

The Right to Water as a Human Right

by Ignacio J. Alvarez¹

Introduction

Water, whether consumed directly or used for such basic needs as sanitation, cleansing and growing food, is essential to human life. Since three-quarters of the water consumed by humans is used in agriculture, water shortages or contamination can lead to famine, disease and even death.²

The United Nations Department of Technical Cooperation for Development has said that:

No resource is more basic than water. Water is essential for life, crucial for relieving poverty, hunger and disease and critical for economic development. Despite enormous improvements over the past 15 years, hundreds of millions of men, women and children still do not have proper water for drinking and sanitation. Many remain unemployed because water resources cannot support agricultural or industrial growth. Water problems ultimately end up as “people” problems.

As world population increases and development efforts expand, water needs can only increase. By the end of the century, global water use is expected to reach twice the level of 1980.³

While the consumption of water has increased constantly through the years and the number of human beings using and relying upon it continues to multiply at an alarming rate, the amount of water on earth remains finite and constant, being that the total supply of water neither grows nor diminishes. It is believed to be almost precisely the same now as it was 3 billion years ago.⁴ In this sense, there exists a steady and continuing reduction of the amount of fresh water on earth per individual that will inevitably lead to intensified competition for increasingly scarce water.⁵

The demand for water stimulates invention, and the facility of obtaining it is forever increasing the demand. In light of this observation, it is perhaps not surprising that the most technologically advanced societies consume the most water on a per capita basis. The average person living in the United States, for example, consumes over 70 times as much water annually as the average resident of Ghana.⁶

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² McCafrey, Stephen C., A Human Right to Water: Domestic and International Implication, 5 Geo. Int'l Env'tl. L. Rev. 1, at 5. (1992).

³ U.N. Dept. of Technical Cooperation for Development of Water Resources, (undated brochure), cited in McCafrey, *supra* note 1, at 8.

⁴ Luna B. Leopold & Kenneth S. Davis, Water 33 (1966), cited in McCafrey, *supra* note 1, at 3.

⁵ McCafrey, *supra* note 1, at 2.

⁶ *Id.*, at 4.

Therefore, the point on whether water is a human right is very important. Equally important is the consequence on whether states have an obligation to provide its citizens with water of adequate quality and quantity for their health and sanitation needs.

I. LEGAL FRAMEWORK

The right to water is not specifically mentioned in the 1948 Universal Declaration on Human Rights; in the 1966 Covenant on Economic, Social and Cultural or in the 1966 Covenant on Civil and Political Rights. Nevertheless, the right to water is understood as part of the right to life; as a component of the right to health, and as part of the right to food. However, little attention has been given to the question of whether there is a specific *right to water*, and, if so, what the contours of such a right may be.⁷

With respect to water as part of the right to life, the right to life comprises the right of every human being not to be deprived of his life and the right of every human being to have the appropriate means of subsistence and a decent standard of living.⁸ In this sense, construed as including the right to appropriate means of subsistence, the right to life would clearly encompass the right to sanitary drinking water.⁹

The right to water can also be viewed as part of the right to health. The Constitution of the World Health Organization (WHO) in 1946 declared the "enjoyment of the highest attainable standard of health" to be a "fundamental right" recognized by the international community.¹⁰ In this respect, one common definition of health is a "state of complete physical, mental and social well-being and not merely the absence of disease or infirmity".¹¹ It has been argued, that applying these standards, the right not to suffer from cancer, liver damage, disorders of the nervous system, or birth defects as a result of drinking contaminated water, is a fundamental right.¹²

In relation to water as a component of the right to food, "the right to food should be interpreted as the right to receive life-sustaining nourishment, or sustenance, so that it would include the right to potable drinking water sufficient to sustain life."¹³

The principal importance of the distinction on whether the right to water is part of the right to life, or of the right to health or the right to food is, as noted *infra*, the difference resulting to states' obligations related to this right, and therefore, the different methods of enforcing it.

⁷ *Id.*, at 1.

⁸ Human Rights Committee, General Comments adopted under Article 40, paragraph 4 of the C.P. Covenant, U.N. Doc. CCPR/C/21/Rev. 1 (may 19,1989) at 5.

⁹ McCafrey, *supra* note 1, at 10.

¹⁰ See Constitution of the World Health Organization, opened for signature, July 22, 1946, 62 Stat. 2679, 14 U.N.T.S. 185.

