

Human Right to Safe Drinking Water & Sanitation

Sharmila L. Murthy

Assistant Professor, Suffolk University Law School

Associate Fellow, Carr Center for Human Rights Policy

Visiting Scholar, Sustainability Science Program

Harvard Kennedy School of Government

August 7, 2013

Overview

What is the human right to water and sanitation under international law?

1. Content

2. Legal basis

3. Enforceability

- *National context (S. Africa, India)*
- *Millennium Development Goals (MDGs)*
- *Privatization*



What is the human right to water and sanitation?



Right of *access* to water for personal and domestic use and to sanitation services



http://s.wsj.net/public/resources/images/OB-SH977_iwater_E_20120322075312.jpg

1. availability
2. quality
3. accessibility
 - a. physical
 - b. economic
 - c. non-discrimination
 - d. information

(1) Availability/Quantity: Water



<http://www.bhopal.org/2012/01/support-for-petition-to-drop-dow-continues-to-grow/bhopal-water/>

Continuously available and in a sufficient quantity for drinking, personal hygiene, and domestic uses (cooking, washing, etc.)

World Health Organization Guidelines

Source: "The Right to Water" (2003)

Service level	Distance/time	Likely volumes of water collected	Needs met	Intervention priority and actions
No access	More than 1 kilometre/more than 30 minutes round trip	Very low (often below 5 litres per capita per day)	Consumption cannot be assured Hygiene practice compromised Basic consumption may be compromised	Very high Provision of basic level service
Basic access	Within 1 kilometre/within 30 minutes round trip	Average unlikely to exceed approximately 20 litres per capita per day	Consumption should be assured Hygiene may be compromised Laundry may occur off-plot – i.e. away from home	High Hygiene education Provision of intermediate level of service
Intermediate access	Water provided on-plot through at least one tap (yard level)	Average of approximately 50 litres per capita per day	Consumption assured Hygiene should not be compromised Laundry likely to occur on-plot – i.e. within the confines of the household	Low Hygiene promotion still yields health gains Encourage optimal access
Optimal access	Supply of water through multiple taps within the house	Average of 100-200 litres per capita per day	Consumption assured Hygiene should not be compromised Laundry will occur on-plot	Very low Hygiene promotion still yields health gains

(2) Physical Accessibility: Water



<http://40brown.wordpress.com/>

- Within, or in the immediate vicinity of
 - Household
 - Educational institution
 - Public institution
 - Health institution
 - Workplace
- Disabilities
- Gender burden

(3) Safety/Quality: Water



http://thegrowblog.blogspot.com/2011_03_01_archive.html

- Not pose a threat to human health
- WHO Guidelines
- Significant burden on infants and children

(4) Affordability: Water

- Affordable does not mean free
- BUT, no one disconnected for failure to pay
- Policy mechanisms: lifeline policies, subsidies, block tariffs, etc.



<http://ibnlive.in.com/news/water-policy-draft-is-convoluted/234742-55.html>

(5) Cultural Acceptability: Water



- Water must be of an acceptable color, odor and taste and provided in a way that is consistent with cultural practices
- Important point for donor/NGO household water treatment programs

(1) Availability: Sanitation

- Sufficient number of facilities
- Waiting times not unreasonably long



http://bostonherald.com/business/technology/general/view/2011_0504mit_start-up_focuses_onsanitation_needs_of_poor

(2) Physical Accessibility: Sanitation



<http://www.com.org/disability-inclusive-wash-benefits-all-320/05.png>

- Within, or in the immediate vicinity of
 - Household
 - Educational institution
 - Public institution
 - Health institution
 - Workplace
- Disabilities
- Significant Gender Burden

(3) Safety/Quality: Sanitation

- Hygienically safe to use: human excreta must not come into contact with humans or animals



<http://www.mercycorps.org/dewisaparini/blog/22706>



<http://washtech.wordpress.com/category/topics/hygiene/>

- ▶ Hand washing is available

(4) Affordability: Sanitation

- ▶ Costs of individual access



<http://www.changemakers.com/morehealth/entries/revolutionary-developing-rural-markets-sanitation>



<http://www.eco-nomic.com/septic.htm>

- ▶ Costs of waste disposal
 - ▶ Containment
 - ▶ Treatment

(5) Culturally acceptable: Sanitation



<http://www.defeatdd.org/blog/sanitation-not-just-more-better>

- Ensure privacy
- Acceptable to women and men

Overview

What is the human right to water and sanitation under international law?

