

## Q and A on the Human Right to Water

with Patricia Jones, UUSC Program Manager for Environmental Justice

### The Human Right to Water – Acting Locally to Act Globally

We can make a difference in our communities, in our state, in our country, and by acting locally, make change in the world – by adopting human right to water policies in our local communities. People living in our communities will be able to access sufficient, safe affordable water for their daily human needs, and we can make a contribution, both politically and legally, to human rights law. Each town, each county, each state, each country, each case in court, each private company that adopts a human right to water policy helps to build the international consensus, and legal understanding of human rights law. We can create political momentum for our national government to adopt strong, equitable water policies for the country.

### What is the human right to water and sanitation, where does it come from, and what is its status?

#### *Is there a human right to water and – what is it?*

There is a human right to water! The human right to water is non-discriminatory access to safe, sufficient, affordable water for daily human needs. <sup>1</sup> A UN Member State, the government, that has ratified a human rights treaty containing direct or indirect provisions for the human right to water, must “protect, respect and fulfill” the human right to water. A private actor in one of these countries must “respect” the human right to water. Unfortunately, the U.S. has not ratified the international human rights treaties that contain direct provisions, and has ratified only some of those that contain indirect provisions. The U.S. has declared that it does not recognize the indirect treaty obligations – so Americans are not protected by the human right to water!

#### *Where does the human right to water come from?*

The human right to water and sanitation is found in the “International Bill of Human Rights,” other human rights treaties, in national constitutions of several countries around the world, and in the case law of a few countries. Some private corporations have adopted a human right to water policy – such as PepsiCo and Connecticut Water.

The International Bill of Human Rights is the title given basic human rights provisions found in the Charter of the United Nations, the Universal Declaration of Human Rights, the two International Covenants on human rights and their optional protocols.

### Charter of the United Nations

The Charter of the United Nations, which the U.S. has signed and ratified, requires the UN Member States (countries are referred to international law as “States), to promote the universal respect for and

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<sup>1</sup> General Comment 15, UN Economic and Social Council, January 2003: “The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.”

observance of human rights and fundamental freedoms. What these obligations mean has evolved over time, and is still evolving, like all law at the local, national and international level.

After the UN Charter was adopted, a commission was established to draft an international bill of human rights – the Commission on Human Rights. The Commission took up the task to draft the bill; however it became clear that the competing factions would not be able to come to agreement on a treaty, so the Commission drafted a declaration and agreed to immediately take up the task of drafting two treaties. This agreement became the Universal Declaration of Human Rights (UDHR). A prominent American, former first lady Eleanor Roosevelt, was the Chair of the Commission and helped to shepherd the adoption of the Universal Declaration of Human Rights.

### **Universal Declaration of Human Rights**

The Universal Declaration of Human Rights was adopted in 1948 by the U.N. General Assembly as a resolution, a non-binding recommendation to UN Member States and originally was meant to have no force of law. There is debate among the UN Member States about what content and scope the UDHR has today, but the UDHR is generally recognized as having legal significance. The UDHR has articles that have indirect provisions for the human right to water.

The two principal human rights conventions that were adopted after the Universal Declaration of Human Rights are the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The covenant that directly affects the human right to water is the International Covenant on Economic, Social and Cultural Rights.

### **International Covenant on Economic, Social and Cultural Rights**

A UN Member State that has ratified the treaty has obligations to its citizens for the right to water. The U.S. has not ratified the Covenant and does not have obligations for the right to water under its provisions. The Secretariat for the Covenant on Economic, Social and Cultural Rights asked a group of legal experts from every legal tradition, representing all regions of the world, to come together and study the human right to water. The result of their study is an interpretation of the Covenant, [General Comment 15](#), which identifies the sources of law, the scope, and the content of the human right to water.

The other conventions that contain provisions for the human right to water are described the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), Convention on the Rights of Persons with Disabilities (CRPD – not yet in force), ILO Convention No. 161 of 1985 on Occupational Health Services, African Charter on the Rights and Welfare of the Child, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. There are human rights instruments that have adopted principles with direct reference to the human right to water and sanitation – such as the Standard minimum Standard Minimum Rules for the Treatment of Prisoners, the United Nations Principles for Older Persons, among others.

