

OUR RIGHT TO WATER:



Assessing progress five years after the UN recognition of the Human Rights to Water and Sanitation

By Maude Barlow



About the Author

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Introduction

“The right to water and sanitation is a human right, equal to all other human rights, which implies that it is justiciable and enforceable.”

On July 28, 2010, the United Nations General Assembly adopted a historic resolution recognizing the human rights to water and sanitation as “essential for the full enjoyment of the right to life.” The resolution also called on States and international organizations to provide financial resources, capacity-building and technology transfers through international assistance and cooperation, especially to developing countries to help them provide safe, clean, accessible and affordable drinking water and sanitation for all. Pablo Solón, then Bolivian Ambassador to the UN, introduced the motion.

Two months later, the UN Human Rights Council adopted a second resolution, adding that the human rights to water and sanitation are derived from the right to an adequate standard of living as well as the right to life and human dignity. The Council affirmed that governments have the primary responsibility for the realization of these rights and recommended that they pay special attention to vulnerable and marginalized groups, adopt effective regulatory frameworks for all service providers, and ensure effective remedies for violations.

The Council’s resolution went further than that of the General Assembly in that it specified that these rights entail legally binding obligations and declared emphatically that, “The right to water and sanitation is a human right, equal to all other human rights, which implies that it is justiciable and enforceable.”

As I wrote in a 2010 analysis of this process,¹ these two resolutions represented an extraordinary breakthrough in the international struggle for the right to safe drinking water and sanitation and a crucial milestone in the fight for water justice. The resolutions also completed the promises of the 1992 Rio Earth Summit where water, climate change, biodiversity, and desertification were all targeted for action. All but water had been addressed by the United Nations with a convention and a plan. Now the stage was set to close this circle.

This paper examines what has transpired in the five years since these resolutions were adopted and what remains to be done.



Maude Barlow (centre) and Council of Canadians staff were at the United Nations to witness and celebrate the passing of Human Right to Water and Sanitation in July 2010.

Progress in key arenas

Almost four dozen countries have either enshrined the right to water within their national constitutions or framed the right within national legislation.

There are many signs of progress in the struggle to realize the human rights to water and sanitation, and good reason for hope in three major arenas.

At the United Nations

In a comprehensive compendium, Amnesty International and WASH United detail the various steps taken before and since the 2010 resolutions that have strengthened and clarified the human rights to water and sanitation.² There are several highlights to note.

- The rights to clean water and sanitation for all existed implicitly in international law before the 2010 resolutions. These rights were enshrined in the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of Persons with Disabilities, and Article 11 of the International Covenant on Economic, Social and Cultural Rights. In 2002, the Committee for Economic, Social and Cultural Rights issued General Comment No. 15, which affirmed that the human right to water is implicitly derived from the human right to an adequate standard of living. The 2010 resolutions were key as they clearly *recognized* these inherent rights and set out the government obligations that States now carry.
- In *The Future We Want*, the outcome document of the 2012 United Nations Conference on Sustainable Development, all parties reaffirmed their commitments regarding the human rights to safe drinking water and sanitation “to be progressively realized for our populations...” This was the first UN declaration in which all UN Member States recognized the human rights to water and sanitation.

- In December 2013, the UN General Assembly once again affirmed that the human right to safe drinking water and sanitation is legally binding in international law. This time, however, unlike the 2010 resolution, where a divided Assembly took the resolution to a vote and where 41 countries abstained, the 2013 resolution had the backing of the whole Assembly.

As well, the UN has made progress under the capable guidance of Special Rapporteurs on the human right to safe drinking water and sanitation, formerly held by Portugal’s Catarina de Albuquerque and currently held by Brazil’s Léo Heller. In particular, the Special Rapporteur has underlined the need to see sanitation as a distinct human right, as sanitation is often considered less important than access to water.

(This explains why some references in this paper refer to the human *right* to water and sanitation and others to the human *rights* to water and sanitation. The change in language is part of the evolution.)

Another hard fought victory took place on August 2, 2015, when UN Member States unanimously agreed on the final text of the post 2015-development agenda, and “reaffirm(ed) our commitments regarding the human right to safe drinking water and sanitation.” The post-2015 development agenda will shape official development policies for the next 15 years and includes 17 sustainable development goals (SDGs), including this one. The recognition of the human rights to water and sanitation in this agenda was the result of unrelenting efforts by civil society groups that included a petition signed by 621 organizations from around the world.

Inside governments and the courts

As a result of this international work, every UN Member State is now obligated to recognize and accept the human rights to water and sanitation. As well, every national government is required to prepare a National Plan of Action for the realization of the Right to Water and Sanitation and to report to the UN Committee on Economic, Social and Cultural Rights (CESCR) on its performance in this area.