1. Content

2. Legal basis

3. Enforceability

- *National context (S. Africa, India)*
- *Millennium Development Goals (MDGs)*
- *Privatization*





<http://i.ytimg.com/vi/gn1rPsvuclA/0.jpg>



<http://www.downtoearth.org.in/node/2489>



http://t2.gstatic.com/images?q=tbn:AND9GcSgz7T5YDP1osCFjHp4aioSSBvVPx5WKn14bHCDYvIEak8_EZSKOUrR5uNb

South Africa

Mazibuko v. City of Jo'burg
(2011)

POLICY PAPERS

DRINKING WATER REGULATION

Rethinking the Right to Water

PHILIPPE CULLET



ENVIRONMENTAL LAW RESEARCH SOCIETY

India

Subhash Kumar v. State of Bihar (1991)
Supreme Court of India

“Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life”



Search

Media centre

Millennium Development Goal drinking water target met

Sanitation target still lagging far behind

Joint news release: UNICEF/WHO

6 MARCH 2012 | GENEVA/NEW YORK - The world has met the Millennium Development Goal (MDG) target of halving the proportion of people without sustainable access to safe drinking water, well in advance of the MDG 2015 deadline, according to a report issued today by UNICEF and WHO. Between 1990 and 2010, over two billion people gained access to improved drinking water sources, such as piped supplies and protected wells.

theguardian

News | US | World | Sports | Comment

Posted by
Sanjay Wijesekera
Tuesday 6 March 2012
07.32 EST

[Previous](#)

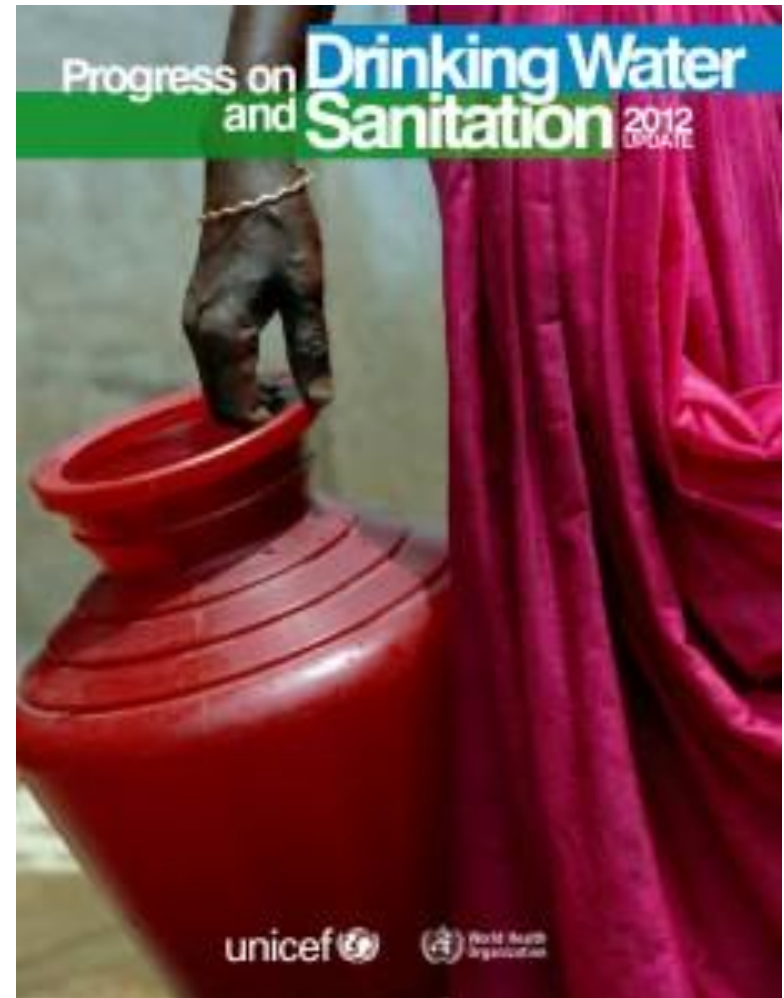
[Blog home](#)

MDG drinking water target being met is cause for celebration

This achievement shows that where there is a will, it is possible to truly transform the lives of hundreds of millions of people for the better. Now we must tackle sanitation

MDG: Target 7c

- “To halve, by 2015, the proportion of people without sustainable access to safe drinking-water and basic sanitation.”
- Sanitation added only in 2002
- Target of 50% reduction does not meet human rights standard



MDGs: Work far from over

- ▶ Access to “improved” sanitation
 - ▶ 63% world has access → below the 75% target
 - ▶ 2.5 billion lack access

- ▶ Access to “improved” water
 - ▶ 89% world pop (6.1 billion) has access
 - ▶ 783 million lack access



<http://garkwatertechnologies.blogspot.com/view/classic?z>

MDGs do not currently capture human rights criteria

- Drinking-water quality
- Quantity
- Hours service available
- Distance
- Time spent
- Social obstacles for certain populations
- Infrastructure maintenance
- Safe disposal of excreta
- Affordability



- Current efforts to introduce water treatment (safety)

Source: First Consultation on Post-2015 Monitoring of Wat-San, Berlin (May 2011)

Photo credit: Daniele Lantagne

Overview

What is the human right to water and sanitation under international law?

