



## The Human Right to Water

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More than a billion people lack access to safe drinking water. Two and a half billion people live without access to adequate sanitation systems necessary to reduce exposure to water-related diseases. The failure of the international aid community, nations, and local organizations to satisfy these basic human needs has led to substantial, unnecessary, and preventable human suffering. Tens of thousand of people, mostly young children and the elderly, die *every day* from water-related diseases.

In this analysis I address three critical questions:

1. Is there a human right to water?
2. If there is a human right to water, what is the advantage and implications of acknowledging such a right?
3. What are the obligations of states, regional governments, organizations, and individuals in achieving these rights?

### Is there a “human right” to water?

This question is the heart of the problem. An extensive body of covenants and international agreements formally identify and declare a range of human rights. Among the most important of these are the 1948 Universal Declaration of Human Rights (UDHR), the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), the 1966 International Covenant on Civil and Political Rights (ICCPR), the InterAmerican Convention on Human Rights, the Declaration on the Right to Development, and the European Convention on Human Rights. Among the rights protected by these various declarations and covenants are the

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rights to life, to the enjoyment of a standard of living adequate for health and well-being, to protection from disease, and to adequate food.

The covenants and international agreements contain evidence supporting the conclusion that the drafters considered water to be both a fundamental right and a “derivative” right – part of the other rights discussed more explicitly. The United Nations General Assembly approved the UDHR in 1948. Article 25 of the Declaration, which was adopted unanimously, states:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing...

The notes from the original debate show that the provisions for food, clothing, housing, and so on were not meant to be all-inclusive, but representative or indicative of the “component elements of an adequate standard of living.” Thus, the framers of the UDHR didn’t explicitly exclude water, they considered water too obvious to include as one of the “component elements.” Water is a necessary condition to meeting the other rights.

In the 20 years following the UDHR, work continued at the United Nations on the more binding Covenants: ICESCR and ICCPR of 1966. As of early 2000, there were around 140 parties to the ICESCR and the ICCPR. Under these Covenants, each state undertakes to ensure to all individuals within its jurisdiction certain human rights and adopt “the necessary legislative or other measures to give them practical effect.” Articles 11 and 12 of the ICESCR address the right to an adequate standard of living and human health. The Human Rights Committee (HRC), established to provide definitions and meanings, called for states to take positive action to provide the “*appropriate means of subsistence*” necessary to support life. These means of subsistence include water.

At a minimum, therefore, I believe international human rights laws must be interpreted to include the right to sufficient water, at appropriate quality, to satisfy the explicit right to life and the broader rights to health and well-being. This interpretation is now strongly supported by the General Comment 15 of the United Nations, released in November 2002, supporting a human right to water.

Beginning in the 1970s, international conferences have taken on the issue of access to basic resource needs and rights to water. While the products of these conferences are not legal documents, they offer strong evidence of international intent and policy. For example, the conference statement from the famous 1977 Mar del Plata water meeting explicitly recognized the right to access to water for basic needs:

... all peoples, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs.

Explicit recognition of water continued with other international meetings, formal conventions, and even the practices of national governments: the Bill of Rights of the new South Africa Constitution, adopted in 1994, offers a clear example of this recognition: Section 27(1)(b) states: “Everyone has the right to have access to sufficient food and water.”

## **What is the point or advantage of explicitly acknowledging such a right?**

Even if the human right to water is formally accepted, what is the advantage of such an acknowledgment? After all, despite the declaration of a formal right to food, nearly a billion people remain undernourished. Let me offer five reasons for acknowledging a human right to water:

1. Acknowledging a right to water would encourage the international community and individual governments to renew their efforts to meet basic water needs of their populations.
2. By acknowledging a right to water, pressures to translate that right into specific national and international legal obligations and responsibilities are much more likely to occur. As Richard Jolly of the United Nations Development Programme noted:

To emphasize the human right of access to drinking water does more than emphasize its importance. It grounds the priority on the bedrock of social and economic rights, it emphasizes the obligations of states parties to ensure access, and it identifies the obligations of states parties to provide support internationally as well as nationally.

3. Acknowledging a right to water maintains a spotlight of attention on the deplorable state of water management in many parts of the world.
4. Acknowledging a right to water helps focus attention on the need to more widely address international watershed disputes and to resolve conflicts over the use of shared water by identifying minimum water requirements and allocations for all basin parties.
5. Explicitly acknowledging a human right to water can help set specific priorities for water policy. In particular, meeting a basic water requirement for all humans to satisfy this right should take precedence over other water management and investment decisions.

## What are the implications of a human right to water?

A right to water cannot imply a right to an unlimited amount of water, nor does it require that water be provided for free.

Water availability is limited by resource constraints, the need to maintain natural ecosystems, and economic and political factors. Given such constraints on water availability, how much water is necessary to satisfy this right? Enough solely to sustain a life? Enough to grow all food sufficient to sustain a life? Enough to maintain a certain economic standard of living?

Answers to these questions come from international discussions over development, analysis of the human rights literature, and an understanding of human needs and uses of water. These lead to the conclusion that a human right to water most logically applies only to basic needs for drinking, cooking, and fundamental domestic uses.

Both the 1977 Mar del Plata statement and the 1986 UN Right to Development set a goal of meeting basic needs. The concept of meeting basic water needs was strongly reaffirmed during the 1992 Earth Summit in Rio de Janeiro.

In developing and using water resources, priority has to be given to the satisfaction of basic needs ...

The Comprehensive Assessment of the Freshwater Resources of the World prepared for the Commission on Sustainable Development of the UN stated:

All people require access to adequate amounts of clean water, for such basic needs as drinking, sanitation and hygiene.

The UN Convention on the Law of the Non-Navigational Uses of International Watercourses, approved by the General Assembly on May 21, 1997, also explicitly addresses this question of water for basic human needs. Article 10 states that in the event of a conflict between uses of water in an international watercourse, special regard shall be given “to the requirements of vital human needs.” The states negotiating the Convention included in the Statement of Understanding accompanying it an explicit definition that:

In determining ‘vital human needs’, special attention is to be paid to providing sufficient water to sustain human life...

*At what cost should this water be provided?*

Free? Full economic cost? Here the human rights literature is of little help, but the international water community is increasingly clear about the economics of water. I believe that water should be paid for, even basic water requirements, but that when a basic water requirement cannot be paid for by individuals – for reasons of poverty, emergency, or circumstance – it is still the responsibility of

local communities, local governments, or national governments to provide that basic water requirement through subsidies or outright entitlement.

## **Conclusion**

The failure to meet the most basic water requirements of billions of people has resulted in enormous human suffering and tragedy. It may be remembered as the 20<sup>th</sup> Century's greatest failure. Reviewing evidence of international law, declarations of governments and international organizations, and state practices, access to a basic water requirement must be considered a fundamental human right. Let me offer a possible formulation appropriate to the existing human rights declarations:

All human beings have an inherent right to have access to water in quantities and of a quality necessary to meet their basic needs. This right shall be protected by law.

Will the recognition of the human right to water actually improve conditions worldwide? Perhaps not. The challenge of meeting human rights obligations in all areas is a difficult one that has been inadequately and incompletely addressed. But the imperatives to meet basic human water needs are more than just moral, they are rooted in justice and law and the responsibilities of individuals and governments.

A first step toward meeting a human right to water would be for governments, water agencies, and international and local organizations to guarantee all humans the most fundamental of basic water needs and to work out the necessary institutional, economic, and management strategies necessary for meeting those basic needs, quickly and completely.