Some countries have taken the challenge to adopt into local law their international human rights obligations and enshrined the human right to water in their constitutions. There are ten countries that have the human right to water in their constitutions – and many more countries are considering the

human right to water. Most new constitutions adopted in the last 10 years have direct human rights provisions including the human right to water.

***What is the status of the human right to water and sanitation?***

The UN Human Rights Council voted to appoint an independent expert on the human right to water and sanitation in March, 2007. The Council had before it a proposal to appoint a special rapporteur, who would have a few more powers than an independent expert. Because of opposition from a few powerful countries, including the U.S., the Council by consensus chose to appoint an independent expert. The Independent Expert, Ms. Catarina de Albuquerque, was appointed in 2008. Her task is to continue to define the scope and content of the human right to water. It is not to continue the debate, as the U.S. wanted, on whether there is a human right to water. We can understand this again by looking to our own legal system. There are several rights enumerated in the U.S. Constitution. These rights have been defined, and continue to be defined, in legislation and in case law. For example, in the U.S. Bill of Rights, the series of amendments to the Constitution, the 1<sup>st</sup> Amendment recognizes that each person has the freedom of speech and assembly. The content and scope of these rights are not set out in the Bill of Rights. Courts and the legislature have and continue to define these rights as conditions change. That is the task of Ms. De Albuquerque, to define what the scope and content of the human right to water and sanitation by taking the view of the UN Member States and legal experts. This will be debated over the three years of the work program. In the meantime, any UN Member State that has ratified any of the treaties that contain a right to water has current obligations, and is guided by the language in General Comment 15 on what the scope and content is in the national and local context. The Independent Expert has chosen to focus on two issues – the right to sanitation as an integral part of the right to water, and best practices implementing both the right to water and sanitation.

**Why didn't the U.S. recognize the human right to water in the past?**

In June, 2007, the government of the United States wrote to the Office of the High Commissioner for Human Rights about its views on the human right to water and sanitation, acknowledging that as a matter of policy and good governance safe and accessible water supplies “further the realization of human rights, such as the right to a standard of living adequate for health and well being of all individuals and for the furthering other “economic, social and cultural rights indispensable for [one’s] dignity and the free development of [one’s] personality (UDHR, Art. 22). The U.S. declared that the intentional deprivation of water based on prohibited grounds of discrimination (on the basis of race) may be a violation of international human rights law. However the U.S. at that time did not agree that a human right to water existed based on a very narrow legal reading, and one that is not shared by most UN Member States, or the UN Human Rights Council.

The U.S. position said that because there is no direct wording in any international treaty that states specifically “the human right to water”, the right does not exist. The U.S. also stated in its submission that a human right to water was not necessary in the U.S. because the existing legal framework is adequate to meet the human needs of its citizens – both the Drinking Water Quality Act, and the Clean Water Act. In part this is true, there are elements of the human right to water that exist in national, state and local legislation. However there are elements that do not exist in all jurisdictions. For example, water shut off policies is standard operating procedure for most public and private water service institutions. There are regulations that control the process for raising water rates; however there are few provisions that set targets to make water services rates “affordable”. The EPA has guidelines for small, rural water service districts which state that water rates not exceed 2.5% of the monthly income of the household. There are no such guidelines for urban service districts and there is no funding for small districts to be able to meet the standard. There are regulations under the Drinking Water Quality Act that

set standards for “safe” drinking water. These standards do not include all toxic contaminants, and set standards that many consider too low for protecting health. The U.S. framework is not complete and does not meet all of the elements of the human right to water.

President Obama stated in his inaugural address that a foreign policy goal of the U.S. would be to ensure that all persons have access to safe water. The U.S. Congress and President Bush signed into law the Senator Paul Simon Water for the Poor Act, which guides U.S. international aid to providing financing for “safe, sufficient, affordable water for the poor.” The previous U.S. administration recognized that providing sufficient, affordable water for basic human needs is necessary to enjoy human rights. Building on this basis, we can advocate for a stronger U.S. policy that includes current international law on the human right to water.

