

A UN Convention on the Right to Water

An Idea Whose Time Has Come

By Maude Barlow



All over the world, groups that are fighting for local water rights are championing an international instrument on the right to water. Increasingly, the demand is for a United Nations Convention that

would serve as a model for nation-state constitutions. While grassroots struggles for water security will continue to be the most important part of the global water justice movement, it is becoming more clear that a proactive goal to unite the movement is crucial.

For the past 15 years, the World Bank and the other regional development banks have promoted a private model of water development in the global South. This model has proven to be a failure. High water rates, cut-offs to the poor, reduced services, broken promises and pollution have been the legacy of privatization. One important new study has confirmed that this experiment has actually led to a net reduction in water development in the global South as northern governments and the banks have assumed that the private sector would bring in new investments, a promise that never materialized.

At the 4th World Water Forum in Mexico City this past March, the UN cited the failure of privatization and called for governments to re-enter the water services arena. Calls for a UN Convention to re-assert the crucial role of government in supplying water to the poor increased dramatically at the Forum and new impetus was given to this campaign.

Why a UN Convention?

The fact that water is not now an acknowledged human right has allowed decision-making over water policy to shift from the UN and governments toward institutions and organizations that favour the private water companies and the commodification of water. These institutions include the World Bank and other regional development banks, the World Water Council, the Global Water Partnership and the World Trade Organization.

Not only have these institutions vigorously promoted the interests of the private water companies in the global South, they have ceded much political control over water policy to them. In fact, the study *Pipe Dreams* by Public Services International and the World Development Movement, reported that the big water transnationals actually influence decision-making around which communities and countries will receive water services.

Many nation-state governments have gone along with this trend, allowing creeping privatization with little or no government oversight or public debate.

Behind the call for a binding instrument are questions of principle that must be decided soon as the world's water sources become more depleted and fought over:

- 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 – the 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 Suez?

The global water crisis cries out for good governance – and good governance needs binding, legal bases that rest on universally applicable human rights. Above all, it calls for the political will to act.

It is also crucial to note that, because the operations of these global water companies and the financial institutions that back them are now global, nation-state instruments to deal with water rights are no longer sufficient. International laws are needed to control the global reach of the water barons.

At the Rio Earth Summit in 1992, key areas were targeted for action; since that pivotal event, conventions on climate change, biodiversity and desertification have all

been accomplished. But water, which was targeted as a priority area, has been neglected.

What is the practical use of a Convention?

Would a convention on water solve the world's water crisis? Of course not. But it would set the framework of water as a social and cultural asset, not an economic commodity. As well, it would establish the indispensable legal groundwork for a just system of distribution.

A convention on the right to water would serve as a common, coherent body of rules for all nations and clarify that it is the role of the state to provide clean, affordable water to all of its citizens.

Such a convention would also safeguard already accepted human rights and environmental principles.

It would also set principles and priorities for water use in a world destroying its water heritage. The convention we envisage would include language to protect water rights for the earth and other species and would address the urgent need for reclamation of polluted waters and an end to practices destructive of the world's water sources.

A human rights convention or treaty imposes three obligations on states:

- The Obligation to Respect, whereby the state must refrain from any action or policy that that interferes with the enjoyment of the human right;

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- The Obligation to Protect, whereby the state is obliged to prevent third parties (such as corporations) from interfering with the enjoyment of the human right; and
- The Obligation to Fulfil, whereby the state is required to adopt any additional measures directed toward the realization of that right.

At a practical level, a right to water convention gives citizens a tool to hold their governments accountable in their domestic courts and the “court” of public opinion, as well as seeking international redress.

(In Canada, the decision by the new government to back away from Canada’s previous commitment to the Kyoto Accord has become highly contentious and given environmentalists in Canada and around the world a powerful tool with which to criticize the government. Had Kyoto not existed, the fight for good climate policy in Canada would be much more difficult.)

A convention could also include specific principles to ensure civil society involvement to convert the UN convention into national law and nation action plans. This would give citizens an additional constitutional tool in their fight for water.



Where is the process now?

