

UN High Commissioner for Human Rights Examines the Right to Water

Report from the International Expert Seminar
Berlin, Germany, June 4-6, 2007

by Anil Naidoo

I am pleased to report that the momentum has been steadily building for our campaign to recognize and implement the human right to water. I have been asked to serve as an expert adviser to the United Nations High Commissioner for Human Rights, Madame Louise Arbour – an indication that our hard work is paying off.

It has been over five years since Maude Barlow launched the Treaty Initiative to Share and Protect the Global Water Commons. Since then we have taken many steps toward securing the human right to water, including promoting a draft UN convention, launching the Friends of the Right to Water network, and speaking on these issues at every possible opportunity. We have promoted this campaign in spaces ranging from a tent lit with one bare bulb in Nairobi, to the luxurious space occupied by the European Parliament in Brussels. Our message resonates around the world. Now we have been given the opportunity to take the message directly to the UN.

Advising the United Nations

Madame Arbour has been asked to write a report on the scope and obligations of states regarding the human right to water. This report will be delivered at the fall session of the UN Human Rights Council in Geneva. The advisory committee we have been invited to join is made

up of 22 international human rights and water experts from a variety of sectors, including heads of UN agencies, human rights lawyers and UN Special Rapporteurs whose mandates encompass water.

This is a critical moment for our campaign. The questions facing the High Commissioner, and how she responds, will have huge implications for our future work and for how governments and multilateral organizations respond to the global water crisis.



Co-opting the right to water

In the past, the divisions between water justice activists and private water promoters were clear. Countries such as France, United Kingdom, Spain and Germany pushed for

increased private water delivery, and fought any attempts to enshrine the right to water at the United Nations.

These countries have since changed course, and are now supportive of the right to water. Given their past advocacy at the World Trade Organization in favour of privatization, we have to wonder whether or not the privateers are seeking to co-opt the right to water, in an effort to serve private interests. In contrast, we see the right to water as a mechanism that could guarantee access to the poorest and most vulnerable people on the planet.

Accelerating the debate

The debate about the right to water has been a hot topic since 2002, when the UN Committee on Economic, Social and Cultural Rights released a document called General Comment 15 (GC15). This represented a landmark interpretation of the UN states' human rights obligations, stating: "water is a limited natural resource and a public good fundamental for life and health. 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."

GC15 gave the right to water a legal basis and an official acknowledgement that never previously existed. It elevated the stakes and made the issue impossible to ignore. It meant that the right to water wasn't going away, and this forced countries to modify their position, even if their real agenda was to support water privatization.

Certain UN member states are afraid of a broad definition of the right to water which could oblige them to provide water to their citizens on a non-profit, public basis.

Corporations and corporate-influenced states now seem to be trying to direct and define the meaning of the right to water, in an effort to allow privatization to proceed. We are concerned that if the right to water is defined too narrowly, then it could simply guarantee access to water, without obliging states to ensure that water is managed in an equitable manner. This would mean that corporations could actually benefit from implementation of the right to water by being able to use it as a tool to challenge public water delivery and state monopolies.

Looking back, the initial reaction to GC 15 was muted to say the least. At the Kyoto 3rd World Water Forum, just months after GC15 had been released, the final ministerial declaration

did not even reference the issue. Other than the NGO voices, no other statements were issued to support the arguments embodied in GC15 – concepts such as non-discrimination, accessibility and affordability. The issue was all but boycotted by the most powerful.

Privatization is no solution

Since the 3rd WWF, however, there has been a stampede to acknowledge the right to water and everyone from the World Bank to the corporations themselves claim to be its champions. Hyping the tragedy of the global water crisis, decrying the failure of public water management and then claiming to be the solution, water privateers have

adopted the water justice movement's rights-based language, in an effort to carve out a greater market for themselves. Of course, they are ignoring the serious failures associated with private water delivery and the rights violations perpetrated by private operators who routinely cut off the poor after delivering poor quality water and jacking up prices.

Another argument that the corporate sector has been elbowing in on, is the discussion about whether governments should provide subsidies to ensure access to poor people. Of course, this is a measure we support. But we don't want to see those subsidies funneled back to private water companies.

