OUR RIGHT TO WATER:

A People's Guide to Implementing the United Nations' Recognition of the Right to Water and Sanitation

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Introduction

"Our world in stupor lies;
Yet, dotted everywhere,
Ironic points of light
Flash out wherever the Just
Exchange their messages"

- W. H. Auden

On July 28, 2010, the United Nations General Assembly adopted an historic resolution recognizing the human right to safe and clean drinking water and sanitation as "essential for the full enjoyment of the right to life." For those of us in the balcony of the General Assembly that day, the air was tense with suspense. A number of powerful countries had lined up to oppose the resolution so it had to be put to a vote. Bolivian UN Ambassador Pablo Solón introduced the resolution by reminding the Assembly that human bodies are made up of almost two-thirds of water and that our blood flows like a network of rivers to transport nutrients and energy to our bodies. "Water is life," he said.

But then he laid out the tragic and growing numbers of people around the world dying from lack of access to clean water. He quoted a new World Health Organization study on diarrhoea showing that every three-and-a-half seconds in the developing world, a child dies of water-borne disease. Ambassador Solón then quietly snapped his fingers three times and held his small finger up for a half second. The General Assembly of the United Nations fell silent. Moments later, it voted overwhelmingly to recognize the human right to water and sanitation. People on the floor erupted in cheers.

Two months later, the UN Human Rights Council adopted a second resolution affirming that water and sanitation are human rights, adding that the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and is "inextricably related to the right to the highest attainable standard of physical and mental health as well as the right to life and human dignity." Together, the two resolutions represent an extraordinary breakthrough in the international struggle for the right to safe clean drinking water and sanitation and a crucial milestone in the fight for water justice. The resolutions also complete 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; the circle has finally closed.

This paper is meant to serve as a background document to help civil society groups fighting for water justice and their governments take these two historic resolutions and make them work. It traces the history of the struggle for the right to water and lays out the case for why the recognition of the human right to water is needed. It also outlines what is now expected of governments under this new rights regime, and most importantly, what communities, human rights, development and indigenous groups and others can do to realize the great potential of this new rights framework.

It is crucial to underline that the two resolutions do not *confer* new rights. The right to clean water and sanitation inherently exists for every person on Earth and for future generations. Rather, the new resolutions *recognize* these inherent rights and set out the obligations that States now carry in regard to clean water and sanitation. As well, while this paper primarily deals with a human right, it is clear that it is not possible to protect the human right to water and sanitation without recognizing the inherent rights of nature and other species. Weaving

the rights of nature into the interpretation of the "right to water" is essential for true transformation. Similarly, the genuine realization of these new rights will require recognizing and honouring that some cultures place responsibility and relationship of community over the more "western" notion of individual rights. Promoting respect for the traditional and collective values of a diversity of cultures will strengthen the reach of the human right to water and sanitation internationally and expand the possibilities for its application.

The two new UN right to water resolutions present an incredible opportunity for communities and groups around the world. It is not often that a new right is recognized at the United Nations, especially around an issue that is as increasingly political and urgent as the global water crisis. The right to water and sanitation resolutions are living documents waiting to be used for transformational change around the world. However, they will be only as meaningful as people and communities make them. The challenge now is ours.

Why do we need the Right to Water and Sanitation?

"Without water, we can never fight hunger, without toilets in schools, girls will continue to drop out before finishing their education, and without adequate sanitation and hygiene, disease will continue to spread, resulting in increasing child mortality and bad maternal health." [1]

- Anders Berntell, Stockholm International Water Institute

Water was not included in the 1948 Universal Declaration of Human Rights because, at the time, no one could perceive of a world lacking in clean water. All over the world, people learned that there is a finite and specific amount of water that circulates through the hydrologic cycle and that it cannot be destroyed. So humans wantonly polluted, mismanaged and displaced water as if it was indestructible, using it to grow crops in deserts, dump as waste in oceans, and send out of watersheds in the form of virtual water exports to support a global market economy.

Using borewell technology that did not exist a hundred years ago, humans have relentlessly mined groundwater at an alarming rate. Worldwide overpumping of groundwater more than doubled between 1960 and 2000 and is responsible for about 25 per cent of the rise in sea levels.[2] A recent study on the global water supply conducted by water intensive industries and coordinated by the World Bank found that by 2030, global demand for water will exceed supply by 40 per cent.[3] The world's rivers, the single largest renewable water resource for humans and a crucible of aquatic biodiversity, are in a crisis of ominous proportions. The journal *Nature* reports that nearly 80 per cent of the world's human population lives in areas where river waters are highly threatened, posing a major threat to human water security.[4]

As well as massively robbing watersheds of their water, humans have also relentlessly polluted them. In many parts of the world, surface and groundwater are contaminated and completely unsafe for drinking, cooking and fishing. In the Global South, more than 90 per cent of sewage and 70 per cent of industrial wastewater is dumped untreated into surface water. Every day, two million tons (almost 2 billion kilograms) of sewage and industrial waste are discharged into the world's water, the equivalent of the weight of the entire human population of 6.8 billion people. The amount of wastewater produced annually is about six times more water than exists in all the rivers of the world.[5]

These two crises of declining water and poisoned water sources are extremely concerning on their own; but when combined with a world of people with increasing class and income disparities, these crises are lethal. By every measurement, global income disparities are more severe than they have been in almost a century. A small percentage of the world's elite owns the vast majority of assets. Billions of people around the world live in poverty amongst great wealth and this affects their access to water. A child born in the developed world consumes 30 to 50 times more water than one in the developing world. Peri-urban slums ring most of the developing world's cities where climate and food refugees are arriving in relentless numbers. Unable to access their traditional sources of water either because they have disappeared or have been polluted, and unable to afford high water rates set by newly privatized water services, these refugees must rely on sources contaminated by their own untreated human waste as well as industrial poisons for drinking water.

