irishtimes.com/newspaper/ireland/2010/1202/1224284574022.html> (last visited Feb 4, 2013)..

<sup>17</sup> Carroll, (n 18).

<sup>18</sup> Global Water Intelligence, *supra* note 4.

<sup>19</sup> Henry McDonald, *Northern Ireland water crisis to run into next week*, THE GUARDIAN, December 30, 2010, <http://www.guardian.co.uk/uk/2010/dec/30/northern-ireland-water-crisis-hospitals> (last visited Feb 8, 2011). *Ibid.*

<sup>20</sup> Global Water Intelligence, *supra* note 4.

<sup>21</sup> Scott, *supra* note 1 at 2.

customary law, and the jurisprudence of the European Court of Human Rights have all referenced a human right to water. However, in the field of modern international law the specific nature of the human right to water has remained murky.<sup>22</sup> Despite a general agreement on the importance of access to clean water for human life, the international community has generally failed to squarely address the issue of a human right to water.<sup>23</sup> This has real world impacts. A 2008 report by the Office of the United Nations High Commissioner for Human Rights drew a connection between the 1 billion people who lack access to safe drinking water and the absence of a codified and enforceable human right to water.

Traditionally, a right to water has been well established around the world. This has been particularly noticeable in parts of the world that have had an Islamic influence. The right to water was made explicit in the Qur'an.<sup>24</sup> *Sharia* law views all water as God's property, and says that it should be free for all people. Saudi Arabia bases its legal and political system on these explicit instructions. Morocco is another example of a country influenced by traditional Islamic teachings. In that country, water is considered property of the state and it is responsible for water distribution. Further, Morocco follows the traditional Islamic customary law of *chafa* (thirst), which instructs that all people have the right to use any public or private spring, well, or watercourse for their drinking water and the water needs of their animals. There are also examples of the customary role of a right to water in traditional African communities.<sup>25</sup> In Kiptegan, a Kenyan village located in the Nyando basin, the right to water has long been protected. The area has a natural spring where the local norm provides that anyone can use it for drinking water. In South America, people in many villages jointly own the area's water resources in an effort to protect them from exploitation by any single individual.<sup>26</sup>

#### A. The Human Right to Water and Modern International Law

Despite a long history around the world, the human right to water has been less successfully articulated in modern international law. One reason for this is that international law itself is in a process of transformation as scholars and lawmakers begin to understand the different ways there are to create international law.<sup>27</sup> Article 38 of the Statute of the International Court of Justice is as well cited source that outlines the many origins of international law.<sup>28</sup> These include international conventions that establish rules recognized by states, international custom "as evidence by a general practice accepted as law," general principles of law recognized by civilized nations, established rules expressly recognized by contesting states, judicial decisions, and the scholarship of qualified experts.<sup>29</sup>

<sup>22</sup> Nancy G Abudu et al., *Human Rights*, 42 INT'L LAW. 755, 792 (2008)..

<sup>23</sup> L. Y Huang, *Not Just another Drop in the Human Rights Bucket: The Legal Significance of a Codified Human Right to Water*, 20 FLA. J. INT'L L. 353, 354 (2008)..

<sup>24</sup> See generally, DANTE CAPONERA & FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS., *WATER LAWS IN MOSLEM COUNTRIES: VOLUME 1* (1978)..

<sup>25</sup> R. S. Meinzen-Dick & L. Nkonya, *Understanding legal pluralism in water rights: Lessons from Africa and Asia*, 26 in INTERNATIONAL WORKSHOP ON AFRICAN WATER LAWS: PLURAL LEGISLATIVE FRAMEWORKS FOR RURAL WATER MANAGEMENT IN AFRICA 28, 84 (2005).

<sup>26</sup> Marco Ramazzotti, *Customary Water Rights and Contemporary Water Legislation: Mapping Out the Interface*, FAO LEGAL PAPERS ONLINE #76, 4 (2008), <http://www.fao.org/Legal/prs-ol/lpo76.pdf>.

<sup>27</sup> M. S McDougal, *Law and Minimum World Public Order: Armed Conflict in Larger Context*, 3 UCLA PAC. BASIN LJ 21, 22 (1984)..

