

## **Views of the United States of America on Human Rights and Access to Water**

Submitted to the  
Office of the United Nations High Commissioner for Human Rights  
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1. The United States appreciates the opportunity to provide information requested by the Office of the United Nations High Commissioner for Human Rights on “human rights obligations related to equitable access to safe drinking water and sanitation.” The United States takes domestic and international water issues seriously and strongly supports the goal of universal access to safe drinking water. The United States likewise recognizes the importance of meeting basic water needs to support human health, economic development, and peace and security.
2. Part I describes the United States’ views on the issue of water as a human right. Part II provides a broad overview of U.S. water law and policy. Part III describes the U.S. approach to international development assistance on water issues. Due to the breadth and complexity of the subject, the United States regrets that it cannot provide additional information. However, more information can be found at the U.S. government websites referenced in Parts II and III. In addition, if requested by the OHCHR, we will endeavor to provide additional information on specific topics.

### I. Water and Human Rights

3. The United States notes that water is increasingly referred to as a human right. References to water as a human right take various forms, including the following:
  - § right to clean water,<sup>1</sup>
  - § right to water,<sup>2</sup>
  - § right to water and sanitation,<sup>3</sup>

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<sup>1</sup> See General Assembly Resolution 54/175. “The right to development.” A/RES/54/175 15 February 2000. OP 12: The General Assembly “*Reaffirms* that, in the full realization of the right to development, inter alia: (a) The rights to food and clean water are fundamental human rights....”

<sup>2</sup> See Committee on Economic, Social and Cultural Rights, General Comment 15. E/C.12/2002/11 20 January 2003. Paragraph 1 (“The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.”). See also *The Right to Water*. World Health Organization, 2003.

- § right to drinking water and sanitation,<sup>4</sup>
- § right to sufficient supplies of water,<sup>5</sup>
- § right to a sufficient quantity of clean water for personal and domestic uses,<sup>6</sup>
- § right to have access to adequate and safe sanitation,<sup>7</sup>
- § right to “access to safe water,”<sup>8</sup> and
- § right to “access to water for life.”<sup>9</sup>

The right to water, in its various formulations, is often described as a human right that is “critical,” “fundamental,” or “basic” in nature.

4. The United States does not share the view that a “right to water”—in any of the above formulations—exists under international human rights law. This view is informed by a review of the relevant instruments of international human rights law. Such a review demonstrates that there is no internationally agreed “right to water.” Neither the Universal Declaration of Human Rights (UDHR) nor the International Covenant on Economic, Social, and Cultural Rights (ICESCR) mentions water at all.
5. Two core international human rights treaties mention “water,” but neither establishes nor even alludes to a legal “right” to water. First, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) requires Parties to “take all appropriate measures to eliminate discrimination against women in rural areas . . . and, in particular, [to] ensure to such women the right...[t]o enjoy adequate living conditions, particularly *in relation to* housing, sanitation, electricity and *water supply*, transport and communications.” CEDAW, Art. 14(2)(h). (Emphases added.)

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<sup>3</sup> See Sub-Commission on the Promotion and Protection of Human Rights, “Realization of the right to drinking water and sanitation.” Report of the Special Rapporteur, El Hadji Guissé. E/CN.4/Sub.2/2005/25 at 2. 11 July 2005.

<sup>4</sup> Id. at 1-5.

<sup>5</sup> Id. at 5.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> U.N. Secretary General, as quoted in United Nations Development Programme, *Human Development Report 2006: Beyond Scarcity: Power, Poverty and the Global Water Crisis*, United Nations, 2006 at 4; WHO, 2003, *supra* note 2 at 6. (“Access to safe water is a fundamental human need and, therefore, a basic human right.”)

<sup>9</sup> UNDP, 2006, *supra* note 8 at v. (“Access to water for life is a basic human need and a fundamental human right.”)