The growing commodification of the world's water has made it increasingly inaccessible to those without money. Many poor countries have been strongly encouraged by the World Bank to contract

water services to private for-profit utilities, a practice that has spawned fierce resistance by millions of people left out due to poverty. Other struggles are taking place with bottled water companies that drain local water supplies, very often in poor and indigenous communities. There are "land grabs" where countries and investment funds buy up massive amounts of land in the Global South for access to the water and soil for future use. Some countries actually auction off water to global interests, such as mining companies, which now literally own the water that used to belong to rural communities and local farmers. And many countries are introducing water markets and water trading, whereby a water licence, often owned by private companies or industrial agribusiness, is converted to property to be hoarded, bought, sold and traded, sometimes on the open international market, to those who can afford to buy it. In all of these cases, water becomes the private property of those with the means to buy it and is increasingly denied to those without. All over the world, small farmers, peasants, Indigenous people and the poor have found themselves unable to stand up to these private interests. As the operations of the water companies became more global, backed by global financial institutions, it became clear that nation/state instruments alone were no longer sufficient to protect citizens.

There have been serious attempts to deal with this crisis, but they are not sufficient. The United Nations Millennium Development Goals (MDGs) were adopted by the General Assembly in 2000 as a way to commit to dealing with the most egregious aspects of persistent poverty. The commitment on water and sanitation is to halve the proportion of people living without sustainable access to safe drinking water and basic sanitation by 2015. While the UN admits that it is way behind these goals on sanitation, it claims that it is closer to attaining its goals on drinking water access. The World Health Organization reports that since 1990, 1.3 billion people have gained access to improved drinking water and the UN is "on target" to meet or exceed the drinking water target. Many question this assertion however. One of the chief measurements for access to drinking water used by the UN is to count the number of pipes installed in a country. But just because there is a pipe does not mean there is clean water coming out of it and even if there is, it may be very far away. As well, even as governments move to meet these targets, the declining global water stocks are bringing new people into crisis.

Professor Asit Biswas, president of the Third World Centre for Water Management, calls this claim of success "baloney" and predicts that by the UN deadline of 2015, more people in the world will suffer from the water crisis than when the goals were first adopted.[6] Says Catarina de Albuquerque, formerly the UN Independent Expert, and now the Special Rapporteur advising the Human Rights Council on the human right to safe drinking water and sanitation, "I have witnessed the unintended but perverse effect that MDGs can have, making governments feel proud about their achievements regarding the MDGs, while unfortunately forgetting about the poor, migrants, slum dwellers and ethnic minorities who still lack access."[7] As well, these assertions of success fly in the face of other UN reports that suggest the crisis is deepening. For instance, UN Habitat

reports that by 2030, more than half the population of huge urban centres will be slum dwellers with no access to water or sanitation services whatsoever. And a comprehensive new report on Africa shows that water availability per person in Africa is steadily declining and only 26 of the continent's 53 countries are currently on track to meet the MDG drinking water targets.[8]

To truly fulfil the promise of the MDGs in relation to water, much more money needs to be put towards the crisis. In his 2008/2009 biennial report on the state of the world's water, Peter Gleick points out the need to seriously increase funding for the MDG drinking water and sanitation pledge from its current level of about $14 billion a year to $72 billion. It is not possible to meet the goals with the current level he says, and points out that along with inadequate UN funding, the Organisation for Economic Co-operation and Development reports steadily declining international financial assistance for water and sanitation from the wealthy nations as well.[9] So it has been clear for some time that the MDGs do not replace a true commitment of the global community to water and sanitation for the billions now suffering.

Meanwhile, all over the Global South, and increasingly in poor communities in the Global North, those who cannot pay for the vanishing supplies of clean water are getting sick and dying. As Ambassador Solón reported when he spoke to the UN General Assembly, every year, 3.5 million people die of waterborne disease; half the hospital beds on Earth are occupied by people suffering from waterborne disease; more than 1 billion people lack access to potable water; and 2.6 billion people have no access to the dignity of basic sanitation. Aaron Wolf, program director in Water Conflict and Management and Transformation at Oregon State University says, "The current water crisis is bigger than the crises brought on by HIV/AIDs, malaria, tsunamis, earthquakes and all of the wars in a given year."

The situation is hardest on women and children. A 2006 United Nations survey carried out in 177 countries revealed that women spend about 40 billion hours collecting water every year. In many countries, women spend as much as five or six hours each day fetching water and their female children accompany them, keeping them out of school. In every case, if these families had money, the children would not be dying and would be attending school. The lack of access to clean water and sanitation, in terms of sheer numbers affected, is arguably the single biggest human rights issue of our time. Without the recognition of this right, and the obligations it places on governments to find a solution that is supported by adequate financial resources, the suffering will only deepen.

Why did it take so long to get the Right to Water and Sanitation?

"Is access to water a human right or just a need? Is water a common good like air or a commodity like Coca-Cola? Who is being given the right or the power to turn the tap on or off: people, governments or the invisible hand of the market? Who sets the price for a poor district in Manila or La Paz – the locally elected water board or the CEO of a transnational water corporation in another country?"

- Rosmarie Bär, Alliance Sud

The call for the right to water came out of the suffering and struggles of people in thousands of communities around the world seeking the simple dignity of clean water for daily living and basic sanitation services, as well as the protection of their local water sources from government or corporate abuse. While it might seem at first glance to be a given that water is a human right, many powerful forces came together to prevent it from being officially recognized for many years.