¹¹ *Id.*

¹² Juss, Satvinder, Global Environmental Change: Health and the Challenge for Human Rights, 5 Ind. J. Global Leg. Stud. 121, at 150.

¹³ McCafrey, *supra* note 1, at 23.

A. Universal Declaration on Human Rights

Article 25 of the Universal Declaration on Human Rights proclaims that "[e]very one has the right to a standard of living adequate for the health and well-being of himself and of his family, including food...". McCaffrey sustains that the right to water is implicit in the right to an adequate standard of living, because "it seems obvious that such a standard of living could not exist without an adequate supply of water suitable for drinking. Further, unless food were imported from other states, the 'right' to an adequate standard of living presumes an adequate supply of water to sustain agriculture to the extent necessary to feed a state's population".¹⁴

The word "including" in article 25 of the Declaration implies that there can be other components of the right to an adequate standard of living. In this sense the right to water, whether conceived as part of the right to health, as part of the right to food or a right characterized by its autonomy, is a fundamental component of the right to an adequate standard of living.

B. Covenant on Economic, Social and Cultural Rights

The Covenant on Economic, Social and Cultural Rights establishes more detailed provisions from which the right to water can be inferred. Article 11(1) establishes that the states recognize the right of everyone to an adequate standard of living for himself and for his family, including adequate food. This part of the article is similar in nature to article 25 of the Declaration, from which, as noted above, the right to water has been deduced.

Article 11(2) refers to state obligations related to the right of everyone to be free from hunger, saying that states shall take measures to improve methods of production of food by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources. The right to water could also be inferred from this part of the article. Evidently, the most efficient development and utilization of natural resources in order to improve methods of food production shall take into special account aspects related to quality, distribution and utilization of water.

Article 12 of the Covenant, related to the right to health, includes as part of the necessary steps to be taken by states to achieve the full realization of this right, those necessary for the reduction of infant mortality, and those necessary for the improvement of all aspects of environmental and industrial hygiene. Given the close relation between safe drinking water and infant mortality, as well as the link between environmental and industrial hygiene, it could be very well argued that the right to water is also implied in article 12 of the Covenant.

¹⁴ McCaffrey, *supra* note 1, at 8.

C. Covenant on Civil and Political Rights

Article 6 of the Covenant establishes that every human right has the inherent right to life, which has to be protected by law. There are disagreements on whether the right to life could imply the right to water. It has been said that "[t]he human right to life per se ... is a civil right and does not guarantee any person against death from famine or cold or lack of medical attention".¹⁵ In this line of thought, Article 6 would not require the state to take affirmative actions to ensure that its citizens have access to adequate sustenance, but only obliges it to refrain from practicing or tolerating arbitrary deprivations of life. Therefore, it would be difficult to infer a right to water under this interpretation of Article 6.¹⁶

On the other hand, more recent and progressive doctrine adopts a more expansive interpretation of Article 6. Cancado Trindade, Judge of the Inter-American Human Rights Court, says in this sense that "under the right to life, in its modern and proper sense, not only is protected against any arbitrary deprivation of life upheld, but furthermore States are under the duty to pursue policies which are designed to ensure access to the means of survival for all individuals and all peoples".¹⁷ The Human Rights Committee has also stated that:

[The Committee] has noted that the right to life has been too often narrowly interpreted. The expression 'inherent right to life' cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially adopting measures to eliminate malnutrition and epidemics.¹⁸

Within this modern view, the right to life comprises the right of every human being not to be deprived of his life and the right of every human being to have the appropriate means of subsistence and a decent standard of living. In this context, the right to life would clearly encompass the right to sanitary drinking water.¹⁹

D. U.N. Convention on the Rights of the Child

This modern Convention which is a comprehensive human right treaty comprising economic, social and cultural rights, civil and political rights and humanitarian, that has been ratified by nearly all countries of the world, establishes in Article 24 that States parties recognize the right of the child to the enjoyment of the highest attainable standard

¹⁵ Yoram Dinstein, *The Right to Life, Physical Integrity, and Liberty*, in *The International Bill of Rights*, at 114 (L. Henkin ed., 1981), cited in McCafrey, *supra* note 1, at 9.

¹⁶ McCafrey, *supra* note 1, at 9.