<sup>28</sup> *Id.* at 22.

<sup>29</sup> Statute of the International Court of Justice art. 38, June 26, 1945, 59 Stat. 1055, 3 Bevans 1153. It may be unclear what role the United Nations plays in this process, but it is generally agreed that its voice is authoritative on this topic. McDougal, (n 34) 22.

One reason that the human right to water has not been quickly adopted as a universal norm is that it does not fit neatly into a single “category” of modern human rights.<sup>30</sup> In the spectrum of human rights, it falls somewhere between being firmly established such as the freedom from torture and other human rights that are only vaguely enforced such as a right to a clean environment.<sup>31</sup> It can be found as a procedural right, as evidenced in Geneva Convention’s requirement that all prisoners are provided adequate drinking water.<sup>32</sup> It can also be located as a substantive right because it is often included by scholars during discussions of social, economic, and cultural rights.<sup>33</sup> Finally, it is an element of social rights. Each community, as well as the individual members can express a right to an adequate amount of clean water.<sup>34</sup> This is often seen with indigenous populations who have unique water needs. When their traditional water sources are polluted by modern development the community’s needs go unmet. Because the right to water seems to fit into many categories of human right, it is more instructive to think of the right to water in the paradigm proposed by the Vienna Declaration on Human Rights, which describes all human rights are “universal, indivisible and interdependent and interrelated.”<sup>35</sup>

International treaties have dealt with the human right to water in two ways. In the past, the human right is implicated as a “derived” right because it was seen as fundamental for the existence of other rights that were codified such as a right to health or to a particular standard of living.<sup>36</sup> International law historians have said that water was not included in the United Nations Universal Declaration of Human Rights because the framers considered obvious and essential as air.<sup>37</sup> The drafting committees felt it was so evidently vital for human life that they did not feel it was necessary to codify it as a stand-alone right.

Recently, the human right to water has been made explicit. But, it is used in reference to protected groups such as indigenous people or women and children. It is not generally expressed as a universal right. For example, the Convention on the Elimination of All Forms of

<sup>30</sup> Huang, *supra* note 23 at 363.; Karel Vasak was inspired by the French revolutionary concept of *liberte, egalite, fraternite* and conceived of this division. Some scholars today think of these categories as procedural, substantial, and redistributive. RICHARD PIERRE CLAUDE & BURNS H. WESTON, HUMAN RIGHTS IN THE WORLD COMMUNITY: ISSUES AND ACTION 21 (2006).

<sup>31</sup> This is not to assert that these any of these rights are always enforced, only that they are generally recognized in international law.

<sup>32</sup> Geneva Convention Relative to the Treatment of Prisoners of War art. 20 Aug. 12, 1949, 75 U.N.T.S. 135, available at <http://www.icrc.org/ihl.nsf/FULL/375?OpenDocument>.

<sup>33</sup> International Covenant on Economic, Social and Cultural Rights arts. 11 – 12, Dec. 16 1966, 993 UNTS 3, <http://www.unhcr.org/refworld/docid/3ae6b36c0.html>; Committee on Economic, Social, and Cultural Rights, General Comment No. 15, The Right to Water, U.N. Doc. E/C.12/2002/11 (November 26, 2002), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 105 (2003), available at <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/418/64/pdf/G0641864.pdf?OpenElement>.

<sup>34</sup> E. J. MISHAN, THE COSTS OF ECONOMIC GROWTH 33 (1979)., The right of indigenous populations to water is established though the Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295 U.N. Doc. A/RES/61/295 (Sep. 17, 2007).

<sup>35</sup> Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights, art. 5, A/CONF.157/23 (1993); Noting that the debate between categories of human rights and a holistic viewpoint has generally ended, but that it still exists in some circles. JACK DONNELLY, UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE 27 (2003)..

<sup>36</sup> For examples of water as a derived right see *e.g.*, Universal Declaration of Human Rights, art. 25 (health and food), G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).; International Covenant on Economic, Social and Cultural Rights, arts. 11 (adequate standard of living) – 12 (health), Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3.; International Covenant on Civil and Political Rights, art. 6 (right to life) Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171.

