

Identifying and Addressing

Violations of the Human Right to Water

Applying the
Human Rights Approach



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“Bread for the World” is a development organization under the auspices of the Protestant Churches in Germany. The organization is committed to the objective of “Justice for the Poor”. Since 1959 it has sought to contribute to overcome hunger and poverty in the developing countries. In March 2003, “Bread for the World” launched a campaign for the human right to water. An important objective of the campaign is to contribute to the strengthening of an international network to defend the human right to water.

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1 Water – a human right unfulfilled

“The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.”¹

However, **about 1.1 billion people** worldwide do not have access to safe and sufficient water to drink, to cook with or to wash themselves with.² In combination with the lack of adequate sanitation this causes the deaths of about 2 million people every year, most of them children. Many more suffer daily from the lack of water, from water-related diseases, and from the loss of income and education that goes hand in hand with the resulting health problems and the laborious collection of water.

It is especially the poorest who are affected because they are the ones who most often obtain their water from so-called “unimproved” sources likely to be a threat to health such as unprotected wells or expensive water vendors.³

- 60% of the poorest households depend in their (basic) water supply on unimproved sources – compared to 10% of the rich households.
- More than 8 out of 10 households without access are situated in rural areas.
- Two thirds of the 1,1 billions without access live in Asia.
- Coverage is worst in Sub-Saharan Africa. Here, only 58% of the population have access to improved sources of drinking water.
- In some countries, spending five hours per day collecting water to meet the family's needs is not unusual. Women and girls shoulder this burden of hauling water especially in Africa and Asia.

Even though there has been a certain progress in the past decade, the situation is marked by the desperate need for further and faster improvement. In addition to problems concerning lack of enough finance, technical expertise or water in developing countries, it is too often **missing political will and com-**

mitment that is holding back the necessary expansion and improvement of access. In many cases, mismanagement and lack of interest by the authorities not only prevent improvements but even worsen the situation by depriving people of their existing access to water. One of the major problems is the discrimination and wilful neglect of the poor and marginalized who lack the power to defend themselves and their rights. This is where the **human rights approach** can help. It stresses above all the responsibility of a state: the right to water entitles every individual to have access to adequate water and it is the state's obligation to do everything possible to realize this for everybody and without discrimination. Where states fail to carry out this duty, the human rights perspective makes it possible to hold them accountable for it. Access to adequate water thus is discussed not only as a moral but also as a political and legal claim.

In light of this approach, the human right to water has increasingly gained attention. Civil society groups around the world use it to reveal political failures and to claim better water governance. In 2002, the General Comment No. 15 on the Right to Water was issued by the United Nations Committee on Economic, Social and Cultural Rights. This document clarifies the elements of the right to water and lists general and specific obligations of the states with respect to this fundamental right. It thereby provides a measure for government policies, laws, and administrative action and helps to show their shortcomings.

A comprehensive concept of the right to water has only been developed quite recently with the General Comment No. 15 on the Right to Water. States do not yet fully acknowledge the significance of this right and their corresponding obligations and many civil society groups and most citizens do not

yet know well the meaning of the right to water and how to use it. It is therefore particularly crucial to make known and to apply and further elaborate the human rights approach to water.

Seeing the potential of the approach and the lacking acknowledgment of the right to water so far, Bread for the World would like to contribute to the recognition and implementation of the human right to water. This is also the goal of the Friends of the Right to Water, an international network of civil society and nongovernmental organizations which was formed to promote the right to water.⁴ One important goal of the network is the adoption of an international convention on the human right to water. Such a convention could serve as a binding legal instrument elaborating states' obligations under the right to water and establishing adequate complaint and monitoring mechanisms. Bread for the World supports this initiative and would like to present this brochure as a contribution to the group's efforts. Within this context, the brochure's purpose is to provide you with an introduction into what the right to water is and how you can identify and address violations of the right to water in specific situations.⁵

1 General Comment No.15, para. 2

2 World Health Organization / UNICEF Joint Monitoring Programme for Water Supply and Sanitation: Meeting the MDG Drinking Water and Sanitation Target. A Mid-Term Assessment of Progress. Geneva 2004.

This number does not include all those who do have access to a source of safe water close to their homes, but who cannot afford the necessary amount of water because they lack the means to pay for it.

3 see WHO / UNICEF: Meeting the MDG Drinking Water and Sanitation Target. A Mid-Term Assessment of Progress. Geneva 2004; WHO / UNICEF: Water for life. Making it Happen. Geneva 2005

4 The Friends are a loose and still expanding network. Among the participating organizations are: Alliance Sud (Switzerland), Bread for the World (Germany), CEDHA (Argentina), COHRE (International), Corporate Accountability International (USA), FIAN (International), Council of Canadians (Canada), Ghana Coalition against Privatisation of Water (Ghana), Public Citizens (USA), Redes (Uruguay), Tarun Bharat Sangh (India) and others

5 For many helpful comments and suggestions on earlier drafts of this brochure I would like to thank Ashfaq Khalfan (COHRE) and Annette von Schönfeld (Bread for the World).

2

The General Comment No. 15 on the right to water

In this brochure, the right to water will be presented and used as it is developed in the General Comment No. 15 on the right to water. This is an official legal interpretation issued in 2002 by the Committee on Economic, Social and Cultural Rights which is the monitoring treaty body to the International Covenant on Economic, Social and Cultural Rights. This Covenant – like the International Covenant on Civil and Political Rights or the Convention against Torture – is one of the major human rights treaties that have been adopted and are being monitored within the framework of the United Nations human rights system. It has been in force since 1976 and currently 151 states have ratified the treaty and are therefore legally bound by it.⁶ This means that they are obliged to implement the provisions of the treaty at the national level.

In the Covenant, the right to water is not directly mentioned. However, the General Comment No. 15 says that it is included within the right to an adequate standard of living and the right to health in Articles 11 and 12 of the Covenant. Furthermore, the General Comment also makes reference to a number of bodies of international law and international documents in which the human right to water has been recognized.⁷

The General Comment on the right to water is an interpretation and not a treaty. Therefore it is not legally binding itself. However, it is based on the provisions of the International Covenant on Economic, Social and Cultural Rights and on the general acceptance of fundamental human rights like the right to life and the right to health. It is also supported by the authority of the Committee on Economic, Social and Cultural Rights which is composed of independent experts who are nominated and elected by the states parties to the Covenant and have a mandate from these states to issue general comments.

