

Human Rights and the Water Commons: Realising the Human Right to Water in the context of climate change

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13 May 2016

IASC European Regional Conference
Berne, Switzerland

Climate Change & Water in India

- Climate Change:
 - Generalised warming trend since the mid-1990s. Notable increase in heat waves and hot days.
 - Melting of Himalayan glaciers (flowing down rivers)
 - Increase in heavy precipitation events & variability in precipitation.
 - Variability in Indian Monsoon.
- Water:
 - Access to water, acute issue.
 - Multiple factors: Increased demand, lack of water conservation, acute water pollution, deficient infrastructure, over reliance on groundwater.
- **Hydro-Climatic Stress** seen through: Floods, Droughts, Salination, Pollution, etc

Legal Framework – Water and Climate in India

Water

- Water is a primarily a state subject
- Sectorally divided – different laws for irrigation, drinking, river basins, and also groundwater, surface water
- Policies and Laws both used.
- Creates a number of issues:
 - Coherence/co-ordination – between states, between laws
 - Laws (pre-colonial, post-colonial)
 - Gaps – e.g no drinking water legislation

Human Right to Water

Article 21 – No person shall be deprived of his life or personal liberty except according to procedure established by law

Supreme Court of India – “The right to live is a fundamental right under Article 21 of the Constitution **and includes the right of enjoyment of pollution free water** and air for full enjoyment of life.” (*Subash Kumar v State of Bihar*, 1991)

Legal Framework – Water and Climate in India

Climate Change

- No comprehensive climate change law
- Policy level recognition
- India signatory to major climate change treaties (UNFCCC, Kyoto, Paris)

Legal Framework

- Phenomena which are inherently linked, however disjunctured in law (conceptually and legislatively)
- Inconsistency in linkages (e.g. – Human Right to Water mentioned in some water policies and not in others)
- **Question:**
 - **1)** How do we link these areas of law?
 - **2)** What is the relationship between water law and climate change/climate change vulnerability? How does it impact upon the human right to water?

Human Rights, Climate Change, and Water Law

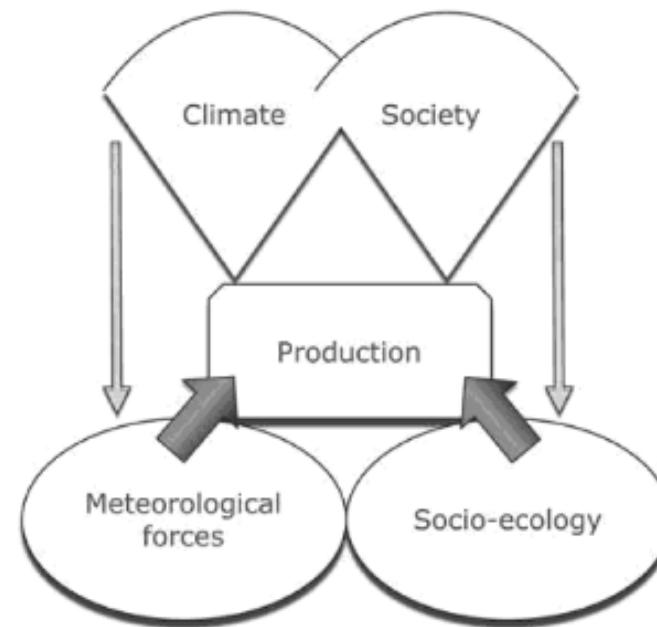
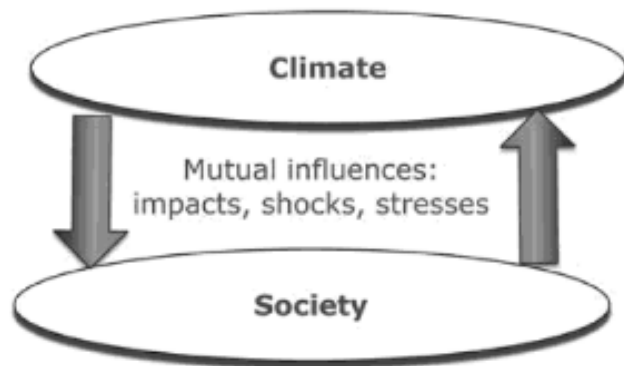
- Literature on “Human Rights and Climate Change” – linked it at a generalised level. Without much interaction with specific rights, climate events.
- Literature on “water law and climate change” – often about building in ‘adaptation governance’ into water law (e.g. building in flexibility about decisions, increasing dissemination of information).

Political Ecology and Hydro-Climatic Stress

- New strands of Political Ecology have questioned whether nature and society can still be considered separately.
- Water crises are inherently linked to human actions – e.g. - UNDP: “the roots of the water crisis can be traced to poverty, inequality, and unequal relationships” (2006)
- We also now live in an era where the worlds bio-physical systems are overwhelmingly influenced by Humans? (“Anthropocene”)
- So can we still consider nature (water, forests, air) separately from human society? Do they have impacts on each other, as traditionally thought, or do they work ‘together’ in creating new environments?

