

Nandita Singh *Editor*

# The Human Right to Water

From Concept to Reality



Springer

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*Dedicated to my parents and parents-in-law*

# Preface

The origin of this book lies in two of my research projects that were funded by the Swedish International Development Cooperation Agency (SIDA), which is a government agency working on behalf of the Swedish parliament and government, with the mission to reduce poverty in the world. The research projects focused on the human right to water at the level of local communities. One of them looked at realization of the right from the gender perspective, while the other one considered the right of children. The novelty in both the projects lay in the argument that human right to water cannot be realized by the right holders in local communities just because rosy legal frameworks have been created. Based on an interdisciplinary research hypothesis arguing that implementation of legal frameworks is deeply embedded in the societal context where they are implemented, the projects on the whole concluded that realization of the human right to water by women and children of both genders in local communities depends on the norms prevailing in the context existing on both sides of the implementation process.

This coincided with my experiences from an international evaluation of the India Country Programme of WaterAid International. This organization regarded its role in supporting domestic water provision to be unconnected to the human right to water and integrated water resources management questions. Human right to water question was seen as “legal matters” (essentially outside their purview), while the importance of integrated water resources management for sustainable domestic water provision just could not be realized. Two obvious recommendations of the evaluation were, first, to adopt a human rights-based approach to their water provisioning role so that equitable access to safe water can be ensured and, second, to incorporate integrated water resources management approach so that sustainable water access could be ensured particularly in the semiarid areas where they were mostly active.

These experiences led me to start considering the question of realization of the human right to water in a broader perspective, paving the way for scaling up the issue from local community to national, regional, and even global scales. It became a question worth examining that if realization of the human right to water can pose challenge at the small scale of local community, then how is the situation at larger

scales? What other kinds of contexts and factors can make an impact upon realization of the right? My long association with research and education in fields of water resources management and water governance paved the way to frame questions that were rooted in the possible interconnections between human right to water and water resources management/water governance.

After the book idea was initially conceived, further conceptual clarity about the question raised and the need of the book came from a subsequent research project on climate adaptation and water stress funded first by SIDA and later by the Swedish Research Council. This project enabled close investigation on the nature of adaptation planning required that could enable realization of the human right to water.

All this while new literature had been appearing on the diverse subjects mentioned in this preface, however there was a clear lacuna of thoughtful writing examining their cross-connections. These were written by either “legal” experts elaborating on the rationale, content, and processes of implementation of the right or else by experts and practitioners in the fields of water resources management/water governance who had virtually no concern for the human right to water. The hiatus between the two fields was wide, while the interconnections were obvious. As a result, while guidelines for implementing the right were expanding, the outcomes could not be ensured despite the will and best efforts.

The need of a book closing this gap was further reinforced through my experiences from coordinating a long academic exchange with one of the premier law institutes in India – the National Law School of India University (NLSIU). This exchange was supported by SIDA again. The law students at this institution undoubtedly received legal education of the highest order but isolated from the environmental and water contexts in which the laws operate.

All this necessitated the compilation of this book. It is intended toward benefiting a number of groups. First are academics who teach in the fields of human right to water, water law, water management, water governance, and sustainable development. Second are the researchers and students in these fields. The third group comprises policy makers and administrative staff in government agencies who design as well as implement action concerning the right. Fourth are the policy-making and implementing staff in international-, national-, and/or local-level intergovernmental as well as nongovernmental agencies that work in the related field. Finally, it is also intended to benefit practitioners in the field of law in general and environmental/water law in particular who deal with legal cases connected to realization of the right.

A number of people have contributed directly or indirectly to the process that has enabled the completion of this book. The project partners in the human right to water projects, Karsten Åström, Per Wickenberg, and Håkan Hydén; those in the climate adaptation project, Ulf Johansson Dahre and Anna Jonsson; and teachers from the NLSIU, particularly Sarasu Esther Thomas, M.K. Ramesh, Chengappa M.P., Manjeri Subin Sunder Raj, Kumar Abhijeet, and Sairam Bhat, as well as the students at this institution, are all gratefully acknowledged for their respective contributions to the ideas and arguments contained in this book. Special thanks remain for the women, men, and children of the local communities where research

connected to this book were carried out. A word of acknowledgment is extended to all the contributors of this book who wholeheartedly agreed to the novel thinking of the book and faithfully wrote their chapters in a way that effectively fulfilled its objectives. The critical comments received from the anonymous reviewers of the book project are also gratefully acknowledged, particularly because these greatly helped clarify the purpose, objectives, and contents of the book.