1. Content
2. Legal basis
3. Enforceability



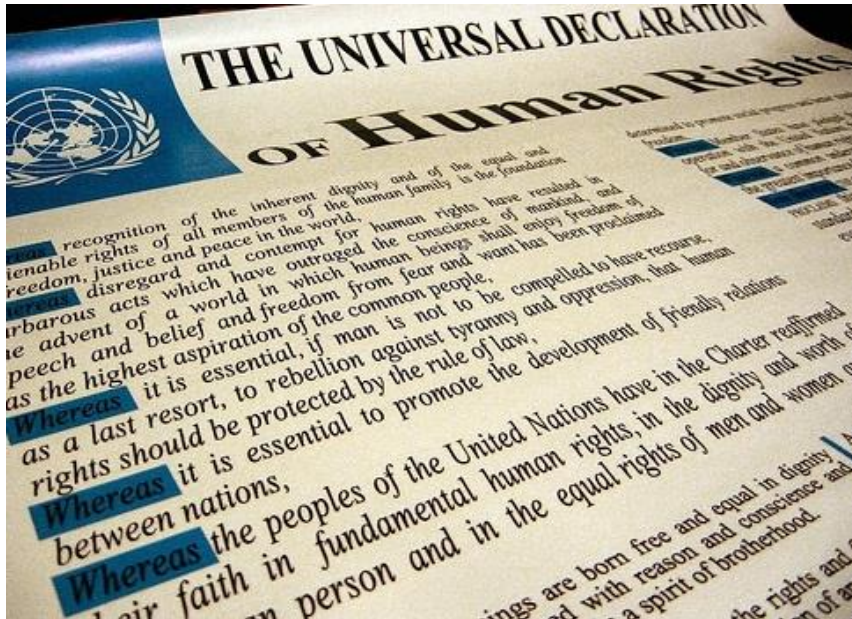


Legal Basis

- CEDAW, CRC
- Committee on Economic, Social & Cultural Rights: Comment 15 (2002)
- UN General Assembly
- UN Human Rights Council

<http://uniosil.org/wp-content/uploads/2010/06/Customary-International-Law.jpg>

Foundations: Int'l Human Rights Law



<http://tx.english-ch.com/teacher/trina/others/discussion-on-human-rights-law/>

Universal Declaration of Human Rights

International Covenant on Civil and Political Rights (1966, 1976)

International Covenant on Economic, Social and Cultural Rights (1966, 1976)

Convention on the Elimination of Discrimination against Women (1991)



<http://eatdrinkbetter.com/2012/03/22/wateraid-and-choice-organic-teas/>

- To enjoy adequate living conditions, particularly in relation to housing, **sanitation**, electricity and **water supply**, transport and communications (Article 14(2))

Convention on the Rights of the Child (1990)

- To combat disease and malnutrition . . . through . . . the provision of adequate nutritious foods and **clean drinking-water** . . . (Article 24(c))



<http://www.sev.asn.au/model-citizen/global-citizen/19-image--07-a-child-drinking-water.html>

- To ensure that all segments of society, in particular parents and children, are informed . . . and are supported in the use of basic knowledge of . . . hygiene and **environmental sanitation** . . . (Article 24(e))

UNITED
NATIONS



**Economic and Social
Council**

Distr.
GENERAL

E/C.12/2002/11
20 January 2003

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS

Twenty-ninth session

Geneva, 11-29 November 2002

Agenda item 3

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE
INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL
RIGHTS

General Comment No. 15 (2002)

**The right to water (arts. 11 and 12 of the International Covenant
on Economic, Social and Cultural Rights)**



<http://omiusajpic.org/topics/human-right-to-water-and-sanitation/>

General Comment 15 (2002)

Article 11

adequate standard of living

Article 12

highest attainable standards
of mental and physical health



General Assembly

GA/10967

28 July 2010

Sixty-fourth General Assembly
Plenary
108th Meeting (AM)