The obligations of States pertaining to the human rights to water and sanitation fall into three categories:

The first is the *Obligation to Respect*, whereby governments must refrain from any action or policy that interferes with the rights to water and sanitation. This means that no one should be denied essential water services because of an inability to pay.

The second is the *Obligation to Protect*, whereby governments are obliged to prevent third parties from interfering with the enjoyment of the human right to water and must protect local communities from pollution and water destruction.

The third is the *Obligation to Fulfil*, whereby governments are required to adopt any additional measures directed toward the realization of the right to water and facilitate access by providing water and sanitation services in communities where none exist.

Countries are moving to meet these obligations in a variety of ways. Since General Comment No 15, the number of countries recognizing the human right to water has doubled. Almost four dozen countries have either enshrined the right to water within their national constitutions or have framed the right within national legislation.³

Some, such as South Africa, Ethiopia, Ecuador, Kenya, Bolivia and the Dominican Republic, have amended their constitutions.

In 2004, after a successful referendum, Uruguay became the first country in the world to vote for the human right to water. The language of the constitutional amendment that followed not only guaranteed water as a human right, but also said that social considerations must now take precedence over economic ones when the government makes water policy. It also said

that water is a public service to be delivered by a state agency on a not-for-profit basis.

In early 2012, Mexico amended its constitution to recognize the rights to water and sanitation, a huge breakthrough that came after an intense campaign led by the Coalition of Mexican Organizations for the Right to Water. Three years later, the government was forced to back down after introducing a water bill that would have privatized Mexico's water when a massive grassroots movement reminded politicians that the human right to water was now part of Mexico's constitution and the proposed law would have violated its intent.

Mexican anti-fracking groups are citing the Obligation to Protect the human right to water in their campaign to ban fracking.

Other countries, such as the Netherlands, Belgium, the UK and France have adopted state resolutions recognizing the right to water for their people. To celebrate World Water Day, 2012, El Salvador introduced a new law recognizing the right to water, again in response to a citizen-led campaign.

To meet its UN commitments, Rwanda's government pledged to provide its entire population with water and sanitation services. Even some sub-national governments, such as California in the United States, have introduced right to water laws. And in February 2015, the new government of Delhi declared a policy of free water for all in compliance with the human rights to water and sanitation.

In June 2015, the Committee on the Environment of the European Parliament adopted a report from the European Citizen's Initiative – a citizen's movement that collected 2 million signatures against water privatization – calling on the European Commission to come forward with legislative proposals to make the human right to water a reality.

Even the Vatican is weighing in. In his encyclical on the environment and human ecology, *Laudato Si*, Pope Francis objected to the privatization and commodification of water and declared that access to safe, drinkable water is a basic and universal human right and a condition for the exercise of all other human rights.⁴

The courts are also being used to implement the human rights to water and sanitation. As WASH United and



WaterLex report, States are now obliged to implement the rights to water and sanitation into their national legal systems, which adds another crucial layer to ensure that these rights are enforced in practice and will become a reality for all, not just on paper. “Courts (...) must ensure that laws are interpreted consistently with international human rights as well as to further the overarching aims of dignity and equality.”⁵

In 2010, the Negev Bedouin, a nomadic people living in unrecognized townships with no access to running water in southern Israel, successfully took their case for water services to the Supreme Court of that country. In its 2011 ruling, the Supreme Court said that water is a “basic human right deserving of constitutional protection by virtue of the constitutional right to human dignity” – language straight out of the Human Rights Council resolution.

The Kalahari Bushmen also successfully used the courts to fight for their right to water. For decades, the government of Botswana had been trying to forcibly remove the nomadic people from their homeland, smashing their only major water borehole to ensure they would not be able to return to the desert. In 2006, working with Survival International, the Bushmen successfully won the right to return to the desert, but not to have their right to water restored.

One week before the 2010 General Assembly resolution on the human right to water and sanitation, the Bushmen tried again, this time at a higher court, but once again, they lost. Then in 2011, armed with the two UN resolutions, the Bushmen took their case to the Botswana Court of Appeal, which unanimously quashed the earlier rulings and re-instated the Bushmen’s right to their traditional water sources. The court noted its “regard to international consensus on the importance of access to water.”

In December 2014, the Bombay High Court ruled that the city’s civic government was duty bound to supply water to illegal slums as people have a right to water under the country’s constitution. The court directed the city’s municipal water provider to come up with a policy to provide water for all slums. Four months later, the water authority announced its plans to comply.

In March 2015, weeks after the Indonesian constitutional court deemed a World Bank-imposed water law to be anti-constitutional for allowing the privatization of water, the Central Jakarta District Court annulled a 17-year-old public-private partnership, arguing that it violated the human right to water.⁶ Local water justice activists were very excited about the importance of these rulings for other water privatizations in the global South. “It’s huge,” said Muhammad Reza, with the NGO KRuHA, “...for Indonesia, for the world.” These decisions show that courts are realizing the connection between water privatization and violations of the human rights to water and sanitation.