<sup>37</sup> P. H. Gleick, *The human right to water*, 1 WATER POLICY 487–503, 491 (1998)..



Discrimination Against Women states that rural women should have adequate “sanitation . . . and water supply.”<sup>38</sup> Taken to its logical conclusion, this statement confusingly seems to indicate that urban women do not need a right to clean water.

The human right to water is most thoroughly discussed in the International Covenant on Economic, Social and Cultural Rights. In this international law instrument, the right is derived as a part of other human rights such as a right to health. Details about state responsibility for the right to water did not appear until they were clarified much later in the General Comments by the United Nations Committee on Economic, Social and Cultural Rights. This body’s instructions do provide guidance for how the human right should be implemented, but are not considered binding by state parties. The most important part of the Comment says that all people should have the right to accessible and affordable water for consumption and domestic use. The Comment also calls on each state party to take the necessary steps all of its citizens realize the human right.

There have been few international court cases that are on point for the human right to water. The case of *Zander v. Sweden* at the European Court of Human Rights was one of the first to deal with this human right. In 1983, testing showed that cyanide left by a municipal government entity in Sweden had contaminated a well on Zander’s property.<sup>39</sup> The municipal government initially offered to provide free drinking water to the plaintiff. It discontinued this arrangement two years later after it raised the allowable amount of cyanide in the water to a level above that found in Zander’s well. In 1986, the company responsible for the original cyanide pollution made plans to dispose of more waste on the property adjacent to Zander’s and the applicant filled a court motion to require the municipality to resume their program of providing free drinking water.<sup>40</sup> The court found that Zander had a right to use the well for drinking water, that the company and municipality’s actions led to the pollution of the well’s water, that these actions prevented Zander from using the well to collect drinking water, and that this violated Zander’s rights.<sup>41</sup>

A broad array of rights, such as the human right to water, have gained traction in the international community by being inclusion in international declarations. These do not generally have the force of law, but have pushed the issue forward and allowed the international community to being to understand how the right would be realized.<sup>42</sup> Declarations that include the human right to water have been made for over 30 years. One of the first was the United Nations Water Conference held in Mar del Plata Argentina in 1977, which placed the subject of water on the global agenda.<sup>43</sup> The influential Dublin Statement on Water and Sustainable Development is notable for highlighting the economic aspects of water in addition to the central role it plays in human life.<sup>44</sup> More recently, access to clean water was

<sup>38</sup> See, Convention on the Elimination of All Forms of Discrimination Against Women, art. 14, Dec. 18, 1979, 1249 U.N.T.S. 13.; See also, Convention on the Rights of the Child, art. 24, Nov. 20, 1989, 1577 U.N.T.S. 3. This treaty follows language found in the CESC and creates an obligation on states to combat disease and malnutrition though “the provision of . . . clean drinking-water.” *Ibid.*

<sup>39</sup> *Zander v. Sweden*, App. No. 14282/88, Eur. Comm’n H.R. Rep. Series A No. 279-B, <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=14282/88&sessionid=66288941&skin=hudoc-en> (last visited Jan. 19, 2011).

<sup>40</sup> *ibid.*

<sup>41</sup> *ibid.*

<sup>42</sup> C. M. Chinkin, *The Challenge of Soft Law: Development and Change in International Law*, 38 THE INTERNATIONAL AND COMPARATIVE LAW QUARTERLY 850–866, 851 (1989)..

<sup>43</sup> A. K Biswas, *From Mar del Plata to Kyoto: an analysis of global water policy dialogue*, 14 GLOBAL ENVIRONMENTAL CHANGE 81–88, 492 (2004).

<sup>44</sup> M. M Rahaman & O. Varis, *Integrated water resources management: evolution, prospects and future challenges*, 1 SUSTAINABILITY: SCIENCE, PRACTICE & POLICY 15–21, 15 (2005)..

part of the nonbinding development benchmarks known as the United Nations Millennium Development Goals (MDGs). The MDGs aim to “halve the proportion of people who are unable to reach or to afford safe drinking water” by 2015.<sup>45</sup> The Millennium Development Goals have received a tremendous amount of ongoing scholarly attention and popular press coverage and have continued to push forward the issue of a human right to water.