One powerful opponent was the World Water Council, an international water policy think-tank, the bulk of which 300-plus members are water and engineering corporations, water industry associations and investment banks. Its president is Loic Fochon, who is also the past president of Groupe des Eaux de Marseilles, owned by Suez and Veolia, the two biggest private water corporations in the world. Every three years, the World Water Council holds a very large and influential gathering of water experts, private interests and government officials to set direction for global water policy and financing. The World Water Forum has now overtaken any gathering of the United Nations as the preeminent global water symposium and governments and their policy makers as well as World Bank and United Nations officials give it great heed. At every one of the gatherings since its inception in 1997, the World Water Forum has refused directly to recognize the right to water in the Ministerial Declaration that is released on the final day. At the last Forum, held in March 2009 in Istanbul Turkey and attended by 25,000 delegates from 150 countries, leaders once again refused to include the right to water in the official Ministerial Declaration, resulting in a strongly worded rebuke from Miguel d'Escoto Brockmann, then President of the UN General Assembly.

At the heart of the debate for the World Water Council as well as for many leaders in the World Bank and even the United Nations at the time, is the distinction between water being a "need" and a "right." This is not a semantic distinction. One cannot trade or sell a human right, or deny it to someone on the basis of inability to pay. The World Water Council and the World Bank promote private, for profit water delivery systems and therefore promote the concept of water as a need that can be filled by private as well as public operators. The right to water, however, denotes that water is a basic right, regardless of the ability to pay, and boosts the arguments of civil society that it should be delivered as a public service.

The other major opponents of declaring water a human right are some First World governments. These governments are concerned about extending new rights because of the cost and accountably involved. In explaining why the United States did not support the right to water in the Istanbul Ministerial Declaration, Daniel Reifsnyder, head of the U.S. delegation, said, "Establishing a new right to anything raises a number of complicated issues regarding the nature of that right, how that right would be enforced, and which parties would bear responsibility for ensuring their rights are met."[10]

The U.S. and Canada, two strong historical opponents of the right to water, have recent histories of refusing to recognize what are called "second and third generation" human rights. While they support "first generation" human rights such as freedom of speech, the right to a fair trial, freedom of religion

and voting rights (often referred to as "negative rights" and all guaranteed in the 1948 Universal Declaration of Human Rights), they are less likely to promote the more pro-active second generation of rights, such as the right to employment, housing, health care and social security (often called "positive rights," some of which were found in the Universal Declaration of Human Rights but were more advanced in the International Covenant on Economic, Social and Cultural rights). They are even less supportive of third generation rights such as the right to self-determination, economic and social development, group and collective rights and the right to natural resources. For these countries, the right to water and particularly sanitation are political goals disguised as human rights that create a new set of unwanted responsibilities.

It is important to note that the countries that most strongly opposed the General Assembly resolution – Canada, the United States, Australia, New Zealand and the United Kingdom – all promote a market-based economy and have adopted different forms of privatization and commodification of their water supplies. All also promote open global trade, a regime, says Canadian legal expert Steven Shrybman, that has equipped private and commercial companies with powerful new tools for asserting their proprietary interests in water and water services. "Unfortunately, the most significant developments in international law that bear upon the human right to water are not taking place under the auspices of the United Nations" he wrote before the resolutions were adopted, "but rather under the World Trade Organization and more importantly, under a myriad of foreign investment treaties. Under these regimes, water is regarded as a good, an investment, and a service." As a result, governments are severely constrained from establishing policies and practices needed to protect human rights, the environment and other non-commercial societal goals. [11] It is very likely that a good part of the resistance to the right to water at the United Nations from these countries has come from the fact that they are supporting water as a market good in a variety of international, regional and bilateral trade and investment deals, and they perceive a real conflict between the two models.

In spite of the resistance of these powerful forces, however, the demand for the recognition of the right to water and sanitation steadily grew, led by a dynamic international water justice movement and supported by a number of countries from the Global South, particularly South America, and a handful of countries from the Global North. A key argument of this movement was that the lack of access to safe drinking water and sanitation was hampering the full realization of a number of other key human rights obligations already adopted by the UN. The right to water was recognized inside a number of international resolutions and declarations, the most important being General Comment 15, adopted in 2002 as an "authoritative interpretation" of the International Covenant on Economic, Social and Cultural Rights. In it, the right to water was named as a prerequisite for realizing all other human rights and as "indispensable for leading a life in dignity." But an interpretation of an existing convention was not the same as a stand-alone instrument. So in 2006, the newly formed Human Rights Council, led by Spain and Germany, requested that Louise Arbour, then High Commissioner for Human Rights, conduct a detailed study

on the scope and content of the relevant human rights obligations and make recommendations for future action. The global water justice movement weighed in quite hard at this stage. Anil Naidoo of the Blue Planet Project sent a strong statement to the High Commissioner signed by 185 organizations from 48 countries calling for the appointment of a Special Rapporteur on Water, noting that the failure of existing instruments has allowed several nations to incorrectly deny the inherent right to water of their citizens.

The report of the High Commissioner, tabled in October 2007, clearly stated that "specific, dedicated and sustained attention to safe drinking water and sanitation is currently lacking at the international level" and recommended that access to safe drinking water and sanitation be recognized as a human right.[12] In September 2008, the Human Rights Council appointed Catarina de Albuquerque to be the Independent Expert on the issue of human rights obligations relating to access to safe drinking water and sanitation for a three year period. When he became President of the General Assembly in 2008, Miguel d'Escoto Brockmann publicly declared his support for the right to water and appointed Maude Barlow to be his Senior Advisor on Water. Quite quickly a team came together inside the United Nations to move the agenda forward. No country was stronger in its support of this right than Bolivia and its president, Evo Morales. Bolivia was one of 20 countries that officially challenged the Ministerial at the Istanbul World Water Forum because of its refusal to recognize the right to water. In June 2010, Ambassador Solón presented a draft resolution to the General Assembly, and within three months, the United Nations recognized the right to water and sanitation not once, but twice. While the countries that opposed the General Assembly resolution did not, in the end, vote against it, they did abstain, signalling that the debate over these fundamental rights is not over.