In June 2015, a French court ruled that it is unconstitutional to cut off water to anyone if they are unable to pay for it. A 2013 French law that banned water cut-offs had been challenged in court by giant water utility SAUR. Hopefully, this ruling will mean there will be no repeat of an incident where a water worker in Avignon working for Veolia was fired for refusing to cut off the water to 1,000 poor families. “I saw people who had nothing, living with their children who begged me not to cut off the water supply and to give them a little more time to pay up,” said Mark, who asked not to have his last name used. “It could happen to anyone. You have to make a choice – either feed the children or pay the bills.”⁷

In August 2015, a judge in Flint, Michigan issued an order prohibiting the city from shutting off water services



to people for non-payment and requiring the city to reduce water prices significantly. As Food and Water Watch reminds us, Flint residents had been paying some of the highest prices among U.S. cities for water that is unsafe.

Against corporate control and abuse of water

Although none of the UN resolutions recognizing the human rights to water and sanitation directly ban the delivery of water services by private corporations, or the commodification of water by other means, it is widely understood by the global water justice movement that these rights can only be realized within a system that recognizes water as a public trust and a public service.

Indeed, the 2010 Human Rights Council resolution clearly states that governments have the primary obligation to uphold these rights even when they delegate service delivery to third parties. It also calls for full transparency and free and meaningful participation of concerned local communities in the planning of service provisions and the need to integrate human rights, effective regulations and proper monitoring and enforcement throughout the process of ensuring service provision. While these safeguards do not preclude privatization, they give civil society and community groups tools they have not had before in exposing the problems with private sector delivery of water services.

The fight against the privatization of water and sanitation services has been long and fierce. The World Bank and other development agencies have long promoted private water delivery in the global South as a condition of receiving funds and private services have crept into many municipalities in the global North in the guise of

public-private partnerships, often promoted by governments.

Yet all the powerful backing in the world cannot change the real life experience that communities go through when they allow the private sector to run their water services, including smaller workforces, poorer service, environmental breaches and higher water rates. These experiences are standard fare across the board.

The Transnational Institute and Public Services International Research Unit have been closely following water privatizations around the world. They have also monitored the trend to reject this model of water delivery and return to a public system. In their March 2015 book, *Our Public Water Future*, they report that the growing wave of cities putting water back under public control has now spread to 37 countries, impacting 100 million people. The groups document that between March 2000 and March 2015, 235 municipalities around the world have remunicipalized their previously privatized water systems. Ninety-four cities in France alone, including Paris, have remunicipalized their water services.⁸

Activists around the world are also turning to international human rights law in their resistance to water-destroying practices such as fracking and mining. Fracking uses and contaminates vast quantities of water using an injection process that contains hundreds of dangerous – and even carcinogenic – chemicals. Yet governments around the world, anxious to become energy self-secure, are continuing to frack large areas of their territory, putting human and water health in jeopardy.

In its June 2015 report, *A Guide to Rights-Based Advocacy, International Human Right Law and Fracking*, UN-based NGO Sisters of Mercy remind us that over the course of these many resolutions and declarations,



it has been established that to be realized as a human right, water must be free of risky elements, such as chemical substances that threaten health.

General Comment No. 15 stated that the right to water includes the right to water supplies “adequate for maintaining human dignity, life and health, taking into consideration the sustainability of the water supply to ensure the right of future generations.”⁹

To ensure compliance, governments are required to prohibit interference with the right to water such as by “unlawfully diminishing or polluting waters;” protecting the right to water by keeping third parties, including corporations, from “interfering in any way with the enjoyment of the right to water;” adopting legislation and other measures to restrain the “pollution and the inequitable extraction of water resources;” and preventing third parties that control access to rivers and wells from compromising the right to water.

The report goes on to outline the existing UN procedures available to civil society where human rights violations are suspected as a result of fracking, and calls for further legal reform at the international level to establish rules and sanctions for infractions by polluters, including business. The Sisters of Charity remind us that individuals and communities are rights holders and can be powerful agents of change.

That is a message community activists hear loud and clear in El Salvador. These activists are fighting the horrible effects of mining on their water and health based on the human right to water. As Meera Karunanathan of the Blue Planet Project reports, not only is El Salvador Latin America’s most water-scarce country, 98 per cent of its water is contaminated, much of that due to bad mining practices. Further, El Salvador is the third

most unequal country in Latin America and the Caribbean in terms of water access, according to the UN.