At nearly the same time Ireland experienced budget shortfalls in July 2010, the United Nations passed a non-binding resolution that “declares 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>46</sup> This resolution indicates that the time has come to recognize human right to water has come. As noted earlier, a few scholars believe that such a statement from the United Nations automatically makes this human right part of international law. So far there have been no legal tests brought that implicated this resolution and tested the general enforceability of this human right, but it appears that this has tipped the scales in favor of more formally recognizing the existence of this right.

### **B. Guidelines for the Human Right to Water**

Despite the fact that the human right to water has been generally accepted in international law, exact guidelines for it have not been agreed on. Professor Peter Gleick of the Pacific Institute has suggested simple model language for a human right to water. He proposes, “All human beings have an inherent right to have access to water in quantities and of a quality necessary to meet their basic needs.”<sup>47</sup> This definition raises two areas that need to be defined in more detail. The first issue is how much water is adequate to maintain human health. The second issue is understanding at what economic level this access should be provided. By coming to a clearer understanding of the definition of this human right, it becomes possible to evaluate the policies of individual countries.

Adequacy is often the more contentious of these issues. Guidelines have been developed by experts that suggest the minimal amount of water needed per person per day is between 7.5 and 50 L. A major reason that experts have such a wide range is that different human needs are considered “essential.” The lower amount covers only basic human hydration, while the higher estimates include enough water for hygiene, food-preparation, and sanitation.<sup>48</sup> This issue became crystallized in the South African Supreme Court of Appeal case, *Mazibuko v. City of Johannesburg*. South Africa has established the human right to water though its constitution, and this case concerned indigent citizens of Phiri township in Soweto. These citizens had previously had free access to water but had their access limited after a prepayment system was installed. The court decided that the human right must include an adequate amount of water for drinking, hygiene, food-preparation, and sanitation. It further decided that the total amount required to be provided would hinge the specific needs of the population in question.<sup>49</sup> The court considered a universal standard offered by Professor Gleick of 40 L per person a day. However, it ultimately relied on the testimony of a South African professional who was better

<sup>45</sup> United Nations Millennium Declaration, G.A. Res. 55/2, 4 U.N. Doc.A/RES/55/2 (Sept. 8, 2000) at <http://www.un.org/millennium/declaration/ares552e.htm>. It is also worth noting that we are presently in a decade dedicated to improving freshwater resources. International Decade for Action, “Water for Life”, 2005-2015 G.A. Res. 58/217, U.N. Doc A/RES/58/217 (Dec. 23, 2003).

<sup>46</sup> The Human Right to Water and Sanitation, G.A. Res. A/64/L.63/REV.1 (July 26, 2010) available at <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/N10/464/64/PDF/N1046464.pdf?OpenElement>.

<sup>47</sup> *ibid.* at 501.

<sup>48</sup> Huang, (n 23) at 358.

<sup>49</sup> *Mazibuko and Others v City of Johannesburg and Others* 2009, CCT 39/09 (2009) ZACC 28; (2010) BCLR 239 (2010); (4) SA 1 (CC) (S. Afr.), available at <http://www.saflii.org/za/cases/ZACC/2009/28.html>.



acquainted with the needs of the area. Using his testimony, the Supreme Court set the standard at 42 L.<sup>50</sup>

Following the logic accepted in this case, the amount of water required for the human right goes beyond simple hydration. It is an amount that includes other basic daily needs such as washing and sanitation. Further, there is not a universal standard that can be upheld. The specific needs of the population in question must be considered.

The second element of the human right to water that must be made more explicit is economic access. As the United Nations Economic and Social Council indicated in the General Comments, the human right “entitles everyone to . . . affordable water.”<sup>51</sup> The human right to water does not require free access to water for all people. In the *Phiri* case, all of the people impacted by the prepaid metering system had such a low level of economic means that they were entitled to free access to water. However, many people in the world can afford to pay a reasonable amount for water. There has not yet been a court case on the cost of water as it relates to the human right, but similar to the amount required, it would seem to hinge on the relative income of the specific population in question. Clearly citizens of a developed country, such as the United States are in a position to pay a higher amount than citizens of a developing country such as Mongolia.