⁶ You can find a list of all states who have ratified the Covenant at <http://www.ohchr.org/english/countries/ratification/3.htm>

⁷ For example, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child.



3

The right to water and states' obligations

The General Comment No. 15 defines the Right to Water in the following way: "The human right to water entitles everybody to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses."⁸ This definition reflects three basic aspects or elements of the human right to water that always have to be fulfilled: Availability, Accessibility, and Quality⁹

Availability:

This means that there has to be a source where people can get a **sufficient quantity** of water for their personal and domestic use. This includes water for drinking, cooking, personal hygiene and basic domestic cleaning. Not only should there be enough water to satisfy the basic everyday needs but the supply should also be **continuous**.

Accessibility:

Of course it is of little value if there exists a water source but people cannot access it. To ensure **physical access** it is necessary that the distance to the source of water is not too great and that the way to the source is not in some way blocked or dangerous to use. Equally important is that people are able to pay the costs related to using the water. If the water is not **affordable** then *physical access* might be realized but not *economic access*.

Quality:

The water must also be of adequate quality. It has to be **safe** in the sense that it does not threaten the health of those who use it. Furthermore, its taste, odour, and colour have to be **acceptable**. To protect the quality of water supply it is especially important to have adequate **sanitation** in place since contamination with faecal bacteria is the primary cause of most water-related diseases.

In order to ensure that people can enjoy their right to water, states have to comply with three types of obligations:

Respect:

A state that respects the right to water does not interfere directly or indirectly with the enjoyment of the right to water. This means that the state *itself* does not destroy people's access to water, for example by the pollution of water by state-owned companies or by forced evictions.¹⁰

Protect:

In many cases it is not the state but *non-state actors*, like private companies or individuals, who deprive people of their access to water, for example, when private companies arbitrarily cut off users from water supply or when water is polluted or used up by companies' industrial activities. Therefore, state authorities are obliged to protect each person's right to water from being harmed by others.¹¹

Fulfil:

Besides *maintaining access* to adequate water, the state furthermore has to *actively promote* the full realization of the right to water. Water supply systems and sanitation should be created and improved, especially in rural and poor urban areas, and the right to water should be recognized and implemented in national laws.¹²

States have to implement these obligations and realize the right to water through appropriate policies and legislation at the **national level**. A national water strategy should elaborate how the right to water is to be realized and include concrete goals, policies, and a time-frame for implementation. Crucial for holding states accountable is that victims of violations should have the possibility to claim their right and compensation before a court or other institutions when their right to water has been violated.

The realization of the right to water requires management capacities, technological skills and financial resources. Many countries face an enormous task – and have very little resources to fulfil it. It takes time to create the needed infrastructure, establish the necessary legal framework, change administrative practices and so on. The Covenant on Economic, Social and Cultural Rights therefore does not oblige states to fully realize the right to water immediately but obliges them to **progressively realize** it over time. However, this concept does not provide states with an easy excuse for doing nothing or too little: It still means that states have

to use the **maximum available resources** for the realization of the right to water and other human rights. They also have to take **immediate steps** aiming at the realization of the right to water. Under all circumstances, certain "core obligations" have to be met by the state parties. These include that safe access to at least a minimum essential amount of water has to be ensured at all times and that a national water strategy aiming at the realization of the right to water has to be adopted and implemented at once. In short, states have to respect, protect and fulfil the right to water to the highest degree possible in any given moment.

Generally speaking, every measure a state takes has to be compatible with the right to water. The General Comment clearly states that the above obligations also apply to the states' behaviour on the **international level**. Accordingly, the obligation to respect the right to water means that a state may not threaten or destroy people's access to water in another country. States also have to protect the right to water by keeping their companies and citizens from compromising the right to water of people in other

countries. International development cooperation should be directed at realizing the right to water. As members of **international organizations**, each individual state has to make sure that organizations like the International Monetary Fund, the World Bank, and other trade organizations, respect and fully take into account the right to water in their policies.

It is important to keep in mind that the ultimate responsibility to make possible and ensure everybody's access to adequate water always lies with the state. No matter who provides water or who owns it, or whether certain responsibilities are being delegated to private parties, the state has the obligation of ensuring that all individuals have the right to water and has to monitor and control the realization of the right to water at all times.

⁸ General Comment No.15, para. 2

⁹ General Comment No.15, para. 12

¹⁰ General Comment No.15, para. 21

¹¹ General Comment No.15, para. 23

¹² General Comment No.15, para. 25, 26 and 29

We speak of a “violation of the right to water” when a state has breached any of its above mentioned obligations towards the right to water. In order to determine whether there has been a violation it is useful to answer two questions:

- Which aspects of the right to water standard are affected?
- Has the state breached an obligation and thereby violated the right to water?

Which aspects of the human right to water are affected?

13 In October 2004, an expert workshop was organized by Heinrich Boell Foundation, Bread for the World and COHRE in Berlin (Germany) on the development of right to water indicators. For a set of draft indicators and a commentary, see <http://www.boell.de/downloads/global/righttowaterindicators.pdf>

Due to the relatively recent acknowledgement of the right to water, indicators for this right are still being developed and discussed.¹³ The nature of violations can vary greatly in different situations. This brochure highlights those questions which point towards the most common problems concerning the realization of the right to water in specific situations. The questions can be seen as a basic starting kit for organizations or groups of affected people who would like to look into situations of possible violations of the right to water.

When the right to water is violated, usually other rights will be affected, too. For example, the right to water is closely linked to the right to a healthy environment, the right to food, and the right to housing. Though it is beyond the scope of this brochure to elaborate on these rights it might be useful to include them into your analysis and argumentation.

Checking AVAILABILITY

It is important that a sufficient quantity of water is always available. The World Health Organization and UNICEF estimate that about 20 litres per person and day is the minimum quantity needed for consumption, cooking and some personal hygiene.¹⁴

Note that this quantity is an absolute minimum which is still associated with high health risks. 50 liters per person each day are usually recommended.