But a powerful coalition of NGOs and community groups called El Foro del Agua is calling for a national ban on metal mining, a constitutional amendment recognizing the human right to water, and a general water law that would legally establish social control of water resources and services. The coalition was successful in obtaining a constitutional amendment in 2010 recognizing water and food as human rights, but constitutional reform must be ratified twice in El Salvador so the whole process is back in play.

“Through consultation and research with communities on the front line of the water struggle, these strategies are aimed, in part, at shifting the power dynamics to strengthen the sovereignty of the Salvadoran people to determine their own freshwater future,” says Karunanathan.¹⁰

Many problems remain to be solved

Too many people around the world – at least 780 million – lack access to safe water.

The UN says that it has gone a long way to meeting its commitment to provide safe drinking water and sanitation to the world's population. The World Health Organization reports that since 1990, nearly two billion people have gained access to improved drinking water. This is good news indeed.

Some urge caution in using these numbers, however, noting that the UN measurement of access is to count the number of new pipes installed in each country. Just because there is a pipe does not mean there is clean water coming out of it, or that it is near enough to where people live to be accessible. Further, if water tariffs for these new pipes are too high, the water is unattainable to the poor.

For instance, the government of South Africa claims that 95 per cent of its people have access to water, but its own water affairs department admits that only 65 per cent have flowing water, leaving nearly 18 million people who do not have reliable water services.¹¹

In any case, according to UNESCO, there are still too many people around the world – at least 780 million – who lack access to safe water, approximately one in nine people. Further, even the UN admits it has been unable to budge the numbers on sanitation; 2.5 billion people do not have access to this basic human right and one billion people still defecate in the open.

A 2014 UN report notes that the water targets are the least on-track of all the development goals. A lack of investment in water, hygiene and sanitation, as well as government failure to plan countrywide programs, has hindered progress. And even where access to water has improved, almost two billion people are forced to use a source of drinking water that is contaminated.¹²

Since the adoption of the two resolutions in 2010, the world has witnessed a largely new phenomenon: water cut-offs to the poor have spread to the global North. In American cities, such as Detroit and Baltimore, thousands of people unable to pay their water bills have had their water shut off. The same is happening in cities in Greece, Italy and Spain in the wake of austerity-imposed rates hikes. Suddenly, the global water crisis is truly global.

While there are indeed signs of hope, as noted earlier, there are also three key reasons for the slow progress in realizing the human rights to water and sanitation.

Many governments have other priorities

Some governments give lip service to the human rights to water and sanitation and openly ignore them, or worse. Mexico recognized the right to water in its constitution, but is claiming "to promote bulk water transfers and big dams in the name of promoting the right to water, despite the fact that these projects have been linked to terrible human rights violations in that country. This is a clear distortion of what it means to implement the human right to water and sanitation: the rights of one group cannot be violated to fulfil the needs of another.

Australia recently announced that it will discontinue water services to 200 indigenous communities in its northern regions, a policy that could force their re-settlement and kill people unable to survive the cultural shock, human rights experts warn.¹³ Members of First Nations in Canada are 90 per cent more likely not to have running water and sanitation in their homes than other Canadians, yet the former Harper government tried to download responsibility to the provinces and the private sector.



More important than these and other individual cases, however, is the continued adherence by most governments – as well as global financial institutions such as the World Bank – to macro-economic and industrial policies that destroy local water sources and give corporations more rights than the poor.

Large-scale mining and extractive energy industries are given priority treatment by many governments that look the other way when water systems are polluted or mined. Massive land grabs are converting millions of traditional indigenous and peasant farms into industrialized food operations, poisoning the soil with chemicals, and destroying as well as privatizing local water sources. Many parts of the world continue to build mega dams, despite of the fact that existing ones have choked more than half the world's major rivers and displaced many millions of people from their traditional lands.

Many governments favour military and “security” spending over providing basic services to their people. Global military spending now stands at \$1.76 trillion annually, a sum that towers over the estimated \$10 billion to \$30 billion a year the UN estimates it would take to provide minimum water services.

Of particular concern are the new generation of trade agreements that give corporations the right to sue governments for protecting their water resources or the health and well being of their people. Investor-state dispute settlement (ISDS) provisions essentially treat corporations as equals to government and privatize the dispute settlement system between nations.

According to the United Nations Conference on Trade and Development, there are now more than 3,200 investor state deals (mostly bilateral) in the world – with one concluded every other week. These corporate

rights are deeply entrenched in the North American Free Trade Agreement (NAFTA), and all the new regional deals, including the Canada-EU Comprehensive Economic and Trade Agreement (CETA), the Transatlantic Trade and Investment Partnership (TTIP) agreement between Europe and the U.S., and the Trans-Pacific Partnership (TPP), a massive deal among 12 Pacific-aligned countries.