GENERAL ASSEMBLY ADOPTS RESOLUTION RECOGNIZING ACCESS TO CLEAN WATER, SANITATION

AS HUMAN RIGHT, BY RECORDED VOTE OF 122 IN FAVOUR, NONE AGAINST, 41 ABSTENTIONS

Vote on Human Right to Water

The draft resolution on the human right to water and sanitation (document A/64/L.63/REV.1) was adopted by a recorded vote of 122 in favour to none against, with 41 abstentions, as follows:

In favour: Afghanistan, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Benin, Bhutan, Bolivia, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Cuba, Democratic People's Republic of Korea, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Finland, France, Gabon, Georgia, Germany, Ghana, Grenada, Guatemala, Haiti, Honduras, Hungary, India, Indonesia, Iran, Iraq, Italy, Jamaica, Jordan, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Liberia, Libya, Liechtenstein, Madagascar, Malaysia, Maldives, Mali, Mauritius, Mexico, Monaco, Mongolia, Montenegro, Morocco, Myanmar, Nepal, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Portugal, Qatar, Russian Federation, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Sudan, Switzerland, Syria, Tajikistan, Thailand, The former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Tunisia, Tuvalu, United Arab Emirates, Uruguay, Vanuatu, Venezuela, Viet Nam, Yemen, Zimbabwe.

Against: None.

Abstain: Armenia, Australia, Austria, Bosnia and Herzegovina, Botswana, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Ethiopia, Greece, Guyana, Iceland, Ireland, Israel, Japan, Kazakhstan, Kenya, Latvia, Lesotho, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Poland, Republic of Korea, Republic of Moldova, Romania, Slovakia, Sweden, Trinidad and Tobago, Turkey, Ukraine, United Kingdom, United Republic of Tanzania, United States, Zambia.

Absent: Albania, Belize, Cameroon, Chad, Fiji, Gambia, Guinea, Guinea-Bissau, Kiribati, Malawi, Marshall Islands, Mauritania, Micronesia (Federated States of), Mozambique, Namibia, Nauru, Palau, Papua New Guinea, Philippines, Rwanda, Saint Kitts and Nevis, Sao Tome and Principe, Sierra Leone, Suriname, Swaziland, Tonga, Turkmenistan, Uganda, Uzbekistan.



Abstentions



- Support work of Human Rights Council in Geneva, including Ind't Expert
- Right not reflected in int'l law
- Legal implications & scope
- Not drafted in transparent manner





<http://grid.files.wordpress.com/2011/02/no-water-privatization.jpg>

“Human rights are neutral as to economic models in general, and models of service provision more specifically.”

2009 report to HRC on non-State actors
by the UN Special Rapporteur





<http://www-cs-faculty.stanford.edu/~eroberts/cs201/projects/communism-computing-china/heads.jpg>



<http://midlifebloggers.com/2012/04/09/monday-thoughts-on-money-capitalism-and-morality/>



General Assembly

Human Rights Council
Fifteenth session

Distr.: General
6 October 2010

Original: English

(6) Delegation to a third party does not exempt State from primary responsibility

(7) States may use non-state actors; regardless, must ensure transparency, non-discrimination and accountability

(9) spells out some key ways that States should monitor non-state actors



Scope of the right?

**Safe drinking water
& personal use**



**Status of the
right to
sanitation?**

Overview

What is the human right to water and sanitation under international law?

1. Content
2. Legal basis
3. Enforceability



Progressive Realization

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Article 2(1) of ICESCR



<http://www.nosweat.org.uk/files/images/Sweatshop%201.preview.jpg>



http://www.dailymail.com/mediafiles/thumbs/450/294.5246179966/India-a-Right-to-Work_Spae_I120201161520.jpg



http://i.telegraph.co.uk/multimedia/archive/02250/AN41A2_2250193b.jpg



http://2.bp.blogspot.com/_SrmQvh4yOpQ/TRDLg-8oK3I/AAAAAAAAAc/V_Ms6qWAE-Y/s1600/RTE.jpg



<http://photos.state.gov/libraries/estonia/325288/speech/Indigenous%20people%20AP%20300%20x%20234.jpg>



http://ionenewsonline.files.wordpress.com/2009/08/doctor1_ap416.jpg



<http://asha-india.org/assets/images/Slum%20Conditions/slumhuts.jpg>



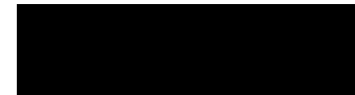
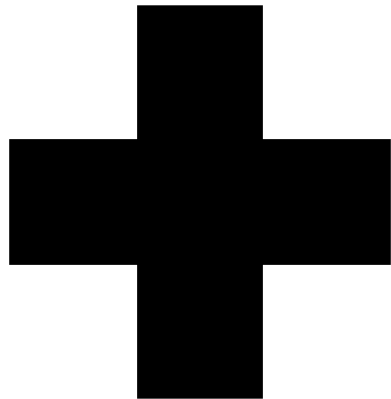
http://www.ohchr.org/SiteCollectionImages/Issues/ESCR/MealstoSchoolChildre_n_UNPhotoMartinePerret.jpg