- *Is there a water source – like a household connection, a borehole or a standpipe – in the immediate vicinity of the home?*
- *Is the available water quantity restricted? Is there enough clean water not only for drinking but also for cooking and personal hygiene?*
- *Is water always available or only during certain periods?*
- *Do people often get disconnected, for example, because they cannot pay their bills? Are there alternative sources of water that can be used then?*
- *Are there often breakdowns of the water supply? How long do they last and are they automatically corrected?*

14 See, for example, Gleick, P. H.: Basic water requirements for human activities: meeting basic needs. Water International, 21 (1996), 83-92. http://www.pacinst.org/reports/basic_water_needs/basic_water_needs.pdf
See also Howard, Guy; Jamie Bartram: Domestic water quantity, service level and health. World Health Organization: Geneva 2003. Available at http://www.who.int/water_sanitation_health/diseases/wsh0302/en/index.html

Checking ACCESSIBILITY

Physical Accessibility

The question of how easy or how difficult it is to access a water source affects whether it will be used at all and how much water will actually be used. Even if water is available in sufficient quantity, it is well possible that people cannot access it. The World Health Organization, for example, has found out that when people need more than 30 minutes altogether for collecting water, they will probably take home less than the minimum amount of water necessary for consumption and personal hygiene.

- *Is a water source within physical reach? Is this true not only at home but also at school and at the work place?*
- *Are people spending more than 30 minutes on collecting water every day, including the waiting time at the source?*
- *Is it safe to go to the source and to use it or do people have to fear harassment or physical violence?*

15 Examples of hidden costs are the loss of income caused by long collection times or additional expenses on the treatment of poor-quality water.

Affordability (Economic Accessibility):

Access to safe water can also be restricted because people cannot afford to pay the costs related to getting the water from a safe water source. One can say that water is not affordable when people do not have the money to pay for it at all, but also when they can only buy it at the expense of other basic goods and services, like food or housing. High prices or high increases of prices will often make it difficult for the poorest to pay for the needed quantity of water. However, to demonstrate that water is not affordable, it is better not to look only at prices but also at how much money the poorest have to spend on water in relation to their available resources.

- *How much is the price for water and connection fees? Are there other (hidden) costs of getting water?¹⁵ Have the costs risen a lot recently?*
- *How much of their income do people spend on water?*
- *How high are the prices compared to the minimum wage?*
- *Are prices controlled or set by public authorities?*
- *Are there subsidies or similar mechanisms that make the provision with the basic water supply cheaper?*
- *Is there a free basic water supply for those who are unable to pay?*

Checking QUALITY

Safety

Of course, it is most convincing when one can prove via a professional chemical analysis that the quality of the water is below national or international standards¹⁶ and that it should not to be used for consumption and personal hygiene. However, quality tests often are not possible to conduct because they are too costly or for technical and organizational reasons. Nevertheless, even without such an analysis there are some indicators that can help to identify possible problems with water quality.

16 The international reference point are the World Health Organization's Guidelines. See World Health Organization: Guidelines for drinking water quality. (3rd edition) Geneva 2004. Available at http://www.who.int/water_sanitation_health/dwq/en/
A short overview of bacteriological and chemical guideline values can be found at <http://w3.who.org/techinfo/water.htm>

- *Is the water source protected against contamination?*
- *Is the water visibly contaminated with excrements or waste?*
- *Do people have to take care of their personal hygiene or of washing their clothes directly at the water source?*
- *Is the water source also used by animals? Is there a protection against animals accessing the water source?*
- *Is household, agricultural or industrial waste water discharged into the water source?*
- *Do people have access to safe sanitation like improved latrines or a sewerage system?*
- *Is there a regular maintenance of the water supply system? Is water quality regularly controlled?*
- *Does the water get treated to make it fit for human consumption? Do people know how to treat the water to make it safe and do they have the means to do so?*
- *Does water have to be stored, for example because there is no continuous supply? Is the way in which water gets stored safe?*
- *Is assistance given to communities relying on non-piped water sources to help them preserve water quality?*
- *Have people complained about the smell, taste or look of the water?*

Acceptability

Even if water is adequate for human consumption and personal hygiene it can happen that people decline to use it or only use it reluctantly because they do not find smell, taste or appearance of water or water sources acceptable.

Checking OTHER ASPECTS

Non-Discrimination

Discrimination, especially of vulnerable or marginalized groups like indigenous people, slum dwellers, women, children, or elderly and sick people etc., is one of the major human rights concerns. When checking the other aspects, one additional question should always be whether certain groups are systematically disadvantaged or treated different than other groups. For example, women and girls are often the ones who are responsible for fetching water and therefore they are often worse affected by problems with the access to water.

Participation

People must have a voice when decisions are made that affect their access to water. This means, that they should participate in the relevant decision-making processes.