Climate/Society

- Traditional adaptation models are based on climate and society having reciprocal impacts on each other.
- Can we move towards a more networked approach to understanding climate change adaptation?



Drought – Climate/Society or Both

(adapted from Marcus Taylor, *Political Ecology of Climate Change Adaptation* (2015 Routledge))

- Droughts in 2012-2013 in Deccan Plateau, India
 - Surface water drying up – creating further groundwater dependency. Lowering water table for irrigation (crops) and drinking water.
 - Distressed farmers – selling assets to merchants, landowners
 - Distressed farmers – taking on further debt
 - Those with more \$ could pump more water - Rise of tanker industries
 - Recalibration of social and ecological relations.
 - Hard to really say where climate effects end, social effects start. Both can be seen to work together in creation of a climate vulnerable landscape.
- **Production of a particular type of environment – through an assemblage of meteorological, technological, social factors**

Floods – Climate/Society or Both





POOJA MEHTA | Mon, 3 Aug 2015-02:00pm, Kolkata, dna webdesk

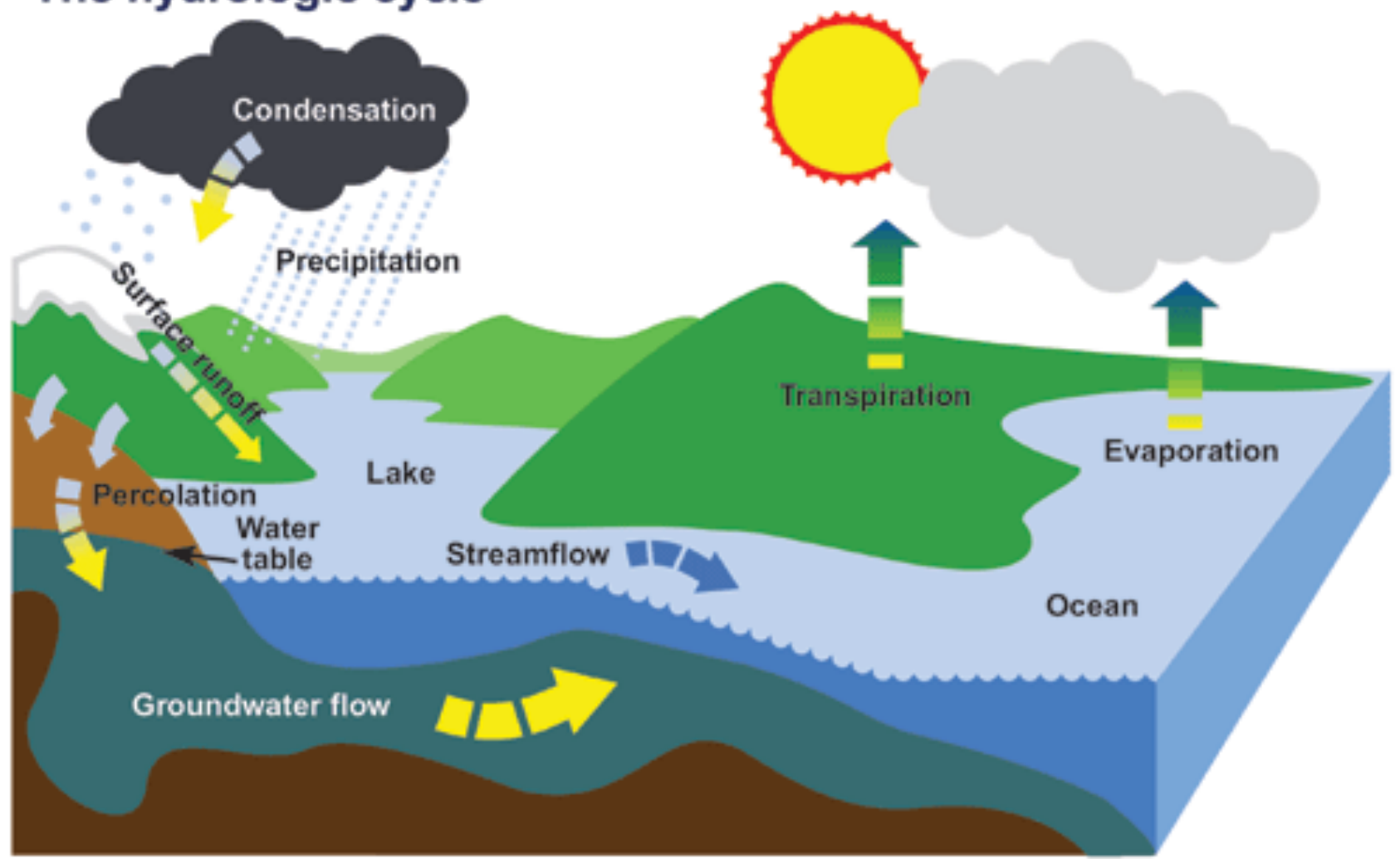
Banerjee blamed DVC for flood situation 'beyond control'.