### **Do we want the UN to adopt any additional conventions or are the existing treaties enough?**

Several UN Member States have expressed a concern about “treaty proliferation” and the burden on UN Member States to participate in more and more treaties. Each of the treaties requires Member States to participate in the administration and implementation of the treaty obligations, and increase the administrative burden. A few UN Member States, such as Bolivia and Norway, proposed that a new treaty be developed specifically on the human right to water and sanitation. For now, the consensus of UN Member States participating in the debates on the human right to water at the UN Human Rights Council is to identify and study best practices implementing the human right to water. UN Member States will continue to adopt legislation and policies to implement the human right to water and sanitation within their national and local legal frameworks. Our best efforts should be put to adopting human right to water policies at the local and national level so that the rights become active in the lives of individuals, and the rights are strengthened through this process. UN Member States can share experiences about the challenges implementing the human right to water.

### **What would it mean if the US did “recognize” the human right to water? What could change as a result? What changes are required at the federal level for the U.S. to “recognize” this right?**

The U.S. should bring its water and sanitation services policies into alignment with the best practices in the world. Water in the U.S. is a devolved power to the states. Normally, water services are provided by a local service provider, with federal regulation setting “minimum / floor” standards on drinking water quality. The U.S. should adopt water services policies at the national level that implement the human right to water to ensure that water services in the U.S. are equitable – whether or not the U.S. recognizes the human right to water. Funding priorities for federal spending in the water sector should as a priority ensure that all have access to safe, affordable drinking water.

Some of the key provisions should include the elements of the human right to water: access to safe, sufficient, affordable water for daily human needs:

#### ***Access***

Termination of water service for non payment places an inequitable burden on low-income persons and people on fixed incomes. Cities and states in the U.S. have policies that address this issue. For example, in Connecticut, state law requires a consumer “bill of rights,” that includes the right of a consumer to appeal a water shut off, the right to a hearing, and sets guidelines for no shut offs in cases of economic hardship, and for residents with severe illness, among others. Shut offs of essential utilities are not

allowed in winter in some states like Michigan, including water, as it affects heating. Water shut offs trigger severe consequences for low income households - for example, children have been removed from the home and placed in foster care because there was no running water in the household. Under some state health law, homes may be condemned as health risks for lack of running water. Unpaid water bills can be placed as a lien against a property or added to tax roles, and homes may be foreclosed for non payment. The federal government can set standards for all states that disallow water shutoffs to low income households, households with children or the elderly or ill persons. The standards can include due process requirements, allowing at minimum water shut offs to be appealed, payment plans to be adopted and other methods to ensure that all have access to water services.

### ***Safe***

Clean Water Action and many other groups have been working at state and federal level to regulate per chlorates, among other toxic chemicals not currently regulated in the U.S. under EPA Drinking Water quality standards. New standards that regulate new toxic chemicals should be developed.

### ***Sufficient***

World Health Organization standards for what a human being needs to maintain life, to meet basic health needs, and to have sufficient water to meet all health needs are a good guide for sufficiency. These standards could be built into federal guidelines for water rates in the form of lifeline rates – low cost rates for meeting the minimum amount of water. WHO says that 5 ¼ gallon (20 liters) / person / day minimum to sustain life; 13 ¼ - 26 gallons (50-100 liters) / person per day, will meet “most health needs”; 100 liters / per person / day will meet all health needs, 79 gallons (300 liters) / person / day is optimal. SPHERE guidelines for minimum water in emergencies, approx. 4 gallons (15 liters) / person / day. South African courts have used 50 liters/person/day as a minimum standard, on appeal. Argentine courts have used 200 liters (53 gallons)/household/day as a minimum.

### ***Affordable***

The international standards for affordable water are twofold. First, a person's access to water may not be interfered with due to inability to pay. Secondly, the general guideline is that "affordability" means that rates for water services may not exceed 1.5-3% of household income. The price for water and sanitation services may not restrict the ability of a person to buy other essential services – food, housing, health care, education. The United Kingdom expresses “serious concern” for rates that require a household to pay between 1.5-3% of their income. The EPA has guidelines for small, rural water service providers on affordability that recommend that rates for water services not exceed 2.5% of monthly household income.