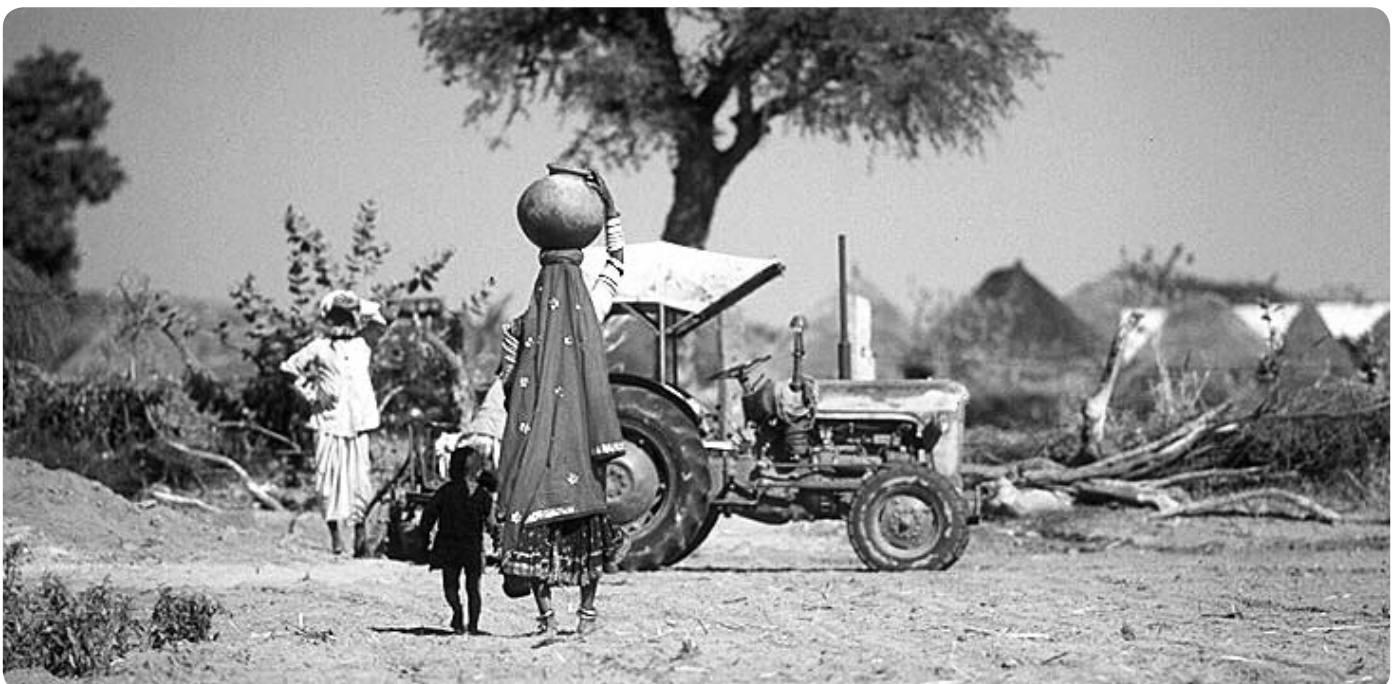
Access to Information and Transparency

Nobody can effectively participate in political decision-making or claim a right if necessary information is not available.

Education

The obligation to fulfil the right to water also includes that there should be education about the correct use of water.

- *Is access to water denied to some groups because of their race, sex, national or social origin, or other comparable reasons?*
- *Have people or their representatives been heard before a decision was taken? Did they have a fair opportunity to present their needs and demands? Have they been considered?*
- *Is information concerning water issues available at all? How difficult is it to get this information? Is information available in languages spoken by the communities and is it easy to comprehend?*
- *Do state authorities provide information on water? Do they make sure that private companies provide such information?*
- *Is the tariff system and the negotiation of tariffs transparent?*
- *Do people know of the dangers of contaminated water?*
- *Do they know how to make their water safe?*
- *Are they aware of the importance of personal hygiene to prevent diseases?*
- *Does the state take educational measures in schools and for the broader public concerning water and sanitation issues?*





The Importance of Collection Time

The distance between home and water source affects all elements of the right to water:

The World Health Organization has found out that when people need more than 30 minutes to collect water, they will probably collect less water than needed even for one person for consumption and personal hygiene. If people have to wash themselves at the source, this can hurt their dignity and privacy and can also make water contamination more likely. Furthermore, when water is not available at home, there is the danger of contamination at the water source or during transport.

The more time is spent on the daily collection of water, the more the time-factor also affects the possibilities to earn money, to farm land, to take care of children, or to go to school. Often, especially girls and women are concerned because they are most often responsible for fetching water, especially in Africa and in South Asia.

Has the state breached its obligation to respect, protect and fulfil?

By using the aspects in the previous part as a check-list you can determine how the right to water standard is affected in a certain situation. However, not every situation in which people do not have full access to adequate water can immediately be called a **human rights violation**. You would have to show that the state has not met its obligation to respect, protect or fulfil the right to water although it could have done so. Such a breach of obligation by a state then constitutes a human rights violation.

In the next chapter, examples will demonstrate how to determine a breach of states obligations. Generally, it helps to distinguish between two situations:

Situation 1: "Destruction of the right to water standard"

Existing access to water has been restricted or has been harmed in any other way.

- Did the state authorities or state-owned companies or agencies themselves destroy aspects of the human rights standard (that means the access to adequate water)?
 - ↳ **Yes** Could the state have prevented this?
 - ↳ **YES** Violation of the obligation to **respect** the right to water.
- Did a third, a non-state party destroy the human rights standard?
 - ↳ **Yes** Could the state have prevented this?
 - ↳ **YES** Violation of the obligation to **protect** the right to water.

Situation 2: "No progress in the fulfilment of the right to water"

Access to adequate water has been lacking for some time and the state has not taken appropriate measures to address the situation.

- Could the state authorities have done something to improve the situation? Did they have or look for the necessary resources and capabilities?
 - ↳ **Yes** Violation of the obligation to **fulfil** the right to water

In any situation you should ask whether the state had the means to meet its obligations. If a government is not unwilling but truly unable to respect, protect or fulfil the right to water then this is not a violation. However, this is only true if the state actually tried to use the resources it had at hand as effectively as possible. States especially have to demonstrate that they have effectively used all available resources when they fail to fulfil core obligations like ensuring the supply with the minimum essential amount of water necessary to prevent diseases. Any measures that deliberately reduce people's access to water are generally prohibited and state authorities have to justify any such **retrogressive measures** and prove that there was no alternative to them.

Even if there are no resources available in order to proceed with the realization of the right to water, states are at least required to acknowledge the situation and to address it, for example by developing a relief strategy or by asking for international assistance.



5 Examples of violations of the right to water

Case 1: Contamination of water by oil company in Peru

The Urarina are indigenous people living in the River Chambira basin in Peru. Their water supply depends mainly on the water from the riverbanks they live at. Due to the extraction of oil by the oil company Pluspetrol in this area, the River Chambira and its tributary river Hormiga have been contaminated. About 75 families living in the communities Pijuayal, Santa Carmela, Nueva Porvenir and San Pedro are affected. Throughout the last few years there have been reports about the contamination of water by the oil industry in this area.

Analysis:

The Urarina depend in their water supply for drinking, cooking and personal hygiene primarily on the water that they get from the rivers. Besides their right to water, their right to feed themselves is also affected since the Urarina use the rivers for fishing.