My heartfelt gratitude is owed to my husband Om Prakash Singh who as a friend, mentor, and guide initiated the writing of this book, helped clarify the ideas at every stage, supported building the arguments through his constructive and thoughtful insights, and extended practical support in carrying out some of the field studies included in this book. Last but not the least, I must appreciate the cooperation of our son Nilay who is only 14 years old but has patiently participated in many of the field visits and quietly listened to discussions regarding water and the human right to water through the years.

Stockholm, Sweden  
September 2016

Nandita Singh



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**Marianne Kjellén** holds a Ph.D. in human geography and has twenty years' experience of policy-related research in the fields of water supply and sanitation, water resources management, health–environment linkages, and gender and rights issues. Currently, she leads the thematic area of water governance at the Stockholm International Water Institute (SIWI). As director of the UNDP Water Governance Facility at SIWI, she is responsible for initiatives that support governance and leadership in the area of water, sanitation, and hygiene in close collaboration with developing country governments, as well as capacity development in the area of “water integrity” aiming to create systems, based on transparency, accountability, and participation, that withstand corruption. She also engages in research related to the human rights-based approach and ways to improve equity and inclusiveness of water and sanitation projects, particularly in relation to indigenous peoples. Her work relates mostly to Latin America and sub-Saharan Africa.

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She has been instrumental in establishing and strengthening educational cooperation between Sweden and India through the Linnaeus-Palme Academic Exchange Program supported by the Swedish International Development Cooperation Agency (SIDA) and the Erasmus Mundus Program supported by the European Commission. She has been a visiting faculty at the National Law School of India University, Bangalore for 8 years and at A. N. College, Magadh University, Patna under these programs. She has served as an expert in the water sector independently and as member in working groups in Sweden, India and also at many other places, including evaluation of the working of nongovernmental organizations in the sector and of projects for research funding agencies. She is a regular reviewer of research articles for several international peer-reviewed journals and has also been an adviser on water issues to the private sector.

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# Abbreviations

BIS	Bureau of Indian Standard
BGL	Bogoso Gold Limited
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
CSR	Corporate social responsibility
CWSA	Community Water and Sanitation Agency
CWSP	Community Water and Sanitation Program
EAP	Environmental Action Plan
EIA	Environmental impact assessment
EPA	Environmental Protection Agency
ESC	Economic, cultural, and social
EU	European Union
GWCL	Ghana Water Company Limited
ICESCR	International Covenant on Economic, Social and Cultural Rights
IEC	Information, education, and communication
IFI	International financial institution
ILO	International Labour Organization
IPCC	Intergovernmental Panel on Climate Change
ISODEC	Integrated Social Development Center
IWRM	Integrated water resources management
JRC	Joint Rivers Commission
Lpcd	Liters per capita per day
M&E	Monitoring and evaluation
NGO	Nongovernmental organization
OECD	Organisation for Economic Co-operation and Development
PCB	Pollution Control Board
PHED	Public Health Engineering Department
PRI	Panchayati Raj Institution
TNC	Transnational corporation
TSH	Thyroid-stimulating hormone



UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children’s Fund
VWSC	Village Water Supply Committee
WACAM	Wassa Association of Communities Affected by Mining
WATSAN	Water and sanitation
WB	World Bank
WHO	World Health Organization
WRC	Water Resources Commission
WTO	World Trade Organization

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# Chapter 1

## Introduction

**Nandita Singh**

**Abstract** This chapter introduces the reader to the purpose and contents of the book. Beginning with a brief outline of history and concept of the human right to water, it argues that the current scenario indicates that measures for implementation of the right are not always able to deliver the goods as planned. Therefore, the central question is identified as: How to enable translation of the human right to water from concept to reality? The central contention in the chapter and hence the book is that human right to water questions cannot be addressed through mere legal formulations. Instead, if the interest lies in enabling people to realize their right, then the need is to look beyond law, linking it to the interdisciplinary fields of water resources management and water governance. Toward this end, concepts of “realization” and “implementation” of the right are differentiated, and the relevance of the “context” of action is explained. The chapter concludes with a description of the aim and contents of the book.