Corporations have used this mechanism to challenge government policies over 600 times and in a number of cases, against laws or regulations designed to protect water and the human right to water. These include a challenge where a government set a ceiling on the price of water so that the poor would have water services, one against a fracking moratorium, and another against a ban on lawn pesticides, and even a successful compensation claim over the “water rights” a company left behind when it abandoned its operations.¹⁴

Human rights experts are concerned about the potential impact of these investor-state agreements and their threat to hard won human rights gains, including the rights to water and sanitation. In June 2015, ten UN rapporteurs on various aspects of human rights issued a statement drawing attention to “the potential detrimental impact” that treaties such as TTIP and TPP “may have on the enjoyment of human rights as enshrined in legally binding instruments, whether civil, cultural, economic, political or social.”

“Our concerns,” said the experts “relate to the right to life, food, water and sanitation, health, housing, education, science and culture, improved labour standards, an independent judiciary, a clean environment and the right not to be subjected to forced resettlement.” The experts noted that investor-state rules provide protection for investors, but not for States or for their populations. In looking at the history of ISDS settlements, the

UN human rights experts concluded that “the regulatory function of many States and their ability to legislate in the public interest have been put at risk.”¹⁵

Corporations have undue influence at the UN and the World Bank

Another systemic problem that stands in the way of progress on the human rights to water and sanitation is the power that transnational corporations have on international institutions, especially the UN and the World Bank.

In the last several decades, many corporations, no longer loyal to their home countries or bound by their laws, have gone transnational, with production and marketing spread around the world and profits placed in tax havens. Today, a handful of corporations control most trade in goods and services and many are bigger than governments. Of the top 150 economies in the world, 60 per cent are corporations. The rise of the transnational corporation is a threat to water protection everywhere as these companies use their power to undermine or avoid government regulation altogether.

Engaged local communities armed with the right to oversee and protect water resources are what we most need if we are to protect water. However, corporations with powerful interests that write the rules to promote their profit undermine communities around the world.

Increasingly, corporate interests are influencing the United Nations and its different agencies. The CEO Water Mandate is an initiative of the UN Global Compact, a UN-corporate partnership aimed at getting corporations to improve their environmental and human rights practices. But many of the corporations involved in the mandate, including Suez, Nestlé, Coca-Cola and PepsiCo, are themselves objects of severe criticism for their exploitation and commodification of water.

Others include companies with poor corporate reputations such as Dow Chemical, manufacturer of napalm and Agent Orange, and Shell Oil, the target of decades of protest for their fouling of the waters of Nigeria. Recently, even the UN’s own watchdog, the UN Joint Inspection Unit (JIU), warned that some large corporations are using the UN brand to benefit their business and expand public-private partnerships, while not conforming to UN values and principles. The JIU called on the General Assembly to rein them in.¹⁶

Global Policy Forum, a respected New York-based independent think tank, reports that as globalization has compounded the power of large transnational corporations, big business has consolidated its influence on global governance and the United Nations in particular. “In that multilateral setting,” it reports, “corporate actors have been granted privileged access to decision makers, and their interests have become more prominent as calls for legally binding instruments for (transnational corporations) become more sidelined.”

The Forum is particularly critical of the influence the private sector wielded in the formation of the post 2015 development agenda. “The embrace of a voluntary ‘partnership’ approach has resulted in a corresponding shift towards a multi-stakeholder governance paradigm – buoyed by big business and the governments invested in it – in the World Economic Forum, the World Trade Organization, and the agencies and agendas of the UN.”¹⁷

The World Bank is even more influenced by corporate power, having promoted the privatization of water services since the 1990s. In spite of the many documented failures of water privatization in the global South, the World Bank is giving more money than ever to private water utilities to provide for-profit services in poor countries. The World Bank partners with the World Water Council, a forum designed to promote the interests of water companies; the Global Water Partnership, which promotes public financing of private water services in the global South; Aquafed, the International Federation of Private Water Operators; and pro-business lobby groups such as the World Business Council for Sustainable Development.

The World Bank sets water policy through the 2030 Water Resources Group, which promotes market-based solutions to the water crisis and is chaired by former Nestlé CEO Peter Brabeck-Letmathe, who once famously described the notion of the human right to water as “extreme.” He now admits that there is a need to set aside some water for the most needy, but that the market should determine the fate of the rest of the world’s water: “Give the 1.5 % of the water [that we use to drink and wash with], make it a human right. But give me a market for the 98.5% so the market forces are able to react, and they will be the best guidance that you can have. Because if the market forces are there the investments are going to be made.”¹⁸



The global water crisis makes the fight for water justice harder

The struggle to bring safe drinking water and sanitation services to all is confounded by the growing scarcity of water in many parts of the world.