The right to water has been recognized in a number of important international resolutions and declarations at the UN over the past decade. These include the 2000 General Assembly Resolution on the Right to Development; the 2004 Committee on Human Rights resolution on toxic wastes; and the May 2005 statement by the 116-member Non-Aligned Movement on the right to water for all. Recently, Evo Morales, the new President of Bolivia, called for the right to water to the Community of South

American Nations. He has received a very favourable response from at least a dozen countries.

Most important is General Comment No. 15, adopted in 2002 by the UN Committee on Economic, Social and Cultural

Rights that recognized that the right to water is a prerequisite for realizing all other human rights and for leading a life in dignity. General Comment No. 15 is an authoritative interpretation of the International Covenant on Economic, Social and Cultural Rights and an important milestone on the road to a full binding UN convention.

In October 2006, several countries presented a resolution to the newly formed UN Human Rights Council requesting that the Office of the High Commissioner for

Human Rights conduct a detailed study on the scope and content of the relevant human rights obligations related to access to water under international human rights instruments, including recommendations for future action. In November, the Council adopted the resolution.

The countries that proposed this resolution are: Belgium, Costa Rica, Cuba, Cyprus, Ecuador, Estonia, France, Germany, Greece, Guatemala, Italia, Luxembourg, Malta, Nigeria, Panama, Peru, Portugal, Romania, Slovenia, Spain, Switzerland, Cameroun, and Bolivia. (Not all are members of the Council.)

Also believed to be supportive are Spain, Brazil, Finland, New Zealand, Norway, South Africa, Uruguay and Venezuela.

Countries that are likely to oppose or who have serious reservations include India, Canada, the US, China, Egypt, and Australia. Until recently, the UK was also opposed, however, it recently responded to the November 2006 UNDP Annual Report, which focused on the global water crisis, by tentatively offering its first support of the right to water.

The next meeting of the Council will be held in September 2007, at which time it may appoint a Special Rapporteur which could then lead to a full formative resolution in 2008 and an eventual convention on the right to water.

Support among civil society groups around the world is growing rapidly and we are collecting the names of these groups for

reference in the near future. For instance, a right to water convention has been adopted by Red Vida, the network of grassroots groups fighting for water justice all through the Americas.

Are there countries that might champion a strong Convention?

There is a fear among many grassroots groups that our movement has been too successful and that success may lead to a compromised convention.

Until recently, the global institutions and the big water companies opposed a right to water convention. So did the European countries such as France and Germany that are home to the big water companies. However, the momentum for a right to water instrument is growing around the world and it is clear it cannot be stopped.

So the position of the World Bank and the World Water Council has shifted. There is now an understanding that the call for the right to water is an idea whose time has come and those who opposed it until very recently have decided to help shape it so that the private sector is not excluded. A proposal by Green Cross International, for example, is in great favour in some circles as it includes the water corporations as “stakeholders” and promotes private financing of water projects in the global South.

(For a critique of the Green Cross draft convention, see the Blue Planet website, www.blueplanetproject.net)

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This has given civil society great cause for alarm, as it is very concerned that a convention that would protect the rights of corporations in the delivery of water would be worse than having no convention at all. Certainly, grassroots groups in the global South would never support a compromised instrument of any kind.

So civil society has been looking for a small number of nations from the global South and the global North to spearhead a more strongly worded resolution that would not only confirm that water is a public trust, but that water services should be delivered by governments on a not-for-profit basis. The two obvious first choices are Norway, which has announced it will no longer support any World Bank water project that imposes privatization as a conditionality, and Bolivia, which has had terrible experiences with private water companies and is determined to return to public oversight of its water systems.

The hope is that, working with the global water justice movement, these two countries will begin a process to develop this instrument and enlist the support of other nation-states to a more strongly worded convention. Discussions with both governments are underway and meeting a great deal of interest.

It is crucial to find a group of countries that would champion a strongly worded convention as well as address two shortcomings inherent in current human rights conventions: that is, it must bind international institutions and corporations and

establish enforcement measures that provide effective remedies for individuals and communities denied their right to water. Further, our convention must make it clear that, where there is a conflict between the human rights articulated in a UN instrument and the corporate rights inherent in trade agreements, UN-sanctioned human rights will prevail.

The right to water is an idea whose time has come. Let us make sure no future generation ever again has to suffer from the horrors of living without clean water.

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