Many questions to explore

Over the two days of the session in Berlin, the expert panel debated a series of questions and, at times, engaged in heated debate on particular issues. To promote a free-flowing discussion, it was agreed that comments were not for attribution. This being said, one of the experts present was Gerard Payen, former senior executive vice-president of Suez. Payen was

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the chief architect of Suez's global expansion in the 1990s and is now head of the global water lobby group Aquafed. You can be sure that Payen strongly protected the position and role of the private sector and this required equally vigorous challenging. I have debated Mr. Payen a few times at various events. Last year we came together in Nairobi and Dijon to discuss our differences on the definition of the Right to Water.

Here is a taste of some of the questions we considered:

- How should we enforce standards and punish violations of the right to water?
- How much water should individuals have a right to?
- Do states have the obligation to provide a certain amount of water?
- In which cases are disconnections prohibited?
- What procedures and safeguards should be followed before a disconnection takes place?
- Is it possible to outline specific obligations to provide access to safe-drinking water in relation to the right to life?
- Is the current system for monitoring human rights obligations to provide access to safe-drinking water comprehensive and if not, what is lacking?

One particularly contentious issue was whether privatization of water should be prohibited in the absence of an effective regulatory and monitoring system. Of course the corporations were strongly against this kind of prohibition, which was originally outlined in General Comment 15.

This debate gave us some interesting insight into the discussions taking place at the UN in regard to the right to water. We were told by some of the people who had originally drafted GC15 that there was great debate regarding the role of the private sector in water delivery. The feeling was that it would not be possible to call for a complete ban on the private sector but that it was important to regulate third-party providers of water, to ensure they don't commit violations. GC15 outlines the need for independent monitoring, genuine public participation and the imposition of penalties for non-compliance.

Next steps



Anil Naidoo (second from the right) with Nathalie Mivelaz and Simon Walker from the Office of the High Commissioner for Human rights Staff, Miloon Kothari UN Special Rapporteur for Housing, and Marie Virginia Bras Gomez of the UN Committee on Economic Social and Cultural Rights.

Overall, the message I took home from the Berlin was that we must be vigilant and prepared to move quickly in the next few months. Once Madame Arbour's recommendations are before the Human Rights Council it will be up to governments on to decide what to do with her report. Civil society and social movements can help our governments do the right thing on this critical issue.

In the lead-up to this report I circulated around a letter outlining our basic positions in regard to a UN Convention on the Right to Water. The letter was signed by almost 200 organizations from 50 countries. Our overall goals in this campaign are to:

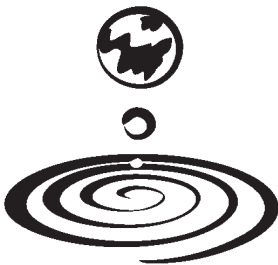
- Ensure that affordable access to clean water is secured and protected as a basic human right around the world;
- Ensure that water systems are locally, publicly and democratically owned and controlled in a transparent manner; and to

- Prevent governments, the private water industry and international financial institutions and others from interfering with the human right to water.

Many of the water justice organizations that signed on to the letter in June are planning to be present in Geneva, when Madame Arbour releases her final report. I expect, based on my work with the expert panel and discussions I have had with the High Commissioner's Office that we will see a clear outlining of the states' obligations under the human right to water. We can also

expect appointment of a Special Rapporteur to be one of the recommendations. From here it will be up to governments to decide what to do with the recommendations, but the more pressure we apply, the harder it will be to ignore any of Madame Arbour's findings.

The next few months will write a critical chapter in the right to water campaign and this is a wonderful opportunity for us to take the movement to the next level. I look forward to working with groups and activists around the world to realize our commitment to water justice and water for all!



The Blue Planet Project is an organization committed to supporting global grassroots struggles for the right to water. As Project Organizer, Anil Naidoo has spent the past 4 years working with local communities and global activists, linking struggles South and North, building the water justice movement, and developing strategies and planning actions to advance the right to water. For more information on the Blue Planet Project, please visit www.blueplanetproject.net.