In its 2015 World Water Day statement, the UN warned that the world is running out of time to solve its water crisis and that by 2030, demand for water will outstrip supply by 40 per cent. A report from U.S. global intelligence agencies warns that in that same time frame, one-third of the world's people will live in basins where the demand-supply deficit is more than 50 per cent.

Five hundred scientists from around the world met in Bonn in May 2013 at the invitation of UN Secretary General Ban Ki Moon and sent out a warning that our abuse of water has caused the planet to enter a “new geologic age.”

They likened this “planetary transformation” to the retreat of the glaciers more than 11,000 years ago. Within the space of two generations, the majority of people on the planet will face serious water shortages and the world's water systems will reach a tipping point that could trigger irreversible change, with potentially catastrophic consequences. Already, the world-renowned scientists said, a majority of the world's people live within 50 kilometres of an impaired water source – one that is running dry or polluted.

And we are pumping groundwater far faster than nature can replenish it, using up the water heritage of future generations. A June 2015 study from NASA satellites shows that over half of the Earth's largest aquifers are being depleted. Twenty-one of the world's 37 largest aquifers – in locations from India to China to the United States to France – have passed their sustain-

ability tipping points, meaning that more water was removed than replaced in those watersheds.¹⁹

Once water-rich Brazil is now in the grip of a terrible drought, caused by the exploitation of its groundwater and the destruction of the rainforest, which produced the moisture needed to carry “flying rivers” of rain thousands of kilometres away. The greater metropolis of Sao Paulo, home to 40 million people, is in desperate shape with water rationing so serious that people are digging wells through their basements. A widespread and deadly outbreak of dengue fever is directly attributable to the water crisis.

A recent study found that more than half the rivers in China have disappeared. Of the 50,000-recorded major rivers, 26,000 have vanished in the last quarter century.

Soon to have the largest population in the world, India is one of the planet's most water-challenged countries. What water is available is often severely polluted and the national supply of water will fall 50 per cent below demand by 2030.²⁰

The stage is being set for drought on an unprecedented scale, mass starvation, and the migration of millions of water refugees leaving parched lands to look for water. This ecological crisis will deepen the human rights divide unless we actively work to avoid such a scenario.

Water scarcity in an unjust world is already making the fight for water justice much more difficult and the need to protect water as a public trust is more important than ever.

The challenge ahead

Water will be nature's gift to humanity to teach us how to live more lightly on the Earth.

While there is much room for hope, there is also much room for concern – and much work to do. The priorities fall into three broad categories.

1. Use the recently recognized rights to water and sanitation to push governments and the courts.

The recognition of the human rights to water and sanitation was an evolutionary step for humanity. Now the world community must come together to bring justice and equality to the issue of access to water in a time of rising demand. To do this, we need to build on the work that has gone on before and expand the scope of the obligations recognized by the UN General Assembly and the Human Rights Council. As well, sub-national jurisdictions such as provinces, states and municipalities should also adopt formal structures to advance the human rights to water and sanitation.

Many governments will take the narrowest interpretation possible of their obligations and it is imperative that there is a countervailing force to the growth of privatization and commodification.

Using the *Obligation to Respect*, we need to assert that no government has the right to remove existing services, as the government of Botswana did to the Kalahari Bushmen; or as authorities in Detroit, Michigan are doing to tens of thousands of residents in cutting off their water supply when rising water rates made it hard for them to pay their bills; or as the City of Johannesburg does when it denies water to residents unable to pay for water meters.

Asserting this obligation will get more and more imperative as the “perfect storm” of rising water rates, growing income inequality and water scarcity hit cities and communities around the world and cash-strapped governments decide to cut or privatize essential services.

Using the *Obligation to Protect*, we need to challenge any laws or practices that remove or contaminate local water sources, whether it is the public auctioning of water rights in Chile to foreign companies that leaves local farmers and Indigenous peoples without water, or sand mining in Tamil Nadu, India, where sand removed from local rivers for urban construction is destroying watersheds, or fracking in New York State where local watersheds are at risk of severe contamination, or dam construction in Turkey where rural communities and their land and water are being submerged. These and many other actions violate the right of local people to uncontaminated water sources.

Speaking to the Lagos Water Summit in August 2015, Nnimmo Bassey, Nigerian environmental activist and Chair of Friends of the Earth International, spoke of the “unconscionable harm” done to the freshwater systems in the Niger Delta by foreign oil companies. Quoting a UN report, Bassey told of waters completely polluted with hydrocarbons and other toxic chemicals so intense they were contaminating groundwater that supplies communities with their drinking water. The water in one community contained levels of benzene 900 times above World Health Organization standards.