¹⁷ Cancado Trindade, Antonio A., *The Parallel Evolutions of International Human Rights Protections and of Environmental Protection and the Absence of Restrictions on the Exercise of Recognized Human Rights*, 13 *revista IIDH* 35, 51 (1991).

Human Rights Committee, *General Comments adopted under Article 40, paragraph 4 of the C.P. Covenant*, U.N. Doc. CCPR/C/21/Rev. 1 (may 19, 1989) at 5.

¹⁹ McCafrey, *supra* note 1, at 10.

of health and the right to facilities for the treatment of illness and rehabilitation of health. To the end of pursuing the full implementation of this right, States shall take, according to the article, appropriate measures to “combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water...”.

This treaty is therefore the main universal instrument that explicitly refers to water as a human right. Within this context, water is seen as part of the measures needed to ensure the right to health. Nevertheless, it is important to highlight that the above article makes some distinction between food and water, assuming that the right to water is not the same subject as the right to food.

E. Humanitarian Law

Under humanitarian law (the laws governing war) the right to water is recognized and protected. McCaffrey points out that "It is a well established rule of the law of armed conflict that the enemy's water supply may not be poisoned or contaminated".²⁰ In this respect, article 54, paragraph 2 of the 1977 Protocol I Additional to the Geneva Conventions, related to the protection of civilians in conflicts of an international nature, states that:

It is prohibited to attack, destroy, remove or render objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse party, whatever the motive, whether in order to starve out civilians, to cause them to move away or for any other motive.²¹

F. U.N. Standard Minimum Rules for the Treatment of Prisoners

The United Nations has also explicitly established the right to water in its Minimum Rules for the Treatment of Prisoners. In its article 20, whose title is "Food", the mentioned instrument says that

- (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.
- (2) Drinking water shall be available to every prisoner whenever he needs it.²²

²⁰ McCaffrey, *supra* note 1, at 20.

²¹ Protocol I Additional to the Geneva Convention of Aug. 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Dec. 7, 1978), 1125 U.N.T.S 4, at Art. 54, para.2, repinted in 16 I.L.M. 1391.

Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611,

It is interesting to note that although the right to drinking water is located under the title of food, it is construed in a paragraph different to that dealing with the right to food. This could be another manifestation of the fact that it is not quite clear whether the right to water is comprised in the right to food, part of the right to health or a right by itself.

G. Inter-American Human Rights Instruments

Although neither the American Declaration of the Rights and Duties of Man nor the Inter-American Convention on Human Rights establishes an explicit right to water, the Declaration understands the right to food as part of the right of every person to the preservation of his health. Within this context, the Inter-American Commission has dealt with the right to water. For example, in its 1997 Report on the Development of Human Rights in Cuba, the Commission analyzed the impact of the U.S. embargo on Cuba, and cited a report of the American Association for World Health, according to which

The deteriorating water supply in Cuba has increased the incidence of water-borne illnesses such as typhoid fever, dysentery and viral hepatitis. For example, the mortality caused by acute diarrhea rose from 2.7 per 100.000 inhabitants in 1989 to 6.7 per 100.000 in 1994. The rate of illness from amoebic and bacillary dysenteries showed a sharp increase during the same time.²³

H. National Laws

The right to water is diversely treated in national laws. While many countries do not have this right in their laws, there are examples in which the right is given such importance that it is placed in the Constitution, while others have enacted specific laws on the matter.

The 1996 South-African Constitution, for example, rules in its section 27(b) that “Everyone has the right to have access to (...) sufficient food and to sufficient water”. The United States, for its part, has the Safe Drinking Water Act of 1974, which directed the Human Health Subcommittee of the United States Environmental Agency (EPA) to ensure that both public and non-community water systems meets minimum standards for protecting public health.²⁴

II. Components of the Rights and State Obligations

To accept that water is a human right would presume at least a right to a sufficient supply of safe drinking water to sustain life. This right would entail a correlative obligation of the state to provide such a supply of water.²⁵

annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977).

²³ Inter-American Commission on Human Rights, Annual Report 1997. OAS/SER.L/V/II.98, at 950.

²⁴ Juss, *supra* note 11, at 13.

²⁵ McCafrey, *supra* note 1, at 12.

The right to water comprises two main aspects: the water consumed directly by human beings and the water used for such basic needs as sanitation, cleansing and agriculture.