6. Second, the Convention on the Rights of the Child says that state parties shall “pursue full implementation” of the “right of the child to the enjoyment of the highest attainable standard of health” by taking “appropriate measures” to “combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and *clean drinking-water*...” CRC, Art. 24(2)(c). (Emphasis added.)
7. Thus, although the word “water” appears in CEDAW and the CRC, neither instrument establishes a “right to water” in any of the formulations listed in paragraph 3 above.
8. The Committee on Economic, Social and Cultural Rights has asserted that a right to water exists in its General Comment 15 (GC 15). We have not identified a legal basis for this conclusion and therefore disagree with it. General Comment 15 is perhaps the most elaborate and most cited treatment of the “right to water” and therefore merits discussion here, with respect to both its legal reasoning and status.
9. General Comment 15 begins by stating “Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity.” While the United States agrees that water is fundamental for the life and good health of all human beings and that there is a profound duty as a matter of policy for governments to take responsible actions to ensure that their citizens have proper access to water and to other resources needed for people to live healthy and productive lives, this responsibility is not of a legal nature. In this sense, the manifest importance and indispensability of water do not in themselves create legally binding international obligations on States.
10. In paragraphs 2-7 the Committee attempts to describe the “legal bases of the right to water.” The Committee relies most heavily on Article 11(1) of the ICESCR. This article states in part: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”

11. From this, the Committee concludes that “use of the word ‘including’ indicates that this catalogue of rights was not intended to be exhaustive.” GC 15, para 3. While it is apparent enough that this provision of the Covenant does not create an open-ended “catalogue of rights,” any doubt is dispelled by the following sentence which states: “The States Parties will take appropriate steps to ensure the realization of *this right . . .*” ICESCR, Art. 11(1) (Emphasis added). The reference to “this right” makes it manifestly clear that governments negotiating this agreement intended to create one right in Article 11(1), namely the right to an adequate standard of living which has a number of different elements identified in the Covenant.
12. The fact that the provision of a particular good or service may be essential to the realization of a Covenant right does not make that good or service itself the subject of a distinct international human right. Where one right “includes” another right, it can be expressed in the text of the treaty. This is the case in Article 6 of the Covenant, which states that “the right to work...*includes the right* of everyone to the opportunity to gain his living by work which he freely chooses or accepts....” ICESCR, Art. 6. (Emphasis added.)
13. As legal bases for the right to water, the Committee also relies on the provisions in CEDAW and the CRC discussed above. These provisions, as noted, plainly do not contain a right to water. In addition, according to the Committee, two of the Geneva Conventions and their Protocols Additional recognize the “right to water.” These instruments create certain legal obligations for State Parties during times of armed conflict or occupation. They do not, of course, recognize or create a “right to water” under international human rights law.
14. The United States also notes that General Comments, including those of the Committee on Economic, Social and Cultural Rights, are not legally binding or authoritative. Under international treaty law, it is the duty and responsibility of parties to treaties—which are the subjects of international law—to interpret and apply treaties in good faith. As a matter of international law, treaty body committees enjoy only those authorities granted to them by parties to those instruments. The United States respects the Committee and similar committees established under other human rights treaties. States sometimes agree with the opinions and interpretations offered by such committees. In other instances states

do not agree, and there is nothing in the Covenant or elsewhere suggesting that the views of treaty bodies are legally binding or authoritative.

15. As noted above, while there is no “right to water” under international law, as a matter of policy and good government it is manifest that water is essential for the life and all individuals, and indeed for all life on earth. Safe and accessible water supplies further the realization of certain human rights, such as the right to a standard of living adequate for the health and well-being of all individuals. UDHR, Art. 25. The provision of safe and accessible water supplies may also be appropriate or even necessary for the furthering of certain other “economic, social and cultural rights indispensable for [one’s] dignity and the free development of [one’s] personality.” UDHR, Art. 22. Similarly, the intentional deprivation of water by a state based on prohibited grounds of discrimination (e.g., on the basis of race) may also involve violations of international human rights law.

## II. Equitable Access to Safe Drinking Water and Sanitation in the United States

16. “Equitable access to safe drinking water and sanitation” involves a wide range of water issues, including access rights, pollution and quality control, infrastructure and investment, and wastewater treatment. Understanding how the United States addresses these issues requires an understanding of the U.S. system of federalism, under which, state and local authorities play the primary role in promoting access to safe drinking water and sanitation. Over time, the U.S. Congress and the courts have increased the involvement of the federal government in certain areas. Today there are a wide range of federal laws and regulations aimed at promoting safe drinking water and sanitation. However, state sovereignty over many water issues remains. This section provides a brief overview of the issues and relevant legislation in the United States.