Bassey called on the Nigerian government to amend the constitution to guarantee the human right to water and called for this right to become the foundation for a demand that the water sources the people depend on “must not be treated as though they were dumpsites for all sorts of toxic waste, including untreated human sewage.” He added, “A people that value water would not sit back to watch polluters go unchallenged. When they resist pollution, they are saying that water is more valuable than crude oil, iron ore, coal, gold or any other pollutant.”²¹



Using the *Obligation to Fulfil*, we need to demand the extension of public water and sanitation services to those communities and people not now served, regardless of their ability to pay. Research by the Public Services International Research Unit shows that the estimated \$260 million financing gap in water and sanitation can best be met through public financing, and that even the countries most in need of water and sewerage connections could deliver these services over a ten year period with less than one per cent of GDP a year.²²

Filling this gap must be a priority within the sustainable development agenda, which calls for universal access to water and sanitation, in order for it to be achieved by 2030. Having explicitly affirmed the human right to water and sanitation within the text of the Post 2015 Development Agenda, the United Nations must ensure that the Sustainable Development Goals are implemented in a manner that is consistent with a rights-based approach that puts the interests of people and the planet first. The development agenda must not be handed over to water corporations seeking new markets.

If wealthy countries want to help poorer countries meet their goals, rather than inflicting their transnational for-profit water utilities on them, they could increase their foreign aid budgets, which have fallen to historic lows.

Public funding would also be better invested in international solidarity through public-public partnerships or partnerships between public utilities to facilitate capacity building and knowledge sharing on a not-for-profit basis. In Latin America, a network of water justice organizations called La Plataforma de Acuerdos Públicos y Comunitarios de las Américas has seen great success with public-public and public-community partnerships in Colombia, Uruguay and Bolivia.

2. Put the human rights to water and sanitation at the centre of the ecological struggle to protect water.

As governments start to be hit by droughts and water shortages, they are beginning to announce plans to deal with the growing demand for a dwindling resource. Many communities – and even whole countries – are imposing water restrictions and rationing. But it is often only for households and not the big users of water, leading to charges of injustice. California’s Governor Brown has been widely criticized for imposing a 25 per cent reduction in water use by residential and business users, but allowing the big water guzzling agri-farms – which use 80 per cent of the state’s water – to go unchallenged.

Some openly call for different laws for rich and poor. One resident of the ultra-wealthy gated enclave of Rancho Santa Fe says if you can pay for more water, you should be able to get more than those who cannot. “We pay significant property taxes based on where we live. And no, we are not all equal when it comes to water,” he declared.²³

The poor of Sao Paulo, Brazil have been hardest hit by rationing and water cut-offs that have followed the four-year drought. One study found that people earning 3,620 reals (\$1,359 CDN) a month were twice as likely to have experienced water cut-offs than people making twice as much.²⁴

Many governments are raising water rates. As reported by *Circle of Blue*, the price of water in 30 major U.S. cities is rising faster than most other household staples – 41 per cent since 2010 with no end in sight. Water rates in Great Britain have soared by 82 per cent in the last decade (as have the profits of the private companies running the services). In March 2015, the Delhi



government announced a rate hike of 10 per cent for households using more than 20,000 litres per month. The government said it was an attempt to force people to conserve, but critics point out it will penalize large families and the poor who are crowded into single dwellings.

In parts of the world already, governments are making choices about whether to allocate declining water sources to people and communities, or to promote economic activity in the drive to industrialize as fast as possible.

The Indian state of Karnataka, where 80 per cent of the population does not have potable water in their homes, is experiencing such severe drought that almost 10,000 villages are in water crisis. But the government and its corporations see water as a tool for industrial development and want the State to become the “Silicon Valley of India.” The State has become a poster child for water privatization with precious water resources channelled to many new free trade zones and public water taps closed.

Governments are also aggressively seeking out new sources of groundwater and, unless the rules are clear about who has access to these new sources, the fear is that they will go to those with power and money. For instance, huge new sources of groundwater have been documented in Africa and the fight is on for control of this water. If these sources are not harnessed for the good of all the people and communities of Africa, and are allowed instead to become the property of transnational corporations, daily life may not change for the vast majority of Africans who will still have little access to affordable water.

It is imperative that the human rights to water and sanitation be put at the very heart of all plans and policies or the water divide will only deepen. All policy must

protect these fundamental human rights and be built around the obligations to respect, protect and fulfil them.

One of the clear instructions to governments from the Human Rights Council is to place the vulnerable at the heart of any plan to realize the human rights to water and sanitation. This means special attention must be paid to women, upon whose shoulders the water burden usually falls and who are left out of positions of decision making in many countries; public sector water workers, whose jobs and families are threatened by privatization; rural communities, peasants and small farmers, whose land and water is being grabbed – often violently – at alarming levels; and Indigenous peoples, who are frequent victims of water theft, water contamination, exploitation of resources on their territory and forced displacement.