In regards to water consumed directly by human beings, or safe drinking water, the Human Health Subcommittee of the United States Environmental Agency (EPA) Science Advisory Board, states that contamination of drinking water is one of four categories classified as a "relatively high risk" to human health. The Subcommittee adds that it can become contaminated at the original water source, during treatment, or during distribution to the home. If the drinking water originates from surface water, such as river or lake, "it can be exposed to acid rain, storm water run-off, pesticide run-off, and industrial waste". If drinking water originates from ground water such as private wells and some public water supplies, it generally takes longer to become contaminated, but the natural cleansing process also may take much longer.²⁶

The quality of the water used for such basic needs as sanitation, cleansing and growing food, is also equally important. An example of this is the situation in Chile, in which much of the agricultural land is irrigated with water from the same rivers into which most domestic and industrial waste is dumped. This resulted in an outbreak of cholera in 1991, largely because Santiago, Chile's capital, has no water treatment plans.²⁷

From the point of view of the individuals, the human right to drinking water comprises both the right to an adequate supply of water and the right to quality water. The state obligations correlative to this right would differ on whether the right to water is understood as part of the right to life or as part of the right to health, of the right to food or as a proper right by itself.

If the right to water is an element of the right to life, thus protected under article 4 of the Covenant on Civil and Political Rights and under other regional instruments, states have "an immediate obligation to 'respect and to ensure' this right and to take whatever other necessary measures to bring about that result."²⁸

On the other hand, if the right to water is viewed as forming part of the right to health, or of the right to food, or even as an "independent" right included in the standard of adequate standard of living, it should be understood as recognized by article 11 or article 12 of the Covenant on Economic, Social and Cultural Rights. In this sense, on a traditional point of view, the states obligations related to the water would be determined by article 2 of the Covenant, according to which states agree to take steps, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant.

²⁶ Cited by Juss, *supra* note 11, at 130.

²⁷ Nathaniel C. Nash, *Scrubbing the Skies Over Chile*, N.Y. Times, July 6, 1992, at 7, cited by McCafrey, *supra* note 1, at 7. McCafrey, *supra* note 1, at 9, citing Burghental, Thomas, *International Human Rights in a Nutshell* 29-33 (1988).

The result of these different approaches to state obligations under the two Covenants seems odd, to say the least. As McCaffrey says, it causes one to wonder whether there are indeed sound reasons in the nature of the obligations undertaken by states parties under the two covenants, and it reveals several defects in the differential approach to the obligations under the two covenants. In particular, it seems questionable whether all of the rights under the Covenant on Economic, Social and Cultural Rights are appropriate for progressive implementation, according to available resources, since

It may well be that certain rights under that instrument either are not of a fundamental nature or would require the establishment of governmental infrastructures and the like to ensure their fulfillment... But other rights under the E.S.C. Covenant can hardly be described as being anything but fundamental. Indeed, article 11 itself refers to the 'fundamental right of everyone to be free from hunger'. This basic right can only be interpreted as a right to life-supporting sustenance, which would include potable water.²⁹

In this sense, and taking into account the importance of the rights under the Covenant on Economic, Social and Cultural Rights concerning basic needs such as food and water, a strong argument can be made that the standard to be applied in determining whether governments have adequately safeguarded those rights approaches the level of obligations under the Covenant on Civil and Political Rights.³⁰ For these reasons, it could be affirmed that water is a basic human right that states have the immediate obligation to respect, to promote, to protect and to fulfill.

Therefore, the state has the obligation to fulfill the right to water for every individual. This is the most important obligation of the state in regard to the right to water, because the state usually has control over water resources and over water distribution machinery. The state also has the obligation to respect the right to water to those who are able to provide themselves with it. This implies respect for water resources owned by the individual and respect for his freedom to take necessary actions to satisfy his own water needs. The state also has the obligation to protect, which means active protection of the existing water resources against public or private subjects, such as contaminating industries. Finally, the other main state obligation is related to promotion: the state has the obligation to facilitate the opportunities by which the rights can be enjoyed. In regard to the right to water, for example, the state, under article 11(2) of the Covenant on Economic, Social and Cultural Rights, should take steps to improve measures of production of food by making full use of technical and scientific knowledge, which would include aspects related to the best use of irrigating water.