A water analysis has shown that the contamination with chemical and oil residual substances is above the permitted maximum values. An array of health problems that have arisen in the communities seems to be related to the consumption of contaminated water and fish from the rivers. Besides the chemical contamination and the threat it poses to the health of the Urarina, the quality of the water can also be considered as inadequate because of its taste and odour. Since there do not exist other sources of safe water that the Urarina could change to, they currently are without access to safe water.

Since the contamination of the water has been caused by a private company, this is a case in which the state authorities have not complied with their obligation to **protect** the Urarina's access to water from interference by non-state actors. Though it is unclear whether the authorities could have prevented the contamination caused by Pluspetrol – for example by stricter environmental laws or controls – it is undisputable that they were obliged to act once it had occurred. They should have made sure that the contamination was stopped and that the Urarina were supplied from alternative sources at least until the water quality of the rivers returned to normal.

The authorities' omission to act is particularly critical in this case because the Urarina are very poor and lack the possibilities to organize themselves in order to claim their rights. The UN General Comment No. 15 on the Right to Water underlines that the realization of the right to water especially of vulnerable and marginalized groups like them should be a priority. Furthermore, the fact that there have already occurred severe cases of contamination caused by the oil industry in this area in the past should have made the responsible authorities pay more attention to this problem.

It is important to note that, although it was Pluspetrol that has caused the contamination, from the human rights perspective the state authorities are ultimately liable for the violation of the right to water because they did not prevent the contamination and did not act when the Urarina's access to water was destroyed.



Case 2: Depletion and contamination of groundwater by Coca Cola bottling plant in Kerala (India) and in Tamil Nadu (India)

In 1998-1999, a Coca Cola plant was established in Plachimada in the Palakkad District in Kerala, India, by Hindustan Coca Cola Beverages Private Ltd. (HCBPL). To supply water for production about 60 bore-wells were dug on the 40 acres of land that the company had leased and 1,500,000 litres of water were extracted every day. This caused a substantial decrease of groundwater levels in the area and the drying up of wells. In addition, groundwater was also severely contaminated, probably partly because Coca Cola gave some of the plant's waste as "fertiliser" to the peasants. The depletion and contamination of the groundwater led to a noticeable decline in the quantity of harvested crops and to health problems of the people living in the area. The women responsible for collecting water had to switch to safe water sources several kilometres away from their home.

In August 2003, the Perumatty Panchayat (village council) therefore took the decision to cancel the company's license. In December 2003, the Kerala High Court decided that Hindustan Coca Cola Beverages would have to find alternative sources for its water supply in Plachimada and could only use a limited quantity of water from the bore-wells on the grounds in the future. The company also had to re-apply for a license from the village council. The Court reasoned that the extraction of water was threatening the right to life protected by the Indian Constitution and that the underground water belonged to the general public. The Indian Government set up a Joint Parliamentary Committee, which affirmed the harm caused by the factory. Finally, the Kerala State Cabinet completely banned the extraction of water from the bore-wells in February 2004. Coca Cola had to stop its production in Plachimada and has not resumed it yet. On April 7th 2005, however, a division bench of the Kerala High Court decided that Coca-Cola could extract up to 500,000 litres of water per day if certain conditions were fulfilled. The Perumatty panchayat (village council) appealed to the Supreme Court of India against this decision and rejected Coca-Cola's application to resume operations in Plachimada because the company did not submit necessary certificates like the clearance of the Kerala State Pollution Control Board. In a surprising decision on June 1st, the Kerala High Court has now ordered that the Perumatty panchayat had to issue a license for Coca-Cola and that the company could resume production even if that license was not issued! On June 5th, the village council therefore renewed Coca-Cola's license for three months. At the moment, it is not yet clear whether the plant will actually start to operate again because there are strong protests and Coca-Cola has objected against the short duration of the license and the conditions set forth by the panchayat.

Hindustan Coca Cola Beverages Private Ltd. has built another bottling plant in the district of Sivagangai in the state of Tamil Nadu in 2003. The factory is located on the grounds of a sugar mill near the village Padamathur, which was established in 1989. This mill already extracts about 1 million litres of water per day and has a license issued by the Tamil Nadu government to withdraw up to 4.9 million litres of water per day. Apparently, this license now was to be shared by the Coca-Cola factory. However, even without the operation of the bottling plant, water levels in the area are already precariously low and people living in the area have reported that they could hardly get any water from the communal schemes or



from their own wells any more. It was also reported that during a test run of the plant several cattle died after having eaten waste produced by the factory.

Analysis:

In these cases again elements of the right to water as well as of the right to food are affected. Both the quantity as well as the quality of the water in Plachimada were inadequate for human consumption while the Coca Cola plant was in operation and other sources of water were too far away to ensure a sufficient supply. Though this was not prevented by the Kerala Government in the first place, it seemed like a positive development when the Kerala High Court decided to stop Coca Cola's activities in Plachimada in December 2003 and the Kerala government acted according to this decision. However, the latest decisions of the Kerala High Court, overruling the panchayat's unanimous decision and the people's concerns and neglecting its own previous decision, are a step backward from the protection of the human right to water.

The right to water is threatened in similar cases all over India. The factory in Sivagangai is but one example. It is possible that this factory and others will have similar outcomes as the one in Plachimada. However, despite protests and resistance by the affected people, the Indian State has not taken measures to prevent the destruction of people's access to their water. This constitutes a violation to **protect** the right to water.

Case 3: Diversion of water for a water theme park in India

The Malampuzha Dam provides about 20,000 peasant families in Palakkad, Kerala (India) with water. In 2003, the Indian government decided to build a check dam in order to divert water for a water amusement park. However, after protests against the diversion the project was stopped.

Analysis:

The Malampuzha Dam originally served the purpose of providing irrigation water for some 40,000 acres of agricultural land in the area. However, the diversion of water to the water theme park also would have threatened the access to drinking water of the peasant families. Aspects of the right to water therefore are affected in this case. It was the government itself that took the decision to build the dam and divert water to the theme park. As long as the government did not, at the same time, also take measures to assure the sufficient and continuous access to drinking water – either from the dam or from alternative sources – the diversion of water to the amusement park would have been a clear breach of the Indian government's obligation to **respect** the right to water of the affected peasant families.