**Keywords** Human right to water • Realization of Human Right to Water • Water supply programs • Water quality • Climate change and water • Bottled water industry • Privatization in water sector • Transboundary water governance

Water is a key resource for human survival and development. It is indispensable to sustain life and health and fundamental to the dignity of all. Yet 750 million people around the world lack access to safe water (WHO and UNICEF JMP 2014), a number which raises significant concern. In order to address this crisis, the international community has increasingly recognized that access to water must be considered within a human rights framework. Water was recognized as a right for the first time in 1977 at the United Nations (UN) Water Conference at Mar del Plata which declared that “All peoples, whatever their stage of development and social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs” (UN 1977).

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In December 1979, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) set out an agenda to end discrimination against women, with explicit reference to water. Article 14(2)(h) of CEDAW provides: “States parties shall take all appropriate measures to eliminate discrimination against women in rural areas,..... shall ensure to such women the right: ... (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication” (CEDAW 1979).

In November 1989, the Convention on the Rights of the Child (CRC) explicitly mentioned water. Article 24(2) of the Convention states: “*States Parties* shall pursue full implementation of this right and, in particular, shall take appropriate measures: ... (c) to combat disease and malnutrition,..... through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution” (CRC 1989).

Among further developments in 1992, in January at the International Conference on Water and the Environment” in Dublin, it was seen as vital to recognize first the basic right of all human beings to have access to clean water at an affordable price (ICWE 1992). At the UN Conference on Environment and Development in Rio de Janeiro that followed in June, the Resolution of the Mar del Plata Water Conference was endorsed that all peoples have the right to have access to drinking water (UNCED 1992).

Later in 1999, the UN General Assembly Resolution A/Res/54/175 “The Right to Development” affirmed in Article 12 that “in the full realization of the right to development, .....the rights to food and clean water are fundamental human rights and their promotion constitutes a moral imperative both for national Governments and for the international community” (UN 2000).

In November 2002, the Committee on Economic, Social and Cultural Rights adopted its general comment No. 15 on the right to water, defining it as the “right of everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses” (CESCR 2002). While the International Covenant on Economic, Social and Cultural Rights does not explicitly refer to the right to water, the Committee underlined that the right to water was part of the right to an adequate standard of living, as were the rights to adequate food, housing, and clothing. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival. The Committee also stressed that the right to water was inextricably linked to the rights to health, adequate housing, and food. Already in 2000, in its general comment No. 14 on the right to the highest attainable standard of health, the Committee on Economic, Social and Cultural Rights had underlined that the wording of its Article 12(2) acknowledged that the right to health extended to the underlying determinants of health, including access to safe drinking water (CESCR 2000).

In 2006, the UN Sub-Commission on the Promotion and Protection of Human Rights adopted guidelines for the realization of the right to drinking water and sanitation (UN 2006). In 2008, the UN Human Rights Council created the mandate of the expert on the issue of “human rights obligations related to access to safe drinking water and sanitation” to help clarify the scope and content of these obligations.

As a significant development, in July 2010, the UN General Assembly adopted a resolution (A/Res/64/292) which formally recognizes the right to water and acknowledges that clean drinking water is essential to the realization of all human rights. The Resolution calls upon states and international organizations to provide financial resources, to help capacity-building and technology transfer to particularly developing countries, and to provide safe, clean, accessible, and affordable drinking water and sanitation for all (UN GA 2010). Even more significantly, in September 2010, the UN Human Rights Council adopted a resolution (A/HRC/RES/15/9) which affirms that the right to water is part of existing international law and confirms that these rights are legally binding upon states. It also calls upon states to develop appropriate tools and mechanisms, which may encompass legislation, comprehensive plans, and strategies for the sector, to achieve progressively the full realization of human rights obligations related to access to safe drinking water, including in currently unserved and underserved areas (UN HRC 2010).

Given the history of development of the human right to water, obvious questions to arise are: What are the key aspects of the right as a concept? How can this concept be translated into a universal reality? What kind of action has been taken in this direction? Which dominant paradigms drive these actions? Is translation to reality universally achievable within the scope of these paradigms? This introductory chapter seeks to answer these questions, in turn initiating the reader into the main debates and discussions in the book.