III. Measurement of States Compliance and Implementation of the Right

Measurement of state's compliance with its obligation of providing safe water can be achieved in different ways. One is by measuring access to water of the general population. This is done, for example, by UNICEF³¹ and by the United Nations

²⁹ McCaffrey, *supra* note 1, at 13.

³⁰ McCaffrey, *supra* note 1, at 15.

³¹ See, e.g., *The State of the World's Children 1996*, UNICEF, New York, 1996, at 29.

Development Programme, which shows measures in its annual Human Development Report. In that Report, the Programme offers data in the profile of human development and in the profile of human deprivation, related to the percentage of population with access to safe water and to the percentage of population without access. In this sense, the 1996 Human Right Development Report shows that in countries with high human development, an average of 84% of the population have access to safe water (showing 100% for Singapore and 71% for Argentina), while in countries with low human development the average falls to 55% (97% for Bangladesh and 12 % for Afghanistan).³² As usually happens with these indicators, these figures reveal that for different reasons, there are countries with high average human developing indicators in which the percentage of population with access to sake water is substantially inferior to some other countries with lower average human developing indicators.

Another manner of measuring a state's compliance with its obligation of providing safe water is trough the personal consequences of the lack of access to it. For example, if a child dies because of illness resulted of not having access to safe water (e.g. diarrhea), it could be very well argued, as indicated *supra*, that the state has violated his right to life.

In regards to the implementation of the right to water, there are also other ways of measuring compliance. One is through the reporting systems of the Covenant on Economic, Social and Cultural Rights and of the Convention on the Rights of the Child, for example, by requiring states to include in its reports measures adopted and progress made in achieving the full realization of the right to water. The reporting guidelines of the Committee on Economic, Social and Cultural Rights requires, for example, State parties are asked to provide (where available), indicators defined by the World Health Organization (WHO) relating to population access to safe water, disaggregated by urban and rural areas.³³

Another form of measurement is through the individual petition system of complaints of the Covenant on Civil and Political Rights and of the Inter-American Convention on Human Rights, for example, by filing individual petitions in cases of violations to right to life related to lack of access to the right to safe water.

At the national level, it is very important to ensure the enjoyment of the right by establishing a specific right to water in national laws, as done in South Africa in its 1996 Constitution, or in the United States, with its Safe Drinking Water Act of 1974.

It is also interesting to note that there is a Non-Governmental Organization called the International Water Tribunal (IWT), seated in Amsterdam that receives "complaints" concerning water use and establishes multidisciplinary "juries" of independent experts to pass on them and make recommendations for their solutions. This Tribunal heard a case

³² U.N. Development Programme, Human Developing Report 1996, at 145.

³³ Alston Philip, The International Covenant on Economic, Social and Cultural Rights, in United Nations Centre for Human Rights, Manual on Human Rights Reporting 63 (1991), cited by Chapman, Audrey R., Monitoring Women's Right to Health under the International Covenant on Economic, Social and Cultural Rights, 44 Am. U.L. Rev. 1157 (1995), at 1167.

in which the complainants charged that at least half of some seventy Arab communities in the center and north of Israel are not recognized by the state and are not connected to national drinking networks. This situation was said to have led to serious health problems caused by Israel to pressure those Arab communities to evacuate their place of residence and relocate against their will.³⁴

In conclusion, there are several ways of measuring and ensuring States compliance with their obligations related to the right to water. Certainly, one of the first and main tasks is to create conscience about the existence of the right to water, and about the importance of this right.

IV. Conclusions

Water, whether consumed directly or used for such basic needs as sanitation, cleansing and growing food, is essential to human life. Although the right to water is not specifically mentioned in the 1948 Universal Declaration on Human Rights; in the 1966 Covenant on Economic, Social and Cultural or in the 1966 Covenant on Civil and Political Rights, it can be clearly inferred from those instruments, and from other international human rights instruments.

Given the importance of the right to water, and on the base of the analysis made, the right to water is a human right that states have the immediate obligation to fulfill, to respect, to promote and to protect.

Although there are several ways of measuring and ensuring States compliance with their obligations related to the right to water, one of the first steps should be to create conscience about the existence of the right to water, and about the importance of this right. One very important aspect of this is to take into account that water is a resource that remains constant and finite.

³⁴ McCafrey, *supra* note 1, at 6.