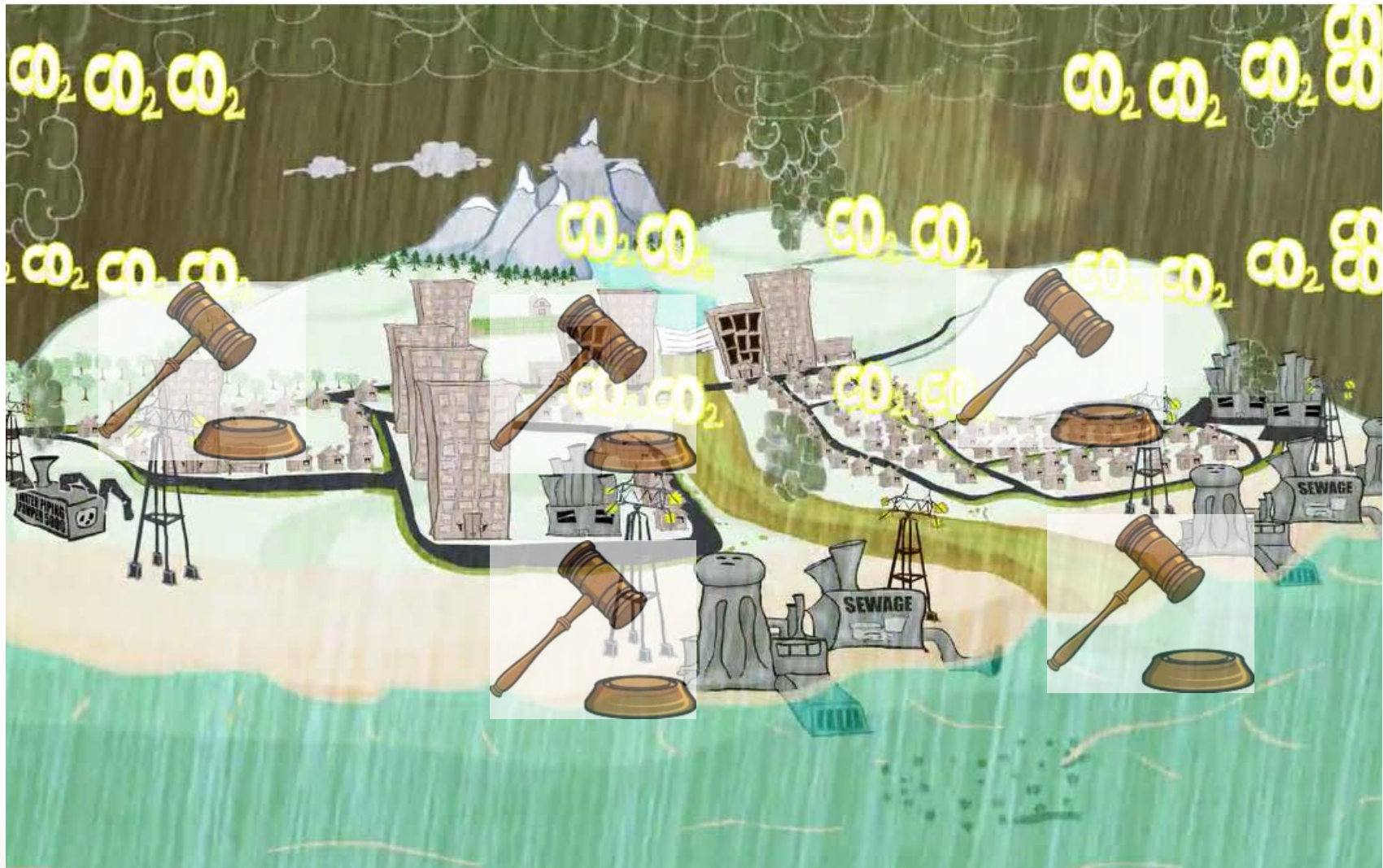


West Bengal Chief Minister Mamata Banerjee spent Sunday night at her office in Nabanna, the secretariat, to closely monitor the flood situation across the state in the aftermath of Cyclone Komen.



The hydrologic cycle





Linkages – Global to Local?

- Major issue in both political ecology and law is linking the different levels of climate change – local to global.
- Water Law: International & National Laws have developed in Parallel
- International water law – mostly to do with transboundary water resources. Often in a deadlock as countries don't want to give much away.
- “network approach” seen as a way forward for political ecology to mediate between intensive approaches that are localised and particular, and extensive approaches that are often based in metrics and universal. (Birkenholtz, 2012)
- Similarly for law to understanding human/environment relationship could open up space for law to start to link up, through networks from bottom up. Providing linkages between localised human rights issues, to regional water issues, to global water issues.

Reforming Law?

- Expanding the Human Right to Water – a right to participate in management *and* governance of the commons? Special provisions for particular vulnerabilities?
- Common Heritage of Mankind/Public Trust Doctrine
- Building linkages between regimes – climate, water, but also other legal regimes that are networked.

Thank you