What do the two Right to Water and Sanitation resolutions mean?

"The right to water and sanitation is now a human right, equal to all other human rights, which implies that it is justiciable and enforceable. Hence from today onwards we have an even greater responsibility to concentrate all our efforts on the implementation and full realization of this essential right."

- Catarina de Albuquerque, Special Rapporteur

The July 28, 2010 General Assembly resolution recognized "the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of the right to life." Besides recognizing the right to water and sanitation, the resolution calls on States and international organizations to "provide financial resources, capacity-building and technology transfer, through international assistance and cooperation, in particular to developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all." It also invited the Special Rapporteur to report annually to the General Assembly. The resolution was presented by 39 countries, mostly from the Global South, and received 122 votes in favour, no votes against and 41 abstentions.

Even though the General Assembly resolution at this point was non-binding, it was a crucial milestone in the fight for water justice. For one thing, the language was simple, but clear and unequivocal. Some countries opposing it tried to weaken it by lobbying the movers to drop sanitation. The movers of the resolution refused, rightly citing that lack of sanitation is the big killer and must be included. Others demanded they add the words "access to" water and sanitation but again the movers refused, noting that changing the wording to include access would let States off the hook by allowing them to argue that private companies were offering these services so their own obligations were fulfilled. As well, even though a number of powerful countries abstained, a number of others, including China, Russia, Germany, France, Spain and Brazil, supported the resolution, and many of those that abstained said they would revisit their opposition if the Human Rights Council were to weigh in with a similar resolution. The resolution also demonstrated the strong intent of the world to move in this direction. Countries that voted in favour represent 5.4 billion people; those that abstained represent 1.1 billion.[13] Finally, because it refers to the "right to life," the General Assembly resolution can be seen as covering first generation rights, the very rights some of the countries that abstained claim always to support.

On September 30, 2010, the 47-member UN Human Rights Council adopted its own resolution recognizing the human right to safe drinking water and sanitation and said this right is derived from the right to an adequate standard of living and is inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity. The Council went further than the General Assembly by specifying that the right to safe drinking water and sanitation has been part of international law and reaffirmed that governments have the primary responsibility for the realization of all human rights, including the right to water and sanitation. It recommended that governments pay particular attention to vulnerable and marginalized groups, adopt effective regulatory frameworks for all service providers, and ensure effective remedies for violations.

The Human Rights Council resolution was another crucial milestone in the search for global water justice. First, it was adopted by consensus (although Great Britain "disassociated from consensus," meaning that it did not want to force a vote but reserves its opinion that there is no

international-agreed upon definition of sanitation). In a welcome and surprise move, the United States, a new member of the Human Rights Council, declared that it was "proud" to take the significant step of joining consensus on the resolution. As well, as noted by the UN News Centre, the Council went further than the General Assembly by specifying that the right entails legally binding obligations: "The right to water and sanitation is a human right, equal to all other human rights, which implies that it is justiciable and enforceable."

Further, the Human Rights Council resolution affirms that the right to water and sanitation are contained in two existing human rights treaties, the International Covenant on Economic, Social and Cultural Rights, to which 160 States are party, and the UN Convention on the Rights of the Child, which has reached nearly universal ratification with 192 states parties. This means, says Ashfaq Khalfan of Amnesty International, formerly with the Centre On Housing Rights and Evictions (COHRE), that the Human Rights Council resolution clarifies that the right to safe drinking water and sanitation recognized by the UN General Assembly resolution is legally binding in international law. "The Human Rights Council resolution refers to the General Assembly resolution and takes a further step by specifying that the right to water and sanitation is legally binding."[14] Adds the Special Rapporteur, "States have recognized that they are under a legal obligation to ensure, in a progressive manner and within available resources, that everyone has access to water and sanitation that meets the relevant human rights criteria." She called on the UN to honour this resolution by placing human rights at the centre of the Millennium Development Goals relating to water and sanitation. Finally, because it is an interpretation of the UN Covenant on Economic, Social and Cultural Rights, the Human Rights Council resolution can be seen as covering second generation rights, as it, like the rights to food and adequate housing, emanates from the right to an "adequate standard of living" contained in that Covenant.

Concern has been raised that this resolution refers to the right to "safe drinking water," not the right to "water," and that some countries might interpret this to say they are only responsible for water for personal consumption. Amnesty International explains, however, that the dictionary definition of "drinking water" refers to water that is suitable to drink, regardless of the use to which it is put, such as washing and food production. Moreover, there was and remains some concern about one provision of the Human Rights Council resolution. Operating Paragraph (OP) 7 states that the Council "recognizes that States are free to opt to involve non-State actors in water and sanitation services provisions," meaning they are allowed to contract water services to the private sector. Civil society groups argue that if this provision was added to counter the General Assembly resolution (thus making it more palatable to countries like the United States), it is unnecessary, in that no mention of methods of delivery were included in the former and private delivery was not specifically ruled out. They also argue that OP7 contradicts OP6, which clearly says that States have the primary obligation to uphold the right to water and sanitation, and this includes where States might delegate service delivery to third parties. In a letter to the Human Rights Council drafted by

U.S.-based Corporate Accountability International and signed by many groups around the world, civil society stated its concern: “We fear that the meaning of OP7 could be misconstrued as encouraging States to seek involvement of non-State actors as a preferential option, when the current understanding of the human rights framework with regard to non-State actors is that human rights law is neutral and does not favour non-State actors over public providers.”

Indeed, the private sector has suddenly started to declare its support for the right to water. “Private water operators throughout the world celebrate the recognition of the Human Right to Water and Sanitation by the United Nations General Assembly,” declared AquaFed, the International Federation of Private Water Operators in a press release the day after the adoption of the first resolution.[15] Now, it added, is the time to turn the “Right into a reality.” In a February 2011 newsletter, Veolia, the French water transnational private water corporation, cited the two UN resolutions as mirroring its own reasons for being in business: “Providing essential services to those who are deprived is one of the most important responsibilities in the business of Veolia Environment.”[16] This cynical attempt to appropriate the struggle for the right to water by the very interests who had so opposed it sounded the alarm in some circles.