Case 4: Price increases after water privatization in Cochabamba (Bolivia)

Cochabamba is the third-largest city of Bolivia. In the past few years it has rapidly grown due to the migration of many from the rural areas to the city. About 40% of the 600,000 living in Cochabamba do not have access to safe water and sanitation. Until 1999, the municipal company SEMAPA was the provider for water and sanitation services of the city. Then, in September 1999, the Bolivian government gave a 40-year concession to a private consortium (Aguas de Tunari). The government had been heavily pushed by the World Bank to do so as a condition for further assistance in the water sector and for further debt relief.



In December 1999, directly after privatization, water prices were increased considerably. The higher tariffs were introduced partly in order to cover the costs for the so-called Misicuni project. The project included the construction of a tunnel to transport water to the city. It was clear that there were much cheaper alternatives to this tunnel and that financing it would unnecessarily drive up water prices. In addition, the tariffs had to be increased because they were supposed to cover the repayment of old debts of SEMAPA and the guaranteed 15% rate of return for Aguas de Tunari. The company Bechtel, one of the major stakeholders in the consortium Aguas de Tunari, has claimed that rates were raised by an average of about 35%. However, people suddenly received bills that were 35% to 50% higher than before and in some cases much more. Apparently, one reason was that water tariffs increased and at the same time more water was available and used because of repairs of the water system. Some families therefore suddenly had to pay the double and more of what they had paid before.

The people of Cochabamba responded with protests and strikes and refused to pay. The Bolivian government sent military forces which tried to stop the protests with violence. A 17-year old boy died and more than 100 people were injured. In the end, however, the people succeeded. They made the government roll back the higher rates and suspend the contract with Aguas de Tunari.

Analysis

In Cochabamba, even before privatization some people spent more than 20% of their monthly income on water. The sudden and high increases in water bills therefore were above what poor families in Cochabamba could afford without spending less on other necessary goods and services. The negotiations about Aguas de Tunari's contract were not transparent. Though Aguas de Tunari's offer did not meet the terms of the tender, negotiations were initiated. It appears that it was the Bolivian government authorities which demanded that the tariffs

should cover the questionable Misicuni project and the repayment of SEMAPA's debt.

Both Aguas de Tunari and the World Bank claimed that they objected to the Misicuni project because it was much more expensive than alternative projects. However, there is clear evidence that the World Bank strongly recommended that there should be no public subsidies to avoid high tariff increases. The Bank wanted the tariffs to "reflect the full cost of provision of the Misicuni multipurpose project".¹⁷



It was the **Bolivian government** that in the end signed the contract with Aguas de Tunari in September 1999. By doing so, it did not **respect** people's right to water, especially by insisting on the tariffs to recover the mentioned costs. The government is also responsible for the human rights violations by its military forces during the protests.

However, the **World Bank** used considerable pressure and threats to make the Bolivian government privatize water services in Cochabamba in the first place. Furthermore, during the negotiations it pressured the government not to make use of public subsidies. Of course, the World Bank is an international organization and not a State bound by the Covenant on Economic, Social and Cultural Rights. However, the General Comment No. 15 also stresses that, even though non-state actors are not bound to the Covenant like states, especially the international financial organizations in particular should be aware of their responsibility for the realization of the right to water. Furthermore, the **member states to the World Bank**, who have signed the Covenant on Economic, Social and Cultural Rights are obliged to make sure that the World Bank policies comply with human rights standards.

17 Quoted in Lobina, Emanuele (2000): Cochabamba – water war. [Public Services International Research Unit PSIRU]; Focus (PSI Journal), Volume 7, Number 2.



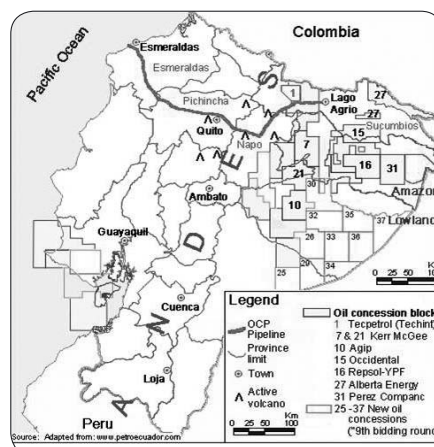
Case 5: Oil pipeline financed by German state-owned bank destroys access to water and livelihoods in Ecuador.

Between 2001 and 2004, a major pipeline for crude oil was built in Ecuador which is now in operation. The pipeline is 500 kilometers (300 miles) long and transports oil from Ecuadorian Amazon across the Andes to the Pacific coast. It has been built and is now being operated by OCP Ltd. (Oleoducto de Crudos Pesados = Pipeline for Crude Oil), a consortium of seven international oil companies. One of the main financial backers is the German WestLB bank.

The pipeline threatens national parks, wildlife reserves, and indigenous lands. During the construction of the pipeline severe environmental damage was caused. Water sources were polluted and cut off and they could not be used anymore. An examination of 47 kilometres of the pipeline in 2002 revealed that along this small part of the pipeline about 157 streams and springs had been either cut off or polluted. In addition, the blockages led to floodings that polluted wells and killed livestock.

Water pipes important for the water supply of cities like El Chaco or El Reventador were also damaged during the construction works. Many families were without access to water for several days.

A major oil spillage was caused when the SOTE oil pipeline was damaged because of the transport of heavy machinery for the OCP-pipeline. This led to the contamination of several rivers and of the Laguna de Papallacta, one of the city of Quito's drinking water reservoirs which supplied about 800,000 people. In addition, several oil spillages occurred along the OCP pipeline itself and contaminated various rivers.



More problems are to be expected in the future. The pipeline does not fulfill a number of national and international standards. The risk is high that it gets damaged because of the considerable seismic and volcanic activity in this area. In November 2002, the eruption of the volcano Reventador already destroyed 870 meters of the pipe.

It is also possible that the pipeline might be attacked by Columbian guerillas or by Ecuadorian opponents of the pipeline.

A series of peaceful protests against the pipeline was not only ignored but many times violently repressed by the Ecuadorian authorities. Many people were arrested, injured and even tortured by the national police.

