

Backgrounder

The Right to Water

Water is essential to human life — for basic health and survival, as well as food production and economic activities. Yet we are presently facing a global emergency in which over one billion people lack access to a basic supply of clean water and over two billion do not have access to adequate sanitation, the primary cause of diseases linked to water. It has frequently been argued in the international arena that the acknowledgement of water as a human right may prove to be the most important step in addressing the challenge of providing people with this most basic element of life.

A recurring theme in the debate on water as a human right has been the recognition that water is a necessary precondition to all of our human rights. It has been argued that without equitable access to a minimum requirement of clean water, other established rights, such as the right to a standard of living adequate for health and well-being, as well as civil and political rights, are not attainable. It is widely thought that the language of the Universal Declaration of Human Rights, which has formed the building blocks of subsequent declarations, was not intended to be all-inclusive, but rather to reflect component elements of an adequate standard of living. The exclusion of water as an explicit right was due more to its nature; like air, it was considered so fundamental that its explicit inclusion was thought unnecessary.

Many policy makers and advocates have called for the recognition of water as a human right as an essential step in ensuring that action is taken on behalf of those who are suffering from lack of access to clean water

supplies. They feel that the legal obligation ensuing from such an acknowledgement of a right to water would motivate governments of both developing and donor countries to make effective changes in domestic and aid policies and resource allocation, and give citizen groups firmer ground on which to pressure governments. Furthermore, some critics of the increasing privatization of water supply services worldwide feel that recognition of a right to water would reinforce their arguments for a stronger role for the public sector rather than profit-motivated corporations in meeting such a crucial need (see backgrounder “*Supplying Water — For a Price*”).

United Nations Decision

In November 2002, the United Nations Committee on Economic, Social and Cultural Rights affirmed that access to adequate amounts of clean water for personal and domestic uses is a fundamental human right of all people. In its General Comment No. 15 on the implementation of Articles 11 and 12 of the 1966 International Covenant on Economic, Social and Cultural Rights, the Committee noted that “the human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.” While the General Comment is not legally binding on the 146 States that have ratified the International Covenant, it aims to assist and promote the implementation of the Covenant and does carry the weight and influence of “soft law”.

The Comment also emphasizes that States parties to the International Covenant have the duty to progres-

sively realize, without discrimination, the right to water, which entitles everyone to sufficient, affordable, physically accessible, safe and acceptable water for personal and domestic uses. Realization of the right should be feasible and practicable, according to the text, since all States parties exercise control over a broad range of resources, including water, technology, financial resources and international assistance, as with all other rights in the Covenant.

The decision elaborates that the adequacy of water should not be interpreted narrowly, by mere reference to the volume of water and technologies. Water should be treated as a social and cultural good, and not primarily as an economic commodity. This presents a different view from decisions taken at several international water forums in the 1990s, in which water was judged to be an economic commodity, reflecting a shift toward market-based policies that reflect the true cost of water, reduce subsidies and possibly engage the private sector in water supply services.

In his address to the Committee where the decision was taken, Mr. Sergio Vieira de Mello, UN High Commissioner for Human Rights, said that the initiative to develop a general comment on the right to water would be a meaningful contribution to the World Water Forum to be held in March 2003. It is, he said, an “integral component of the right to an adequate standard of living and indeed the right to life”.

Previous Action

Although access to clean water is a precondition to many of the rights listed in previously adopted international rights agreements, water is actually mentioned only in the Convention on the Rights of the Child. That Convention includes clean drinking water as an element of the right to the highest attainable standard of health.

Beginning in the 1970s, a series of international environment or water conferences took up the issue of access to basic resources and rights to water. The groundbreaking United Nations Water Conference held in Mar del Plata in 1977 agreed that all peoples have the right to have access to drinking water to meet their basic needs. The 1986 Declaration on the Right to Development, adopted by the UN General Assembly, includes a commitment that States shall ensure equality of opportunity for all in their access to basic resources. The Declaration implicitly includes water as a basic resource in that it states that the persistent conditions of underdevelopment in which millions of humans are “denied access to such essentials as food, water, clothing, housing and medicine in adequate measure” represent a flagrant “mass violation of human rights”.

The concept of meeting basic water needs was further strengthened during the 1992 Earth Summit in Rio de Janeiro and expanded to include ecological needs. In Agenda 21, governments agreed that “in developing and using water resources, priority has to be given to the satisfaction of basic needs and the safeguarding of ecosystems. Beyond these requirements, however, water users should be charged appropriately.”

Similarly, in the Plan of Implementation adopted at the 2002 Johannesburg Summit, governments pledged to “employ the full range of policy instruments, including regulation, monitoring ... and cost recovery of water services, without cost recovery objectives becoming a barrier to access to safe water by poor people....”

Thus, while world leaders have acknowledged that access to drinking water is a basic human right, they also recognize that the cost recovery principle should be applied for water use beyond those needs. Supply systems will not be sustainable unless there is investment to maintain and expand the systems to meet the needs of development and a growing population.