## Human Right to Water as a Concept

The human right to water, as described by the Committee on Economic, Social and Cultural Rights in its general comment No. 15, contains *entitlements* as well as *freedoms* (CESCR 2002). These *entitlements* include access to a minimum amount of safe drinking water to sustain life and health and access to safe drinking water in detention and participation in water-related decision-making at the national and community levels, especially emphasizing the participation of women and other traditionally excluded social groups.

The *freedoms* include protection against arbitrary and illegal disconnections; prohibition of unlawful pollution of water resources; nondiscrimination in access to safe drinking water, notably on the basis of land or housing status; noninterference with access to existing water supplies, especially to traditional water sources; and ensuring that personal security is not threatened when accessing water outside the home.

The general comment No. 15 further clarifies that the right to water is a *universal* right, since it is *everyone's* right to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses. These uses comprise water for drinking, washing clothes, food preparation, and personal and household hygiene.

The right entails that the water supply for each person must be *sufficient* and *continuous* to cover personal and domestic uses. The right therefore covers access to water to sustain life and health and to meet basic needs and does not entitle

individuals to an unlimited amount of water. According to World Health Organization (WHO), this amount ranges between 50 and 100 l of water per person per day. Access to 20–25 l per person per day represents a minimum possible, though this amount is insufficient to meet all basic hygiene and consumption requirements (Howard and Bartram 2003). These amounts are indicative as they might depend on a particular context and might differ for some groups depending on their health status, work, climatic conditions, or other factors.

Further, water for personal and domestic uses must be *safe*. In accordance with general comment No. 15, it must be free from microbes and parasites, chemical substances, and radiological hazards that constitute a threat to a person's health. These requirements apply to all sources of water provision, including piped water, tankers, vendor-provided water, and protected wells. For protection against microbes, use of groundwater through technologies such as hand pumps and deep tube wells has been widely promoted, but in many places, chemical contaminants such as arsenic, fluoride, nitrate, etc., have been found in groundwater in concentrations beyond permissible limits. Such chemical contamination poses huge health risks to millions of people. Even surface water sources, such as rivers and lakes, are getting increasingly polluted due to industrial and municipal wastewater being discharged without adequate treatment. Some of the contaminants in these wastewaters are difficult to be removed, causing serious threat to the safety of drinking water.

Drinking water safety is usually defined through national standards for drinking water quality. The WHO Guidelines for Drinking Water Quality provide a basis for the development of national standards, which, if properly implemented, is expected to ensure the safety of drinking water (WHO 2011). The absence of adequate sanitation systems has led to widespread pollution of water sources in many parts of the developing world. In its general comment No. 15, the Committee also underlines that ensuring access to adequate sanitation is one of the principal mechanisms for protecting the quality of drinking water supplies and resources.

Water must also be *acceptable* – of an acceptable color, odor, and taste – to ensure that individuals will adopt safe water sources. Such acceptability often rests upon culturally defined parameters which may vary from one local context to another. Also, water must be *physically accessible* and within safe reach for all sections of society, taking into account the needs of particular groups, including persons with disabilities, women, children, and the elderly. While the right to water does not imply that everyone should have access to water at home, it requires such facilities to be in close proximity to, or at a reasonable distance from, each house. Also, water should be provided in schools and hospitals, at the workplace, in detention centers, as well as in refugee camps.

As the amount of water accessed every day is largely determined by the distance to the water source and the collection time, a reasonable distance is one that allows everyone to collect sufficient water to cover personal and domestic uses. According to WHO, in order to have a basic access to 20 l per day, the water source has to be within 1,000 m of the home and collection time should not exceed 30 min. When water is piped into the home, access is optimal and at least 100 l per person per day is likely to be ensured (Howard and Bartram 2003). This also eliminates the need



for women and children to spend time and physically exert themselves to collect water from distant sources, at the cost of their health, education, and economic well-being.

Finally, water services must be *affordable* to all. No individual or group should be denied access to safe drinking water because they cannot afford to pay. This does not imply provision of “free” water by the state, but requires that the price be affordable. However, governments or even communities can decide to exclude certain groups, such as the poor, from paying for the water required to meet their basic needs or set up different pricing schemes for different segments of society based on their ability to pay.

