

IS A RIGHT TO WATER A HUMAN RIGHT?

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Who has the right to water?

Isn't water a fundamental human right that all humans should be entitled to as a matter of course?

Is it only humans who have this right or is it also a right that the environment, the plants and animals which sustain us are entitled to as well?

Water has been described as the oil of the 21st century¹.

Will there be wars over water?

As Maude Barlow states, "*Life requires access to clean water: to deny the right to water is to deny the right to life.*"²

Who owns water?

"The commons" - *Some forms of wealth belong to all of us, and these community resources must be actively protected and managed for the good of all.*³

Water is a public good – not a commodity. It's for the good of everyone.

Back ground on the right: United Nations

1948 – The nations of the world ratified 30 articles as the Universal Declaration of Human Rights.

After witnessing the horror and baseness of war, dictatorship and death first hand, the issues that came to the fore related to:

- the right to freedom of thought, conscience and expression;
- the right to dignity and equality before the law;
- the ability to access justice; and
- the right to participate in government, to have education and to participate in society.

The right to water was implicit within of the articles⁴ - but not explicit.

Indeed, many human rights treaties set out obligations related to human rights and access to water and sanitation⁵.

¹ Barlow, M, *Blue Covenant*, Black Ink as an imprint of Schwarz Publishing Pty Ltd, Melbourne, © 2007 p xi

² Ibid p vii

³ This is a concept that's been around for a couple centuries and is described in this manner at <http://onthecommons.org/about-commons>

⁴ Eg Article 3 which protects the right to life; Article 25 "Everyone has the right to a standard of living adequate for the health"

In the last few decades there's been gradual recognition of the need to outline the right to water. In July 2010, when considering this issue, the United Nations Assembly expressed deep concern that:

- 884 million people were without access to safe drinking water;
- more than 2.6 billion (40% of global population) lacked access to basic sanitation;
- 1.5 million children under five years old die each year as a result of water and sanitation-related diseases;
- lack of access to water kill more children annually than AIDS, malaria and measles combined⁶.

*"While these numbers shed light on a worrying situation, the reality is much worse, as millions of poor people living in informal settlements are simply missing from national statistics. The roots of the current water and sanitation crisis can be traced to poverty, inequality and unequal power relationships, and it is exacerbated by social and environmental challenges: accelerating urbanization, climate change, and increasing pollution and depletion of water resources."*⁷

This led in July 2010 to the United Nations General Assembly resolution on the right to water and sanitation⁸ and in September of that year this was approved by the United Nations Council.

There has been a proposal to insert a new article into the International Declaration – article 31 protecting the right to water⁹. The proposed article provides:

"The Right to Water

*Everyone has the right to clean and accessible water, adequate for the health and well-being of the individual and family, and no one shall be deprived of such access or quality of water due to individual economic circumstance."*¹⁰

⁵ The Convention on the Elimination of All Forms of Discrimination against Women, adopted in 1979 (art. 14(2)); International Labour Organization (ILO) Convention No. 161 concerning Occupational Health Services, adopted in 1985 (art. 5); The Convention on the Rights of the Child, adopted in 1989 (arts. 24 and 27(3)); The Convention on the Rights of Persons with Disabilities, adopted in 2006 (art.28)

⁶ <http://www.un.org/News/Press/docs/2010/ga10967.doc.htm>

⁷ United Nations Fact Sheet 35 on the Right to Water

⁸ 122 voted in favour, 41 abstentions including Australia; none voted against.

⁹ There are 30 articles in total. An article protecting the right to water would be additional.

¹⁰ See: <http://article31.org/>

The Right to Water: Examples of international laws

India

The right to live is a fundamental right under Art. 21 of the Constitution of India and the article includes the right to enjoyment of pollution free water and air for the full enjoyment of life.

Mexico

Article 4 of the Federal Constitution of Mexico was reformed in 2012 and recognizes the right to water as the right of every person to sufficient, acceptable and affordable access to water and sanitation for personal and domestic consumption. However, laws to regulate and manage this right are needed.

Kenya

The Constitution of Kenya provides in Article 43(1) "*Every person has the right-
..... (d) to clean and safe water in adequate quantities*".

There is an additional requirement that the State put in place affirmative action programmes designed to ensure that minorities and marginalised groups have reasonable access to water¹¹.

Philippines

The Clean Water Act has no direct mention of water as a human right, but indirectly recognizes the right by phrases like "*shall not adversely affect water supply, public health and ecological protection*"¹².

El Salvador

In El Salvador, there is debate currently regarding the possible adoption of a General Water Law providing the right to clean water and sanitation.

What are the issues here in Australia?

There's no right enshrined in the Australian Constitution.