http://thegrowblog.blogspot.com/2011_03_01_archive.html

Each State Party to the present Covenant undertakes **to respect and to ensure** to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 2(1), ICCPR





http://images.publicradio.org/content/2008/09/01/20080901_police_club_33.jpg



<http://www.utexas.edu/law/about/photogallery/images/courtroom.jpg>



<http://thedailyrecord.com/generationjd/files/2011/04/gavel-judge.jpg>



<http://www.treehugger.com/sustainable-product-design/sustainable-prisons-con-or-pro.html>

- Protect
- Respect
- Fulfill



<http://www.thewaterq.com/wnews1/images/stories/maxqcontent/World/water-pollution4.jpg>



<http://www.newsincolncounty.com/?p=19922>



<http://www.changemakers.com/morehealth/entries/revolootionary-developing-rural-markets-sanitation>



For further reading

Catarina de Albuquerque
UNITED NATIONS SPECIAL RAPPORTEUR
ON THE HUMAN RIGHT TO SAFE DRINKING WATER AND SANITATION
with Virginia Roaf



ON THE RIGHT TRACK

Good practices in realising the
rights to water and sanitation





Abstract

<http://ssrn.com.ezp-prod1.hul.harv>

Citations (1)

Footnotes (296)

[Download This Paper](#) | [Share](#) | [Email](#) | [Add to Briefcase](#) | [Purchase Bound Hard Copy](#)

The Human Right(s) to Water and Sanitation: History, Meaning and the Controversy Over Privatization

[Sharmila L. Murthy](#)

Harvard University - Harvard Kennedy School (HKS) - Carr Center for Human Rights Policy

2013

Berkeley Journal of International Law (BJIL), Vol. 31, No. 1, 2013

Abstract:

The recognition by the United Nations (UN) General Assembly and the UN Human Rights Council in 2010 of a human right to safe drinking water and sanitation has propelled awareness of the global water and sanitation crisis to new heights, while also raising a host of challenging issues. The framing of water and sanitation as a human right can be understood as a response to global water service trends that have increasingly emphasized economic efficiency, environmental sustainability, and privatization. The history of the International Covenant on Economic, Social and Cultural Rights (ICESCR) sheds light on some of the controversies around the scope and meaning of the human right to water and sanitation, including the politics of privatization. Although international human rights law has historically been neutral with respect to economic models of service provision, human rights principles are relevant as to how to engage the private sector in the provision of basic services. Three key themes that highlight the tensions between human rights and private sector involvement in the water and sanitation sectors are explored: financial sustainability, efficiency, and dispute resolution. Human rights principles are guideposts for regulation, monitoring, and oversight, which are critical elements when the private sector is involved in the delivery of water and sanitation services.



HEALTH AND HUMAN RIGHTS

LAND SECURITY AND THE CHALLENGES OF REALIZING THE HUMAN RIGHT TO WATER AND SANITATION IN THE SLUMS OF MUMBAI, INDIA

Sharmila L. Murthy

ABSTRACT

Addressing the human right to water and sanitation in the slums of Mumbai, India requires disentangling the provision of basic services from a more complicated set of questions around land security and land ownership. Millions of slum-dwellers in Mumbai lack adequate access to safe drinking water and sanitation, which places them at risk for waterborne diseases. Many slums are located in hazardous areas such as flood plains, increasing their susceptibility to climate change-related weather patterns. Access to water and sanitation in slums generally hinges on whether a dwelling was created prior to January 1, 1995, because those constructed created prior to that date have greater land security. Although the so-called "1995 cut-off rule" looms large in Mumbai slum policy, a closer reading of the relevant laws and regulations suggests that access to water and sanitation could be expanded to slums created after January 1, 1995. State and municipal governments already have the authority to expand access to water services; they just need to exercise their discretion. However, slums located on central government land are in a more difficult position. Central government agencies in Mumbai have often refused to allow the state and municipal governments to rehabilitate or improve access to services for slums located on their land. As a result, an argument could be made that by interfering with the efforts of sub-national actors to extend water and sanitation to services to slum-dwellers, the central government of India is violating its obligations to respect the human right to water and sanitation under international and national jurisprudence.

Review

What is the human right to water and sanitation under international law?

1. Content
2. Legal basis
3. Enforceability

- *National context (S. Africa, India)*
- *Millennium Development Goals (MDGs)*
- *Privatization*