Given these key aspects, the human right to water is not only directly significant for ensuring human survival and upholding the dignity and quality of human life, but it is also indirectly crucial for the realization of many other rights in society. Examples are the right to health, the right to adequate food, the right to earn a living, and the right to take part in cultural life. Acknowledging water as a human right not only entitles people to water itself but also to accountable institutions, access to information, nondiscrimination, and meaningful participation in decision-making in this sector.

By establishing a legal framework, defining who is responsible with respect to support for realization of the right, promoting pro-poor and nondiscriminatory service provision, and prioritizing water access for personal and household uses over all other uses, it is believed that a rights-based approach to water can effectively strengthen overall development efforts and support progress toward achievement of the Millennium Development Goals and, its successor, the Sustainable Development Goals. This book critically examines this assumption.

## **Translating Human Right to Water into Reality: Current Scenario**

While water is yet to be explicitly recognized as an independent self-standing human right in international treaties, as evident from above, international human rights law already entails specific obligations related to access to safe drinking water. These obligations require states to ensure everyone’s access to a sufficient amount of safe drinking water for personal and domestic uses, defined as water for drinking, personal sanitation, washing of clothes, food preparation, and personal and household hygiene. These obligations also require states to progressively ensure access to adequate sanitation, not only as a fundamental element for human dignity and privacy but also linked to water for protection of the quality of drinking water supplies and resources. The vital question is: How can the states fulfill these obligations? How can they ensure everyone’s access to safe water? According to Human Rights Council’s Resolution (A/HRC/RES/15/9), states must develop appropriate tools and mechanisms, encompassing legislation, comprehensive plans, and strategies for the purpose (UN GA 2010). In this direction, recommendations have been

forwarded and several actions initiated. This section presents a glimpse of these efforts.

Several national constitutions now protect the human right to water or outline the general responsibility of the state to ensure access to safe drinking water for all. In 2004, Uruguay became the first country to include an explicit guarantee of the human right to water in its Constitution. Many other constitutions contain explicit references to the right to water, including those of (Plurinational State of) Bolivia, the Democratic Republic of the Congo, Ecuador, South Africa, and Uganda.

In some other countries like India, there exists an implicit constitutional guarantee of the human right to water. While the right is not explicitly mentioned in the Constitution, settled case law from courts at both state and federal level interprets Article 21 of the Constitution – the right to life – as encompassing the right to safe and sufficient water. Similarly in Argentina, the constitutional rights to health and a clean environment have been interpreted as including the human right to clean water. Besides, courts from various legal systems have also adjudicated cases related to the enjoyment of the right to water, covering issues such as provision of adequate water, pollution of water resources, and arbitrary and illegal disconnections.

Even if a constitutional safeguard is missing, in many places human rights principles in general and those related to the human right to water in particular are highlighted in laws, regulations, and policies related to the sector which helps implement the right. For example, the UK's Equality Act 2010 binds public bodies by the principle of equality, obliging them to shape policy and deliver services in such a way that discrimination is eliminated and equality of opportunity are advanced (de Albuquerque 2014). Similarly in Ghana, the Public Utilities Regulatory Commission Act (Act 538), 1997 (Complaints Procedures) Regulations, has set up the Public Utilities Regulatory Commission as an independent body which regulates and oversees water services to consumers. One of its functions is to receive and investigate complaints and settle disputes between users and the public utility (de Albuquerque 2014).

However, despite several of these utilitarian interventions in place, the global picture on access to safe water is grim. According to WHO/UNICEF Joint Monitoring Programme (JMP) for Water Supply and Sanitation (2014), the figure of 748 million who still lack access to improved water sources actually underestimates the true scale of the problem, since crucial aspects like drinking water quality, continuous availability, distance to facilities, etc., are not yet measured. This would mean that facilities measured as "improved sources of drinking water" may in reality, for example, deliver water of bad quality on an unreliable basis. Also, the progressive numbers showing increased access over the years do not actually take into account the number of facilities that have deteriorated or are broken in the meanwhile because of a lack of proper maintenance (WHO and UNICEF JMP 2014).

The 2014 JMP report further highlights stark disparities across regions, between urban and rural areas, and between the rich and the poor and marginalized. Although progress represents important gains in access for billions of people around the world, it has been clearly uneven. Great geographic, sociocultural, and economic inequalities in access persist and sometimes have increased.