17. **Water Rights.** Water rights are an important part of water governance in the United States. Thus, while the United States does not recognize or implement a “right to water” under international law, the United States does recognize “water rights” in various contexts as a matter of its

domestic law. These rights, which may be held by individuals, private entities, or the government, are legally complex and are primarily governed at the state level. Water rights in the United States have many bases, including Spanish Colonial law, prior appropriation (“first in time, first in right”), English common law (riparian water rights), state water codes, and Indian traditional rights administered at the federal level. Riparian water rights predominate in the eastern United States while prior appropriation water rights are more common in the western United States. Some states, such as California, have multiple legal regimes that govern water use. Overall, states have unique variations in their water rights systems as informed by custom, geography, legislation, and case law.

18. States have also developed institutional structures to regulate water rights allocation. For instance, part of the mission of the California State Water Resources Control Board is to “establish and maintain a stable system of water rights in California to best develop, conserve and utilize in the public interest the water resources of the State while protecting vested rights, water quality and the environment.” (<http://www.swrcb.ca.gov/>)

19. **Water Pollution.** The United States Environmental Protection Agency (EPA) regulates water pollution under the auspices of the Clean Water Act, the Safe Drinking Water Act and other environmental laws. With the help of state and local authorities, the EPA establishes water quality standards, promotes guidelines for best management practices, and issues permits to point source polluters and treatment facilities. The EPA also offers compliance assistance to the regulated community and seeks punitive legal action against violators of water pollution laws and regulations. (<http://www.epa.gov/ebtpages/watewaterpollutionlegalaspects.html>)

20. **Safe Drinking Water.** In the United States, local governments and private water suppliers have direct responsibility for the quality of the water that flows to the taps of individuals. This quality, however, is regulated at the federal level. The Safe Drinking Water Act (SDWA) gives the EPA the responsibility for setting national drinking water standards that protect the health of the 250 million Americans who get their water from public water systems. The SDWA is the main federal law that ensures quality drinking water. Under this law, the EPA sets standards for drinking water quality and oversees the states, localities,

and water suppliers who implement those standards. The EPA sets standards for approximately 90 contaminants in drinking water. For each of these contaminants, EPA sets a legal limit, called a maximum contaminant level, or requires a certain treatment. Water suppliers may not provide water that doesn't meet these standards (The SDWA does not regulate private wells which serve fewer than 25 individuals.). The SDWA was originally passed by Congress in 1974 and was amended in 1986 and 1996. (<http://www.epa.gov/safewater/sdwa/index.html>; <http://www.epa.gov/ebtpages/watedrinkidrinkingsystem.html>; <http://www.epa.gov/safewater/faq/faq.html>)

21. **Public Participation and Information.** Demonstrating its commitment to public health protection and the public's right-to-know about local environmental information, the EPA requires community water systems to provide annual drinking water quality reports to customers. These reports (also known as consumer confidence reports)—which EPA developed in consultation with water suppliers, environmental groups, and the states—help Americans make practical, knowledgeable decisions about their health and their environment. They tell consumers what contaminants have been detected in their drinking water, how these detection levels compare to drinking water standards, and where their water comes from. (<http://www.epa.gov/safewater/ccr/basicinformation.html>)

22. Consumer confidence reports are the centerpiece of the right-to-know provisions in the 1996 Amendments to the SDWA. The Amendments also contain several other provisions aimed at improving public information about drinking water, including the annual public water system compliance report and improved public notification in cases where a water supplier is not meeting a contaminant standard. The Amendments likewise call for increased public participation in the protection and delivery of safe drinking water. (<http://www.epa.gov/safewater/ccr/basicinformation.html>)

23. **Wastewater.** The EPA regulates the discharge and treatment of wastewater under the Clean Water Act. The National Pollutant Discharge Elimination System (NPDES) issues permits to all wastewater dischargers and treatment facilities. These permits establish specific discharge limits, monitoring and reporting requirements and may also require these facilities to undertake special measures to protect the

environment from harmful pollutants.