In Victoria, the Charter of Human Rights and Responsibilities Act (Vic) 2006 recognizes the indigenous cultural and traditional link to certain waters.¹³ Section 19(2) provides:

"Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community—

...

¹¹ Article 56

¹² Section 6

¹³ The Preamble and s19(2)

(d) to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs."

Further, the Act provides that functions of a public authority are those of a public nature, such as "the retail supply of water"¹⁴ and that a public authority cannot limit or destroy the human rights of any person, thereby impliedly prohibiting the destruction or limitation of the right to water. There is an exception, where the public authority could not have reasonably acted differently¹⁵.

In Australia, in the cities and towns it is not so much an issue of access to clean water as the type of access, although there are access issues the further into the country you travel and this therefore impacts indigenous people to a greater extent.

As indicated, the greater issue in Australia is the type of access to water.

Murray River

South Australia is drip fed by the Murray Darling Basin. As demonstrated in the last drought, this is not sustainable and it is necessary to reduce and eventually eliminate this dependency and use more sustainable sources of water.

Desalination

Is desalination an option? South Australia now has the Port Stanvac desalination plant and others are planned. Desalination is expensive in dollar terms, energy hungry (adding to the climate impact) and the brine is often piped back into fragile marine environments. For example, the proposal for the desalination plant which was to provide water to the expansion for the Olympic Dam mine would have resulted in more sediment in the spawning grounds of the cuttle fish – these are their only spawning grounds in the world.

Groundwater

Groundwater use without recharging it is inherently unsustainable and has lead in the United States to sinkage of land.

¹⁴ Section 4

¹⁵ Section 38(2)

The future¹⁶

There is more than enough water in South Australia, as long as plans are put in place to manage it appropriately.

Stormwater offers a cost-effective water supply option. When rain falls in South Australia and in Adelaide in particular there is plenty of stormwater but instead of capturing the storm water, it's dumped in the sea, potentially causing flooding and damaging the sea grasses which hold the beaches firm. Stormwater can be captured and then stored for when it's needed, potentially in aquifers underground. For example, the Salisbury Council has implemented a system where wetlands purify the water and then feed it into underground aquifers to be stored and then used later.

Developers could partner with local government to achieve similar results. The *Development Act (SA) 1993* could be amended to ensure good water capture sites are developed. There should be assessment of aquifer storage capacity as a priority.

Manage existing use Adelaide receives less rain than all other capital cities, but despite this uses comparatively large amounts of water – around 280 litres per person per day. In South East Queensland between 2005 and 2007 consumption was reduced from 300 to 129 litres per day through a comprehensive demand management program. As a result, South Australians need to:

- retain water pricing based on water use;
- for industrial/commercial users, manage demand including a pricing review and mandatory water efficiency management plans for large volume businesses; and
- at the household level:
 - reduce mains pressure to less than 500 kPa;
 - embrace a comprehensive water reduction program for households involving a target of 140 litres of mains water per person per day (averaged over 12 months, ie more in summer, less in winter),
 - provide better information to households including:
 - more frequent meter reads; and
 - greater incentives and support for water saving measures – the more you save the more you save – discounts.

¹⁶ These ideas are detailed at: <http://www.markparnell.org.au/campaign.php?campaignn=25>

Groundwater under the Adelaide plains is currently extracted at an unsustainable rate instead of being reserved for emergency supplies. The quaternary aquifer under the Adelaide plains should be prescribed and there should be a requirement to meter all residential and commercial use.

Mount Lofty catchments The Mount Lofty Ranges will remain a vital water source even with an expected 30% reduction in run-off through climate change. Given this, the Mount Lofty catchments need protection from excessive development.

Water reuse offers a cost-effective water supply option and provides very significant downstream environmental benefits. Currently in Adelaide, water starts in the Hills or in the eastern suburbs, is used once and then is dumped in the sea as wastewater. This water is in fact suitable for irrigation, toilet flushing and other industrial purposes.

Wastewater is cheaper and easier to convert into usable water than sea water and wastewater is the one source of water that increases with population growth and so provides the greatest potential for secure water supplies into the future.

So there is a need to:

- consider locating a treatment plant at Bolivar to treat wastewater as an alternative to the Adelaide Desalination plant as this will improve the marine environment of Gulf St Vincent; and
- require SA Water to reduce in wastewater dumping through sewer mining, reticulation from treatment plants to big end water users and to new developments.

Rainwater tanks at home - Relatively expensive - the biggest barrier is cost - but provides multiple benefits. There's a need to:

- provide direct government assistance to households to retro-fit them with rainwater tanks;
- preserve current incentives for households to install and connect tanks;
- keep rainwater capture outside any water restriction regime; and
- explore the option of allowing customers to pay off the cost of tanks as part of their quarterly water bill.