However, Ashfaq Khalfan notes that OP7 should be read together with other provisions of the Human Rights Council resolution that go a long way to safeguard the public right. OP8 calls for full transparency and free and meaningful participation of concerned local communities in the planning of service provision; the need to integrate human rights into all impact assessments throughout the process of ensuring service provision; and the adoption of an effective regulatory framework for all service providers in line with the human rights obligations of States as well as proper monitoring and enforcement of these regulations. Amnesty International notes that the Human Rights Council resolution reaffirms that States have the primary responsibility to ensure the full realization of all human rights and the delegation of safe drinking water and sanitation to a third party does not exempt the State from these obligations. As well, OP9 sets up strict accountability standards for “non-State” service providers, standards that had not existed before. However, it is clear civil society will have to monitor this situation closely to be sure the intent of the two historic resolutions is not undermined by private interests. This means we will have to use the legal criteria set out in General Comment 15 and the 2010 Statement on the Right to Sanitation, to show the gap between the words and actions of corporations.

What obligations do the Right to Water and Sanitation resolutions confer on governments?

"Through a rights-based approach, victims of water pollution and people deprived of necessary water for meeting their basic needs are provided with access to remedies. In contrast to other systems of international laws, the human rights system affords access to individuals and NGOs."

- World Conservation Union

Whether or not they voted for the two resolutions, every member nation of the United Nations is now obligated to accept and recognize the human right to water and sanitation. Every member nation must take necessary steps to ensure that everyone in their country has access to water and sanitation as soon as possible, compatible within the "progressive realization" framework that recognizes that some governments will need more time and assistance than others to meet these goals. While no country is required to share its water resources with another country, there is an understood obligation that wealthier States will contribute sufficient international assistance necessary to complement national efforts in developing countries. And every member nation 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.

As outlined in the Human Rights Council resolution, each member State is expected to develop appropriate tools and mechanisms, which may include legislation, comprehensive plans and strategies, including financial ones, to progressively achieve the full realization of the new obligations. Each member state is expected to provide services in areas that currently have none, as well as in underserved areas. States must ensure full transparency of the planning and implementation process and the active, free and meaningful participation of concerned local communities and other stakeholders while paying particular attention to vulnerable and marginalized groups. This participation must respect the principles of non-discrimination and gender equity. States must integrate human rights into impact statements throughout the process of ensuring water service provision. They must adopt and implement regulatory frameworks for all service providers in line with the human rights obligations, and allow public regulatory institutions of sufficient capacity to monitor and enforce those regulations and ensure effective remedies for human rights violations by putting in place accessible accountability mechanisms at the appropriate level.

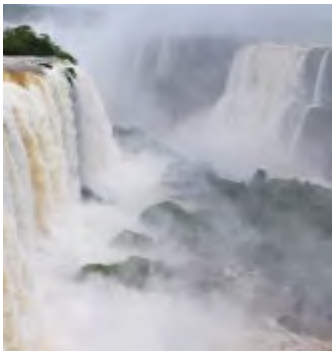
There are three obligations imposed on States with the recognition of a human right. The first is the *Obligation to Respect*, whereby the State must refrain from any action or policy that interferes with the enjoyment of the human right. For water, this would mean, for instance, that no one should be denied essential water services because of an inability to pay. The second is the *Obligation to Protect*, whereby the State is obliged to prevent third parties from interfering with the enjoyment of the human right. This would mean, for instance, protecting local communities from pollution and inequitable extraction of water by corporations or governments. The third is the *Obligation to Fulfil*, whereby the State is required to adopt any additional measures directed toward the realization of that right. This might mean, for instance, enlarging public water services and investing in water infrastructure.

The Centre on Housing Rights and Evictions, which has been a leader in the struggle for the right to water and sanitation at the UN for many years, points to several ways in which this right is significant to those who have been excluded.

It gives priority to people without access to water and places the onus on governments to ensure water services for all in a pro-poor manner. In too many cases, States construct expensive services that serve a small privileged fraction of the population rather than low-cost alternatives that would provide water for a greater number of people. As well, access to clean water now becomes a legal entitlement, rather than a mere charity or a commodity, and individuals and groups can hold State and other actors to account. The human right to water prevents deliberate discrimination and neglect of vulnerable and marginalized communities (such as informal settlements) by governments or local authorities in order to exclude communities seen as undesirable. Communities living in poverty take a much larger role in decision-making processes. The human right to water requires genuine consultation and the participation of communities affected by the lack of water service delivery and conservation of local water resources. Finally, says COHRE, governments and the international community are now held accountable to ensure the right to water and UN human rights institutions can monitor whether States have implemented their commitments and publicly point out when they have failed to do so.

Fulfilling the right to sanitation poses its own challenges. Amnesty International says that the right to sanitation "means that people should not be left with no option but to defecate in the open, or into a bucket or a plastic bag. Women and girls should not have to choose between going to a public toilet and risking sexual violence. They should not – due to lack of toilets in schools – be forced to choose between education and dignity. Children should not be in a situation where lack of an adequate toilet or lack of information about safe hygiene puts them at risk of death from diarrhoea." The Special Rapporteur has defined sanitation as "a system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene." According to COHRE, to meet human rights requirements, sanitation must be: safe, to effectively prevent human, animal and insect contact with excreta, and toilets and latrines must provide privacy and a safe and dignified environment for all; physically accessible, within reach or in the immediate vicinity of each household, educational institution or workplace and available for use at all times of the day or night along with associated services such as the removal of wastewater and latrine exhaustion; affordable, without reducing the individual's or household's capacity to acquire other essential goods and services, such as food, education and healthcare; and culturally sensitive, using appropriate local technology and giving attention to gender sensitivity and the need for separate male and female public facilities.