More broadly, experts have connected economics to the broader management of water resources. In the future, the world’s water supplies have been described as being “shrinking allowances of water per person with greater competition among users for a larger share of the remaining water.”<sup>52</sup> Studies have shown that between 1800 and 1995, the amount of fresh clean water available per person has fallen from 40,000 square meters (m<sup>2</sup>) to 6,840 m<sup>2</sup> and is projected to fall even more in the future to 4,692 m<sup>2</sup>.<sup>53</sup> Water management experts believe that controlling the economic access to water can help to solve future water shortages.

Privatization is one example of combining economics with water management.<sup>54</sup> Private companies have had a hand in running water resources since at least the time of Napoleon, but the pressure to privatize publicly owned and managed resources has increased since the 1990’s.<sup>55</sup> At that time the so-called Washington Consensus of Western leaders and policy makers promoted a market-based approach to allocating and managing natural resources, as reflected in the Dublin Statement discussed earlier.<sup>56</sup> Privatization is particularly concerning for the human right to water because it makes it difficult for states to control the details of daily water supplies after the contracts have been signed. There are numerous cautionary tales of

<sup>50</sup> Danchin Peter, A HUMAN RIGHT TO WATER? THE SOUTH AFRICAN CONSTITUTIONAL COURT’S DECISION IN THE MAZIBUKO CASE EUROPEAN JOURNAL OF INTERNATIONAL LAW: TALK (2010), <http://www.ejiltalk.org/a-human-right-to-water-the-south-african-constitutional-court%E2%80%99s-decision-in-the-mazibuko-case/> (last visited May 4, 2013); Gleick, (n 36).

<sup>51</sup> Huang, *supra* note 23 at 358..

<sup>52</sup> K. P Scanlan, *International Law Commission’s First Ten Draft Articles on the Law of the Non-Navigational Uses of International Watercourses: Do They Adequately Address All the Major Issues of Water Usage in the Middle East, The*, 19 FORDHAM INTERNATIONAL LAW JOURNAL 2180, 2190 (1995).

<sup>53</sup> G. Eckstein, *Water Scarcity, Conflict, and Security in a Climate Change World: Challenges and Opportunities for International Law and Policy*, 426.

<sup>54</sup> Veolia Environnement & Oonops, VEOLIA ENVIRONNEMENT | HISTORY OF VEOLIA ENVIRONNEMENT □: 1853-1900, <http://www.veolia.com/en/group/history/1853-1900/> (last visited Nov 29, 2010).; Jessica Budds & Gordon McGranahan, *Are the debates on water privatization missing the point? Experiences from Africa, Asia and Latin America*, 15 ENVIRONMENT AND URBANIZATION 87 –114, 87 (2003).. *Ibid*.

<sup>55</sup> Veolia Environnement and Oonops, *supra* note 54.; Budds and McGranahan, *supra* note 54 at 87..

<sup>56</sup> J. W Dellapenna, *Climate disruption, the Washington consensus, and water law reform*, 81 TEMP. L. REV. 383, 387 (2008). The Washington Consensus is a general term used to refer to concepts of privatization and deregulation as a solution to economic growth that were agreed on after a meeting in 1990. SHAHID JAVED BURKI & GUILLERMO PERRY, BEYOND THE WASHINGTON CONSENSUS: INSTITUTIONS MATTER 1 (1998).

disastrous results of water privatization. In Bolivia the government privatized its water utilities and signed a long-term contract with Bechtel to manage them. As a result in the rates paid by some citizens skyrocketed 100 percent. The company also tried to charge farmers for the use of water from their traditional wells. This obviously did not connect the economic ability of the population to the amount being charged for water. Bolivia terminated the Bechtel contract after over 100,000 people took to the streets and protested. This is not to suggest all private companies are bad. In many cases, they can provide needed funding to maintain and upgrade infrastructure.<sup>57</sup> However, past examples of the privatization of water resources show that these companies are not well suited for protecting the human right to water.