This will mean a re-prioritization of domestic and international economic and development policies. In many communities of the global South, for instance, tourists have far more access to clean water and sanitation than local residents. Even in wealthier areas such as the Mediterranean, tourists use water needed by the local population. The human right to water can be used to challenge these practices that favour certain groups over others.

To truly promote the human rights to water and sanitation, all governments and international institutions must adopt the public trust doctrine, which underpins in law the notion that water is a commons to be shared, protected, carefully managed and enjoyed by all.

Under public trust, water is a common heritage that belongs to the Earth, other species and future generations as well as our own. Trust resources like water must be protected for the common good and not allowed to be appropriated for private gain. Under public trust,



governments, as trustee, are obliged to protect these trust resources and exercise their fiducially responsibility to sustain them for the long term use of the entire population, not just the privileged few who could buy inequitable access.

The public trust doctrine is an important tool to fuse solutions to both the ecological and human water crises. Under a public trust regime, all competing uses of a watershed should have to pass both the tests of fairness of access and sustainability – that is, that their use will not draw down the future capacity of the watershed. Public trust offers a body of principles that combine the public good, public control and public oversight with the long-term protection of the watershed and sets the stage for a “hierarchy of access” whereby the human right to water and water for ecosystem protection will take precedence over other uses.

Finally, if we are to be successful at placing the human rights to water and sanitation at the centre of the ecological struggle to protect water, it is crucial that those fighting for water justice and those fighting to protect water and watersheds come together in a powerful new movement. Environmentalists must realize that they cannot protect a river if thousands of people have no choice but to use it as an open sewer every day. Similarly, human rights advocates need to understand that a world running out of clean water will exacerbate the human crisis and work to protect watersheds from over-extraction and pollution.

3. Fight for a just economy

As long as most governments and international financial and political institutions promote a globalization agenda of unlimited growth, corporate-friendly “free” trade agreements, privatization of essential services, including water services, and the gutting of environmental protections to promote “the market,” it will be very difficult to meet the challenge of clean, safe water and sanitation services for all.

Clearly, economic globalization, with its emphasis on growth at all costs, its servitude to the 1%, its systematic enclosure of the commons, its entrenchment of corporate rights in international trade law, and its displacement of the local caretakers of land and water everywhere, is a powerful barrier to the human rights to water and sanitation.

The solution to the global water crisis, both human and ecological, must include a renunciation of this model of growth if there is any hope it will be successful. Trade must be radically reformed to serve a different set of goals and come under democratic oversight. Corporations must lose the right to sue governments. Land grabs must end. Tax havens must be shut down. The rule of law must be brought to bear on transnational capital. Citizen-driven democracy must be restored, or built from the ground up, if necessary.

Walden Bello, a member of the Philippine House of Representatives and respected political analyst, says that economic globalization has been “terminally discredited” and that it is time to recognize the end of an era. In his call for “deglobalization,” he advocates using trade policy to protect local economies, implementing long-postponed measures of equitable income and land redistribution, deemphasizing growth while promoting quality of life, and replacing the International Monetary Fund and the World Bank with regional institutions



based, not on free trade and capital mobility, but on the principles of cooperation.²⁵

Given the threat to water for existing and proposed trade and investment agreements, it is urgent to remove all references to water as a service, good or investment in all current and future agreements. Water must not be a tradable good, service or investment in any treaty between governments, and corporations should not have tools to challenge domestic or international protections of water. And governments should have the right to ban the trade in products that harm water or people in their country of origin.

We must continue to fight World Bank-inspired water privatizations and the corporate domination of the funding process of the bank under the auspices of the 2030 Water Resources Group. We must promote another type of development institution other than the World Bank.

The power of transnational corporations at the United Nations must be challenged as well. Unlike the World Bank, the UN is still a contested arena for human rights activists and we have many allies there. But corporations are not “stakeholders,” akin to governments, communities, women’s groups and others, as they claim. They use the cover of the UN to promote their interests of deregulation (or “corporate social responsibility” as they call it) and privatization of essential services. This is an important struggle.

The antidote to bad governance is not a transnational corporation running the world in its image. The antidote to bad governance is good governance. Only the power of true democracy will bring about the conditions necessary to protect the human right to water.

All water is local. Communities that live on watersheds know it best and they must be given tools to protect their ecosystems. Indigenous people have much to teach the world and their guidance and leadership must be respected as we create our alternative economy. All over the world, Indigenous resistance to water privatizations, fracking, big dams and strip mines has been crucial to forcing governments to start dealing with water management and human rights in a different way.

The light at the end of this tunnel is that water survival will necessitate more collaborative, equitable and sustainable ways of producing energy, growing food, trading across borders and producing goods and services. This, in turn, requires more robust democratic governance as well as more local control over local water sources. Water will be nature’s gift to humanity to teach us how to live more lightly on the Earth, in peace with respect for one another and with true justice.

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