Governments are required to undertake the three obligations for the right to sanitation as well as for water. Under the *Obligation to Respect*, governments must not prevent people from accessing sanitation by arbitrarily interfering with customary or traditional arrangements for sanitation without providing acceptable alternatives. Under the *Obligation to Protect*, governments are obliged to ensure that private individuals or groups do not prevent anyone from accessing safe sanitation by charging, for example, excessively for the use of toilets. Under the *Obligation to Fulfil*, governments



must facilitate access by ensuring that appropriate standards and regulations are in place to assist individuals in constructing and maintaining toilets. Where individuals or groups are unable to provide sanitation services for themselves, governments must provide the necessary assistance, including information, training and access to land.[17]

Finally, it is crucial that individual States themselves recognize the right to water and sanitation in their own constitutions. The embrace by nation-state governments of the right to water and sanitation will not be complete until it is recognized in domestic legislation and constitutions. Some countries have already amended their constitutions to this effect. South Africa included water as a human right in its new constitution when Nelson Mandela formed his ANC government and others, such as Ethiopia, Ecuador, Kenya, Bolivia and the Dominican Republic followed. In 2004, the citizens of Uruguay became the first in the world to vote for the right to water after a citizen-led plebiscite resulted in a successful ballot referendum requiring a constitutional amendment. The language of this amendment not only guaranteed water as a human right but also said that social considerations must now take precedence over economic considerations when the government makes water policy, and that water is a public service to be delivered by a state agency on a not-for-profit basis. Movement groups in other countries such as Mexico and Colombia are following suit with popular calls for a similar ballot referendum.

Other countries, such as The Netherlands, Belgium, the United Kingdom and France have adopted state resolutions recognizing the right to water of their people. Even some sub-national governments such as California have introduced right to water laws, and some regional blocks are also moving towards legislation. In January 2011, The European Parliament's Subcommittee on Human Rights held a hearing on actions and measures of Member States to ensure compliance with the new right to water and sanitation resolutions, and on World Water Day in March 2011, put out a statement reaffirming its support for the right to water and sanitation as "part of the human right to an adequate standard of living." The Vatican recently recognized the human right to water and added that water is "not a commercial product, but rather a common good that belongs to everyone."[18]

Clearly, some governments are beginning to move directly to address the human right to water and sanitation while others are stalling or outright avoiding the issue. This sets out a clear mandate for the communities, groups and movements fighting for water justice in the months and years ahead.

How should the global water justice movement promote the Right to Water and Sanitation?

"We are the ancestors of our grandchildren's children. We look after them, just as our ancestors look after us. We aren't here for ourselves. We are here for each other and for the children of our grandchildren."

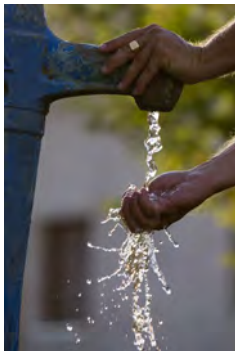
- Roy Sesana, Kalahari Bushmen leader

The two UN resolutions recognizing the right to water and sanitation have had their first test and passed with flying colours. For several decades, the government of Botswana had been forcibly and violently evicting the Kalahari Bushmen from their traditional lands in the Central Kalahari Game Reserve. Then in 2002, the government smashed the Bushmen's only major water borehole to secure the eviction of those who remained behind. Diamonds had been discovered on the lands and the government gave priority for land and water access to the mining companies and tourism. The Bushmen (working with Survival International) took their government to court and in 2006, won an important victory that allowed them to return to their ancestral homeland. However, they did not win back the right to their water sources in that decision, so the Bushmen appealed to gain access to their broken borehole. One week before the UN General Assembly voted to recognize the right to water and sanitation, a High Court judgement again denied the Bushmen their water rights.

However, in a momentous January 2011 decision citing the UN's new recognition of the right to water and sanitation, Botswana's Court of Appeal unanimously quashed the earlier ruling and found that the Bushmen have the right to use their old borehole as well as the right to sink new boreholes and called their treatment by the government "degrading." In its judgement, the Court said it is "entitled to have regard to international consensus on the importance of access to water" and referenced the two UN resolutions. Said one of the Bushmen of the decision: "We are very happy that our rights have finally been recognized. We have been waiting a long time for this. Like any human beings, we need water to live."[19]

Like governments, the global water justice movement should be guided by the three obligations that frame next steps when the UN recognizes a new right. The major difference, of course, will be that our movement will try to expand the scope of each of these obligations, while many of our governments will do their best to limit them if they address them at all. So first and foremost, it is urgent that the global water justice movement in each country call on its government to draft a plan of action as outlined above and commit to fulfilling its responsibility in realizing the intent of the two resolutions. This may be as simple to start as writing to the government outlining its obligations and demanding to know the government's plan of action. Finding media sources to report this correspondence is important, as is, of course, social media, including our international communications systems, so we can enlist others to embarrass recalcitrant governments. We should also consider court action similar to that taken by the Kalahari Bushmen, as most countries have a rule that they have to interpret domestic law in light of international obligations.