(<http://www.epa.gov/ebtpages/watewastewater.html>)

24. **Finance and Infrastructure.** The United States utilizes a set of state revolving funds to assist in financing the construction and upgrade of wastewater treatment facilities, sewer systems, and other water infrastructure. The funds operate like banks. Federal and state contributions are used to capitalize or set up the programs. These assets, in turn, are used to make *low or no-interest loans* for important water quality projects. Funds are then repaid over terms as long as twenty years. Repaid funds are recycled to fund other water quality projects. These programs include the Drinking Water State Revolving Fund (DWSRF, established by the 1996 SDWA Amendments) and Clean Water State Revolving Fund (CWSRF, established under the Clean Water Act of 1987). (<http://www.epa.gov/safewater/dwsrf/cwswp.html>; <http://www.epa.gov/safewater/dwsrf/index.html>; [http://www.epa.gov/safewater/dwsrf/pdfs/fact\\_dwsrf\\_water\\_efficiency03-09-02.pdf](http://www.epa.gov/safewater/dwsrf/pdfs/fact_dwsrf_water_efficiency03-09-02.pdf))

25. **Relevant Links, including Links to Federal Legislation and Regulations:**

- a. Clean Water Act:  
[http://cfpub.epa.gov/npdes/cwa.cfm?program\\_id=45](http://cfpub.epa.gov/npdes/cwa.cfm?program_id=45)
- b. Safe Drinking Water Act:  
<http://www.epa.gov/safewater/sdwa/index.html>
- c. NPDES Regulations:  
[http://cfpub.epa.gov/npdes/regs.cfm?program\\_id=45](http://cfpub.epa.gov/npdes/regs.cfm?program_id=45)
- d. Drinking Water State Revolving Fund (DWSRF):  
<http://www.epa.gov/safewater/dwsrf/index.html>
- e. State/Local Drinking Water Information:  
<http://www.epa.gov/safewater/dwinfo/index.html>
- f. USAID: Water Supply, Sanitation, and Wastewater Management:  
[http://www.usaid.gov/our\\_work/environment/water/water\\_supply\\_sanitation.html](http://www.usaid.gov/our_work/environment/water/water_supply_sanitation.html)

III. Water and U.S. Foreign Assistance

26. The United States strongly supports the goal of universal access to safe drinking water, both domestically and internationally. The United States considers investments to increase access to basic water and sanitation

services a key means of improving human health, increasing economic growth and promoting peace and security.

27. The United States approach to foreign assistance on water issues is in part informed by its domestic experience. Along these lines, the United States has not adopted a human rights-based approach to official development assistance on water activities. However, the United States strongly supports the development of *water rights* systems in other parts of the world. Indeed, the United States considers that improved systems of water rights may be necessary for economic development and for improving water access in many parts of the world where water rights systems either do not exist or are dysfunctional. As explained above, there are many different kinds of water rights systems, and indeed the United States deals with multiple systems of water rights within our own borders.
28. U.S. foreign assistance employs a pragmatic approach aimed at increasing access to safe drinking water and basic sanitation. U.S. efforts are focused on six key areas:
  - a. **Governance**—strengthening the role of institutions at the local, national, and regional levels to optimize the benefits from water among its potential uses and developing a supportive environment for private sector participation.
  - b. **Mobilization of domestic resources**—promoting sound utility management and cost recovery, and using innovative approaches to support investment by the private sector.
  - c. **Infrastructure investment**—investing in both large and small-scale infrastructure to increase access to basic services and improve water management.
  - d. **Protection of public health**—advancing improved hygiene activities including the most suitable disinfection method (including point-of-use technologies), safe water storage, hand washing, and household sanitation.
  - e. **Science and technology cooperation**—Advancing the state-of-art knowledge in areas related to water management including pollution prevention, satellite remote sensing, global information systems, and modeling.
  - f. **Humanitarian assistance**—providing basic services in response to natural disasters and human-caused catastrophes abroad in

addition to prevention, preparedness and mitigation measures to lessen impact of recurrent disasters.

29. Activities in these areas have increased sustainable access to safe water and sanitation. For case studies and examples, see [www.state.gov/g/oes/water](http://www.state.gov/g/oes/water).

30. In fiscal year (FY) 2006, the United States obligated more than \$860 million in official development assistance for water activities in developing countries around the world. Over \$200 million was obligated for water supply projects in 35 countries and sanitation activities in 25 countries. In FY 2006 over 9 million people received improved access to safe drinking water, and close to 1.5 million people received improved access to sanitation from U.S. activities.