Analysis:

In this case, existing access to water was physically blocked, and water has been so severely contaminated that it is no longer suitable for human consumption or other personal and domestic use. Especially in the rural areas, where many indigenous communities live, people depend on the springs, rivers and wells for their entire water supply. Many families were forced to change to other water

sources of inferior quality or had to carry on using the contaminated water sources. Both availability and quality of water are therefore clearly and heavily affected.

As a state that has ratified the International Covenant on Economic, Social and Cultural Rights it is the **obligation of the Ecuadorian State to protect** the people within its boundaries from the destruction of their right to water by others. Much to the contrary, the Ecuadorian government and other authorities even violently repressed the peaceful resistance against the pipeline.

The major financial backer of the pipeline, the German WestLB bank, is mainly owned by the German Federal State of North Rhine-Westphalia. When several German and Ecuadorian NGOs informed the WestLB about the impacts of the project, its officials refused to meet with representatives, denied the evidence and rejected all requests of the victims. The participation of a state-owned bank implies that besides the Ecuadorian state, **Germany** has also breached its extra-territorial **obligation to respect** the right to water of the Ecuadorian people in this case.



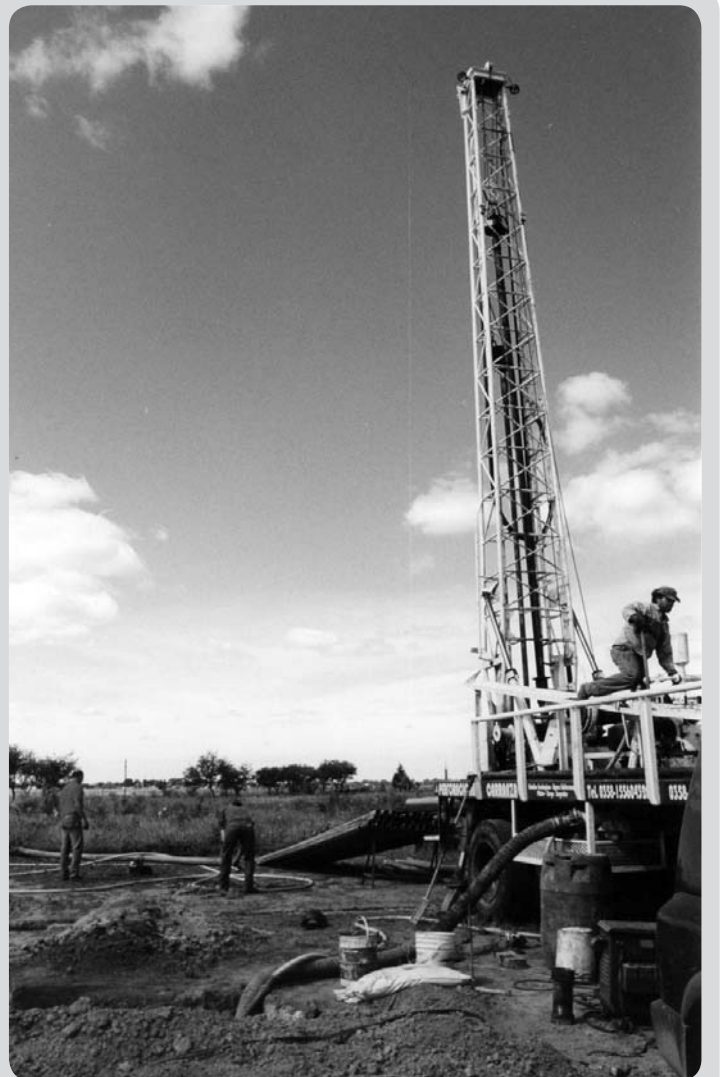
Court judgement enforces right to water: CEDHA wins lawsuit against Municipality and State Province in Argentina – water provided to claimants and public water services extended to outlying poor communities¹⁸

In a court action successfully filed by the Center for Human Rights and Environment (CEDHA) in Argentina, the judge has ruled in October 2004 that the Provincial State was responsible for violations of the rights to a healthy environment, to an adequate standard of living, to health, and of the human right to safe drinking water. The right to safe drinking water was explicitly recognised in the ruling which cited both the International Covenant on Economic, Social and Cultural Rights and the General Comment No. 15 on the right to water.

In the city of Córdoba, Argentina, several outlying poor neighbourhoods had been suffering for years from the lack of access to the public water distribution network and from severe contamination of their local water sources. One of the reasons for the contamination was the public sewer-water treatment facility which lacked maintenance and capacity and therefore caused daily spillage of untreated sewerage water.

Since the Argentine Constitution guarantees the right to a healthy environment and incorporates several international human rights instruments, like the Covenant on Economic, Social and Cultural Rights, CEDHA jointly with four community members filed an action against the Municipality and the Province State of Córdoba. With the ruling, the Municipality was ordered to ensure the proper functioning of the treatment facility and the Province State to provide 200 daily litres of drinking water to the four claimants until their access to the public water service was realised.

In December 2004, the Provincial State has started public works directed at providing fresh and safe water for the affected communities (see picture). The Municipality has presented a plan for the rehabilitation of the sewage infrastructure. Furthermore, the Municipality Congress has passed a law which is to ensure that unlike before all revenue from sewage and sanitation taxes is invested exclusively in the sewage system.



¹⁸ See Housing and ESC Rights Law Quarterly Vol. 2, No. 1, published by COHRE (<http://www.cohre.org/esc-law-quarterly.htm>); The text of the decision can be downloaded in Spanish at www.fian.org (go to: Themes/ Water)

6 What you can do

At the local and national level

To successfully fight human rights violations you will almost always need public support and attention. Raising **public awareness** of a human rights violation can put considerable pressure on the authorities to act in favour of an affected group. If possible, you should therefore try to pass on information to journalists, to newspapers and other media. The local media might not offer a nation-wide press coverage but is often more interested in reporting about local struggles. Having available a handy summary of the situation, as well as providing additional information, photos etc., can help when approaching the media and other groups. In addition, in many situations, public events or letter actions can encourage people to participate in supporting the victims and direct the authorities' attention to your case.

If possible, also address the **responsible authorities** directly. If it has not been brought to their attention yet, you can inform them about the situation and the demands of the affected people. Ask them to act according to their human rights obligations and refer to the International Covenant on Economic, Social and Cultural Rights and to corresponding national human rights standards.