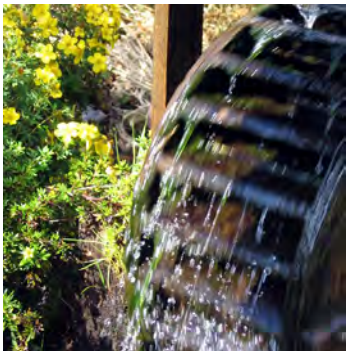
So our movement should be promoting the right to water and sanitation based on the broadest possible interpretation of the three obligations. Using the *Obligation to Respect*, we need to assert that no government now has the right to remove existing services, as the government of Botswana did to the Kalahari Bushmen, or as authorities in Detroit, Michigan in the United States did to tens of thousands of residents when they cut off their water supply because they couldn't afford to pay



the rising water bills, or as the City Of Johannesburg does when it denies water to residents unable to pay for water meters. Using the *Obligation to Protect*, we need to challenge any laws or practices that actually remove or contaminate local water sources as a violation of the right to water. Examples include: public auctioning of water rights in Chile to foreign companies, leaving local farmers and Indigenous peoples without water; sand mining in Tamil Nadu India, where sand being removed from local rivers for urban construction is destroying watersheds; dam construction in Turkey where rural communities and their land and water are being submerged by the construction of thousands of dams; and the destruction of local water sources by foreign mining companies all over the world.

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. This will mean a re-prioritization of domestic and international budgets. In many communities of the Global South, for instance, tourists have far more access to clean water and sanitation than local residents. Many governments also often favour military budgets and industrial and resource exploitation over providing basic services to their people. Nigerian environmental rights activist Nnimmo Bassey points out that his government gets huge revenues from oil production, yet, rather than provide its people with water, it turns to international aid agencies and the World Bank to support water provision, which in turn give the contracts to private sector corporations. Our movement must continue to challenge the practice by the World Bank and its regional counterparts to promote privatization of water services in the Global South and urge every UN agency as well as the UN General Assembly to support public water and sanitation services.

This will mean strongly supporting the stated intention of Bolivia to introduce a resolution to the General Assembly blocking the sale of public water services to private companies. It will also mean continuing to challenge the prominent role of the large water companies involved with the UN in such bodies as the Global Compact and the CEO Water Mandate. 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.[20] Civil society will also have to look for ways to promote the right to water and sanitation in other UN venues and conferences, such as Rio+20 (Earth Summit, 2012); use other instruments such as the International Criminal Court where we could argue that withholding water access to civilians during a conflict is a war crime; and promoting the citation of the resolution in other resolutions and treaties, which make it a living concept. As well, the Committee on Economic, Social and Cultural Rights, the body that monitors implementation of the Covenant, was recently authorized to receive and consider individual human rights communications relating to the Covenant, and this now includes concerns about the denial of the human right to water and sanitation.



As we move forward to implement these newly recognized rights, special consideration must be given to certain groups. Women are disproportionately responsible for water management in their families and communities, and disproportionately affected by the absence of clean water and the lack of private sanitation facilities. Yet as the Women's Environment & Development Organization reminds us, women are often left out of policy and decision-making spheres.[21] Similarly, Indigenous peoples are disproportionately victims of water theft, water contamination on their territories, and forcible displacement from their land and watersheds. The UN Declaration on the Rights of Indigenous Peoples clearly recognizes the right of First Nations to control their traditional water resources, to participate in all decision-making in matters that affect their rights, and not to be dislocated without free, prior and informed consent. Defending the rights of women and Indigenous communities and standing in solidarity with their struggles must be a priority for our movement.

Workers are another important component of this network. When water services are privatized, public sector unions lose members and workers are inevitably laid off while the private company looks for ways to make profit. Public Services International, the global federation of public sector unions, has been a tireless fighter for the rights of workers and their families and the need for governments to provide clean, public, accessible water for all. It is crucial for unions and working people to be at the forefront of the struggle for the Right to Water and Sanitation, and for other groups to support their rights to good working conditions and remuneration within the public system.

Rural communities, like peasant and indigenous communities, are vulnerable as big urban centres fan out looking for new sources of water. An inseparable part of the right to water and sanitation is control and sovereignty of local communities over their natural heritage, and therefore, over the management of their sources of water and watersheds. Sustainable and equitable allocation of water resources depends on cooperation among community members; local water sources must be managed with the community's full participation. Local stewardship is the best guardian of the principles of sustainability and justice, and local water sources must be governed by the lived experience of the local community.

Next steps in the realization of the two resolutions must be built on justice for all these groups within our movement.

Conclusion

"The day will come when the failure of our laws to recognize the right of a river to flow, to prohibit acts that destabilize the Earth's climate, or to impose a duty to respect the intrinsic value and right to exist of all life, will be as reprehensible as allowing people to be bought and sold. We will only flourish by changing these systems and claiming our identity, as well as assuming our responsibilities, as members of the Earth community."

- Cormac Cullinan[22]

When the United Nations recognized the human right to water and sanitation, humanity took a collective step forward in its evolution. But this alone is not enough. The dominant economic system of unbridled, unregulated market capitalism and unlimited growth has brought the planet to the brink of an ecological crisis and created income disparities and economic injustice unparalleled in recent history. We now face a situation of extreme concentration of economic and resource power, which has led to both environmental degradation and the social, economic and environmental exclusion of the majority of the world's people. No recognition of the right to water and sanitation can alone deliver water and sanitation to the billions living without them as long as this system goes unchallenged.

To truly implement the spirit of the right to water and sanitation for all, we must confront the current economic system and work to create new economic, social and resource policies based on the principles of inclusion, equity, diversity, sustainability, and democracy. We need to promote local sustainable food production practices, local sustainable goods production, and a conversion from fossil fuels to safe, alternative energy sources. Economic structures should be designed to move economic and political power downward, toward the local, rather than the global, and the power of transnational corporations and speculation capital must be constrained and brought under the rule of law. The rush to privatize every area once considered a common heritage must end.