### ***Non Discrimination***

An important part of the human right to water is that any policies related to water services be non-discriminatory. Discriminatory policies and practices that have the effect of putting a group of people at a particular disadvantage in accessing water services compared to other groups are prohibited and should be prevented and remedied. In an important case in federal court, *Kennedy v. City of Zanesville*, Case No. 2:03-cv-1047 (2007), on appeal, the Southern District of Ohio, Eastern Division case decided that a group of African American plaintiffs were discriminated against because the City / County had not extended public water to their community for over 30 years. Plaintiffs won \$USD 10.9 million in back damages for discrimination. Under international standards, water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any prohibited grounds.

### ***International Aid***

General Comment 15 interprets the human right to water obligation to include aligning international aid policies with implementing the human right to water. President Bush signed into law the Senator Paul

Simon Water for the Poor Act, PL 121-109 (2005), which guides appropriations for U.S. international aid in the water sector to “provide affordable and equitable access to safe water and sanitation.” Many NGOs, grass roots and faith based organizations worked to include the human right to water language in the bill, and work each year to ensure that appropriations for water for the poor increase, and that US AID and the US State Department implement the legislation.

***Protecting the Environment***

Residents of Barnstead, New Hampshire and Shapleigh, Maine adopted town ordinances that protected the environment, the water resources in their jurisdiction, and the rights of their citizens to access water, as well as the “rights of the environment.” Human rights carry an obligation – to protect the natural resources so that others may enjoy their human rights. Human right to water legislation can help to protect the natural resources for all and generations to come, as well as the natural ecosystems.

***Public Participation***

An important element of human rights law is democratic participation. Individuals affected by decisions have the right to have access to information about how the decision will affect them, and have a say in the process. In the U.S., there are generally procedures for public hearings on many decisions affecting citizens. The federal government can set standards for public participation in decision making over water services.

## What do you think about the Article 31 campaign?

We can understand what international human rights law is, and what the human right to water is, by looking at the U.S. legal system. The U.S. has a Declaration of Independence, which sets out the agreements on principles that the former colonies adopted to guide them in the establishment of the U.S. government and legal system during and after the revolutionary war. This is similar to the Universal Declaration of Human Rights (UDHR). The Constitution of the United States is our “UN Charter.” It is the legal instrument from which all law flows, the highest law of the land. The federal laws that require all states to act on water are the Clean Water Act (taking care of how water is treated in the natural environment and regulating some types of pollution) and the Safe Water Drinking Act (standards for water quality that are provided for drinking purposes). Each state has powers to develop local law that do not violate the federal standards. Each state also has the power to regulate private property. “Water rights” are a part of private property. Owning a water right does not give complete power to owner – it is a relative right, and takes into account the rights of neighboring owners and some rights of the environment. Where waters cross state or international boundaries, the owners of a water right have more restricted use. Ground water is not very well regulated but the law in this regard is evolving. Owners also have obligations to not waste water, pollute water, use more water than is their right, and in some cases may not sell water rights without government permits, depending on the state. The human right to water is different than a property water right. The human right to water is the right of each human being, irrespective of whether he or she owns a water right. It is important to not confuse the two. One is the human right of every individual, the other is a water right of an owner.

The Article 31 campaign is an educational campaign, and an advocacy campaign, to raise awareness of the need to adopt a universal human right to water and give individuals a voice to pressure their governments, national, regional and international human rights institutions to adopt where necessary legislation to implement the human right to water and sanitation. The campaign seeks to amend the Universal Declaration of Human Rights. The UDHR has not been amended since 1948. It is a declaration, a historic document, similar to the Declaration of Independence. It is not possible to amend the Declaration of Independence; similarly it is unlikely that the UDHR will be amended. Individuals and groups can sign on to the petition to amend the UDHR, but must understand that this is unlikely to take place and is unprecedented in international human rights law. International human rights law is “amended” is by adopting new agreements, or implementing existing agreements.

In our advocacy for the human right to water we can act to adopt local policies that would create the political and legal space to support a national and international strong human right to water, and protect citizens in local jurisdictions.

**Note: the UULM Action Network and the UUSC are co-sponsoring the Human Right to Water Act, AB1242 in California – see next page.**