In many countries there exist **national human rights commissions or ombudsmen** to which one can present complaints concerning human rights violations. Appealing to national courts can also be an option. Possibilities to do so, however, depend greatly on the national legal system and on how the right to water or related human rights are implemented in national laws. Furthermore, it might also be a costly and long-term undertaking and usually requires legal expertise.¹⁹

In any case it is advisable to join forces, form networks and cooperate with **other civil society organizations**. Partnerships will strengthen your position in relation to official authorities and can supply you with additional resources and contacts. In many countries specialized human rights organizations are active and can bring in their expertise on national and international human rights law and on the possibilities to address violations in the specific national context.

At the regional and international level

Human rights commissions also exist at the regional level like the Inter-American Commission on Human Rights and the African Commission on Human and Peoples' Rights. One very successful example of national and international NGOs bringing a case before such a regional human rights commission was concerned with the environmental pollution through oil exploitation in Ogoniland, Nigeria. In 2001, the African Commission on Human and Peoples' Rights found that the Nigerian government had violated several human rights and ordered that the government should compensate the Ogoni people.

At the level of the **United Nations**, the **Committee on Economic, Social and Cultural Rights** monitors the implementation of the Covenant by the states every five years. NGOs are invited to submit information to the members of the Committee and to the Special Rapporteurs at any time.²⁰ However, NGOs with an official consultative status at the United Nations – like the Center on Housing Rights and Evictions (COHRE) and FoodFirst Information and Action Network (FIAN) – have more effective possibilities of presenting information to the Committee. For example, they can hand in and present written "parallel reports" about the human rights situation in certain countries when the corresponding states have to submit their official implementation reports. These groups cooperate with numerous civil society organizations around the world and can certainly support you in using the UN Committee mechanisms effectively for your aims.

¹⁹ For more information, see www.cohre.org/litigation

²⁰ For more detailed information on how to use the Committee on Economic, Social and Cultural Rights see <http://www.cohre.org/unframe.htm>



A final checklist: How to fight violations of the right to water

- ✘ **COLLECT INFORMATION** about your case from the affected people, government authorities, newspapers, scientific institutions etc. It might also be helpful to include information about government policies on water and on the legal framework concerning water in your country. When arguing your case, you should name your sources of information whenever possible.²¹ Of course, all important documents that may serve as proof for your information should be kept, including letters to and from state authorities, press articles, photos and so on.
- ✘ **ANALYSE** your case as shown in chapter 4 of this brochure. Show in your argumentation where and how the right to water has been violated and which state authorities are responsible for this violation.
- ✘ **FIND ALLIES** who you can cooperate with at the national and international level. Try to find out whether other groups are dealing with similar situations or do human rights work in your region. NGOs at the international level like COHRE, FIAN and Bread for the World (see contact information at the back of brochure) usually work together with many other organizations and experts around the world and might be able to arrange contacts for you.
- ✘ **ALERT** the media and pass on information to them. Arrange public events to make people aware of your struggle.
- ✘ **CONTACT THE AUTHORITIES** who are responsible, reminding them of their obligations and asking them to react in an appropriate way to the violation.
- ✘ **LOOK FOR LEGAL ADVICE** to find out whether there are judicial or other remedies accessible in your country or at the international level where you can present your case. Use the knowledge of other civil society organizations who have already used these instruments.
- ✘ **FIND OUT MORE** about economic, social and cultural rights and especially the right to water. (See Chapter 7: References and further information).
- ✘ **CONSIDER** whether you would like to promote the recognition and implementation of economic, social and cultural rights in general, for example, by raising public awareness of them with public events and lectures, by arranging human rights trainings for activists, lawyers and state officials, or by demanding from your government their consequent implementation in national legislation.

²¹ On the other hand, especially when the information stems from testimonies of affected or other people, confidentiality and the safety of your witnesses should be your top priority.

DOCUMENTING CASES

Reliable and comprehensive information is the foundation of any successful human rights work. It is useful to keep a case documentation, which summarizes the results of your research and analysis. A case documentation should include:

- A Basic description of the case:**
 - Exact location, origin and number of affected people
 - Description of events and actions that have led to the current situation
 - Description of the roles and positions taken by the different state authorities
 - Necessary background information concerning the political, social, economic, ethnical and legal context
- B Summary of your violation's analysis**
 - Affected aspects of the right to water (Availability, Accessibility, Quality, Discrimination,...)
 - Type of breached obligations (Respect, Protect, Fulfil)
- C List of contacts and important sources of information, documents, etc.**

7

References and further information

Websites by non-governmental organizations about the right to water

Blue Planet Project, Council of Canadians
<http://blueplanetproject.com>

Bread for the World (in German, English, Spanish)
<http://www.menschen-recht-wasser.de>

Center on Housing Rights and Evictions (COHRE)
<http://www.cohre.org/water>

Food First Information and Action Network (FIAN)
<http://www.fian.org> (go to: Themes / Right to Water)

Public Citizen
<http://www.citizen.org/cmep/Water/humanright>

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Langford, Malcolm; Ashfaq Khalfan; Carolina Fairstein and Hailey Jones: *Legal Resources for the Right to Water: International and National Standards*. COHRE: Geneva 2004. <http://www.cohre.org/water>

Official internet resources

United Nations Committee on Economic, Social and Cultural Rights (CESCR) <http://www.ohchr.org/english/bodies/cescr>

General Comments of the UN Committee on Economic, Social and Cultural Rights:
<http://www.ohchr.org/english/bodies/cescr/comments.htm> (english)

Text of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
<http://www.ohchr.org/english/law/cescr.htm> (english)
<http://www.ohchr.org/spanish/law/cescr.htm> (spanish)
<http://www.ohchr.org/french/law/cescr.htm> (french)

Website of the World Health Organization (WHO) on water and sanitation
http://www.who.int/water_sanitation_health/en

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World Health Organization / UNICEF Joint Monitoring Programme for Water Supply and Sanitation: *Water for Life. Making it Happen*. Geneva 2005. http://www.who.int/water-sanitation_health/monitoring/jmp2005/en

Contact Adresses

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