To truly share the world's water sources in an equitable and responsible way, we must recognize water as a shared common heritage to be fiercely protected, carefully managed, and equitably shared. Because it is a flow resource necessary for life and ecosystem health, and because there is no substitute for it, water must be regarded as a public commons and a public good and preserved as such for all time in law and practice. Freshwater is central to our very existence and must be protected by public trust law for the common good, not for individual profit. Of course there is an economic dimension to water, but under the public trust, governments are obliged to protect water sources in order to sustain them for the long-term use of the entire population, not just the privileged few. This will require taking water out of all trade and investment agreements and removing the power of corporations to sue governments under these agreements if governments move to constrain corporate activity in order to protect watersheds and water supplies.

Another imperative to ensure the right to water and sanitation is to challenge the market-driven development paradigm and place human rights-based approaches resistant to the dominance of free-market ideology at the heart of all development work. Ellen Dorsey of the Wallace Foundation notes that this would ensure the meaningful participation of people affected by development programs, address the root causes of poverty, discrimination and exclusion, and give the most marginalized communities priority in law and practice. She suggests renaming the Millennium Development Goals, Millennium Development Rights.[23]

As we move to define and expand the notion of the right to water and sanitation, we also need to

explore ways to enlarge the definition of rights to include third generation rights, such as the right to self-determination, group and collective rights, and the right to local natural resources. In doing so, we would be recognizing the concerns of many cultural and traditional communities that the UN rights-based system may be limited to a more Western notion of individual rights at the expense of other, more collective ways of advancing human rights. The United Nations Declaration on the Rights of Indigenous Peoples is an excellent example of third generation rights in that it includes among its stated rights: self-determination; distinct political, legal, economic, social, cultural and spiritual institutions; traditional knowledge; dignity and well-being; conservation and protection of natural resources on indigenous territory; and free and informed consent on any resource project affecting them. The definition of human rights is not static, much as some would like to have it rigidly and narrowly defined. The issue of water and sanitation offers us an excellent opportunity to explore this notion of rights that one day, will extend to water itself.

To ensure that there will be adequate supplies of clean accessible water for all, we will eventually need to create a body of law for the natural world. In the eyes of most Western law most of the community of life on Earth remains mere "property," and water is increasingly seen as another commodity to be exploited. Modern humans tend to see water as a resource for our pleasure, convenience and profit and not as the essential element in a living ecosystem that gives us all life. We need to develop laws and practices to protect water, outside its usefulness to humans, and to restore and permanently protect watersheds and water sources. We need to adopt laws, like Ecuador has done, asserting that natural communities and ecosystems possess the inalienable right to exist, flourish and evolve, and, as much as possible, leave water where it is, understanding its vital role in nourishing ecosystems and protecting the healthy functioning of the hydrologic cycle. We cannot build a body of rights for humans without the corresponding body of rights for the Earth and other species. To this end, it is crucial to support the campaign to have the UN adopt the Universal Declaration on the Rights of Mother Earth to eventually serve as the companion to the Universal Declaration of Human Rights.[24]

Endnotes

1 Anders Berntell, Executive Director of the Stockholm International Water Institute, *UN Lagging on Water and Sanitation Development Goals*, Thalif Deen, IPS News, September 2, 2010

2 Marc Bierkens, International Groundwater Resource Assessment Center, *Groundwater Depletion Rate Accelerating Worldwide*, Utrecht University, September 23, 2010

3 McKinsey and Company and World Bank, *Charting our Water Future*, 2009

4 Peter McIntyre and Charles Vorosmarty, *Global Threats to Human Water Security and River Biodiversity*, *Nature*, September, 2010

5 Pacific Institute and United Nations Environment Programme, *Clearing the* Waters, *A Focus on Water Quality Solutions*, 2010

6 Asit Biswas, *Water Pollution Expert Derides UN Sanitation Claims*, *The Guardian*, April 26, 2010

7 General Assembly, *Human Rights Council Tests Declaring Water, Sanitation Human Rights "Breakthrough",* UN Department of Public Information, October 25, 2010

8 *Africa Water Atlas*, United Nations Environment Programme, 2010

9 Peter Gleick, *The World's Water 2008-2009, The Biennial Report on Freshwater Resources,* Pacific Institute

10 *Access to Water: A Human Right or a Human Need*, Environment News Service, March 27 2009

11 Steven Shrybman, *In the Matter of the United Nations Human Rights Council Decision 2/104: Human Rights and Access to Water*, April 15, 2007

12 *Annual Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments*, United Nations General Assembly, August 16, 2007

13 As calculated by Brent Patterson, Director of Campaigns and Communications for the Council of Canadians.

14 *United Nations: Historic re-affirmation that rights to water and sanitation are legally binding*, Amnesty International Press Release, 1 October 2010

15 *Private Water Operators celebrate the recognition of the Human Right to water and sanitation by the United Nations General Assembly,* AquaFed press release, July 29, 2010

16 *La Lettre*, *Réduire les inégalités par l'accès aux services essentiels*, Veolia Environment, February 2011

17 *Sanitation, A Human Rights Imperative*, COHRE, WaterAid, UN-Habitat, Swiss Agency for Development and Cooperation, 2008

18 *Vatican official says cheap access to water a right for all*, *Catholic News Service*, February 25, 2011

19 *Victory for Kalahari Bushmen as court grants right to water*, Survival International Press Release, January 27, 2011

20 *UN's Watchdog says the General Assembly Needs to Rein in "Self-Expanded" Global Compact Initiative*, *Fox News,* March 15, 2011

21 *Water is a vital natural resource and a human right*, Women's Environment & Development Organization, Press Release, World Water Day, 2011

22 *Wild Law, A Manifesto for Earth Justice,* Cormac Cullinan, Chelsea Green (second edition) 2011

23 *New Rights Advocacy, Changing Strategies of Development and Human Right NGOs,* Paul Nelson and Ellen Dorsey, Georgetown University Press, 2008

24 *The Rights of Nature, The Case for the Universal Declaration on the Rights of Mother Earth*, Council of Canadians, Global Exchange and Fundaçion Pachamama, 2011

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