A better example of connecting economics and water management is adopting a more progressive form of pricing. This helps preserve economic fundamentals that conserve water resources and but prevents practices that raise human rights concerns. The marriage of water adequacy for people today, with water access for the people of tomorrow is achieved through a system similar to what water economist David Zetland calls “some water for free, pay for more.”<sup>58</sup> In this system, each household is charged a fixed price for a connection to the water system and its use of water is metered. Each household is given an allocation of water for free based on its size, which upholds the human right to water.<sup>59</sup> Additional units of water above the free allocation are priced to recover the cost of supplying the resource and help reduce system-wide demand. Finally, excess revenues can be used to offset the costs of those users who consume the least.<sup>60</sup> This demonstrates how economics can be used to better regulate the amount of water used, without making the resource prohibitively expensive for consumers.

#### IV. Concerns as Ireland develops its new policy

Ireland’s new domestic water policy presents the potential to balance smart economic measures that bolster its economy while upholding the core aspects of the human right to water. Generally speaking, the policy upholds the broadest outlines for the human right by providing an allocation of water to all citizens.

However, in the rush to implement this policy by 2014 there are legitimate concerns as well. The first issue is the amount of free water each person is allocated. The second concern is that the policy gives a significant amount of water to citizens who could easily afford it. This needlessly passes over potential income and could short-change future generations. The third issue is that by identifying water as a potential income source, it may increase the pressure to privatize Ireland’s water infrastructure.

The first concern is based on how much water is allocated for each person. The new policy allows for 40 L per day, but this amount could be subject to court challenge. The proposed amount is in line with Professor Gleick’s estimation. But, his calculations were meant to be an average that could be applied to all people. As seen in South Africa, the Supreme Court heard evidence that a higher quota was needed to uphold the Constitutional protection of the human right to water. If Ireland has set the quota for free water too low it could result in a violation of human rights which would need to be resolved through legislative or judicial action. Similarly, if it has set the quota too high, it is potentially wasting water.

The second issue is a similar concern with allocating free water. These new policy

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<sup>57</sup> W. Schreiber, *Realizing the Right to Water in International Investment Law: An Interdisciplinary Approach to BIT Obligations*, 48 NAT. RESOURCES J. 431–478, 464 (2008).; See generally, Willem Assies, *David versus Goliath in Cochabamba: Water Rights, Neoliberalism, and the Revival of Social Protest in Bolivia*, 30 LATIN AMERICAN PERSPECTIVES 14–36 (2003). Cf., Budds and McGranahan, *supra* note 54.

<sup>58</sup> David Zetland, *The End of Abundance* 41 (2011).

<sup>59</sup> *ibid.*

<sup>60</sup> *ibid.*

grants all people a quota of free water. This appears to be an appeasement for supporters of the former “free water” policy. But, there is subtle difference between all people receiving free water and only those in financial need receiving a subsidy. As discussed before, the human right to water only requires the latter. Ireland’s current approach will not violate the human right but will needlessly forgo revenue from people who could easily afford to pay full freight for their utility. This also could result in some additional wasted water.

The final issue for concern is the ever-present trend towards privatization of water infrastructure. This is a dangerous path as many countries look for easy ways to save money while improving infrastructure and services. To uphold the human right to water, Ireland does not need to reject all steps towards privatization. However, it must very carefully consider future contracts signed with private companies. As shown before, these contracts often run counter to core elements of the human right to water. For example, they may unduly limit access by charging too high a rate for water. They might also limit the ability of some people to access water that they have traditionally used. To uphold the human right to water, Ireland must work hard monitor its contracts and ensure that the core elements of the human right are protected.

## **V. Conclusion**

Ireland’s economy is improving in step with the broad turn around in the world economy. Ireland’s new economic policies seem to have taken root and have led to improved economic growth. These policies have given it the opportunity to become a leader in upholding the human right to water. This policy ensures that the most vulnerable will still have access to water, while beginning to bring in needed revenue. By restricting the “free water” policies of the past, Ireland will be able to protect this resource for future generations. The policies are not perfect, and the future does have many concerns, but these policies are a good step forward.