



Global Interfaith  
WASH Alliance



24 March 2014

Ms. Catarina de Albuquerque  
U.N. Special Rapporteur  
Human Right to Safe Drinking Water and Sanitation

Dear Catarina,

Thank you for the opportunity to provide comment on your wonderful *Handbook for Realizing the Human Rights to Water and Sanitation*. As our world population continues to grow and our water tables become ever-more depleted and polluted, we view your work as vitally important, especially in light of the synthesis of the post-2015 agenda.

*In this letter, we offer our humble recommendations for Chapter One of your Handbook, which include:*

1. Adding a sub-chapter that concentrates on the existing legal and constitutional frameworks concerning the rights of human *and natural communities* to water
2. Reflections on Rights to Remedy
3. Inputs on open defecation and its impact on the rights to water and those of natural communities
4. Concerns on enforceability
5. Approaches towards penalties and remediation to support sustainability

*1. Proposed Sub-Chapter on the existing legal and constitutional frameworks concerning the rights of human and natural communities to water*

Around the world, there are growing efforts to recognize the rights of nature – including the rights of natural communities to water – as integral, inseparable, and an essential part of the human right to water.

Decades of environmental and public health engagement have demonstrated that one cannot protect the rights of humankind to water without protecting the rights of water ecosystems themselves to be healthy and thrive.

Typical environmental laws regulate the *use* of water and other ecosystems, rather than their protection. This will only change with a recognition of our interdependent future with the ecosystems within which we live. From the loss of fresh water, to species decline, to global warming, it is clear that without a fundamental shift in humankind's relationship with nature, sustainability is not possible, and humanity faces serious threats.

Therefore, we must place the highest protections on both human and nature – that is, recognition of the rights of both human and natural communities to exist and thrive, to health and well-being. Without which, the human right to water will not be achievable, as our water ecosystems will continue to be exploited until they simply disappear.

### **Securing the Rights of Human and Natural Communities to Water**

In the **United States**, dozens of municipal governments have now recognized the rights of both human and natural communities to water. This comes in concert with the rights of human and natural communities to a healthy environment, and the rights of ecosystems themselves to exist and thrive.

In **Pittsburgh, Pennsylvania**, for example, in 2010 the City Council enacted an ordinance which establishes a Community Bill of Rights. The Bill of Rights provisions include:

Section 4.1: *Right to Water*. All residents, natural communities and ecosystems in Pittsburgh possess a fundamental and inalienable right to sustainably access, use, consume, and preserve water drawn from natural water cycles that provide water necessary to sustain life within the City.

Section 4.2: *Rights of Natural Communities*. Natural communities and ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems, possess inalienable and fundamental rights to exist and flourish within the City of Pittsburgh. Residents of the City shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems.

In 2008, the people of **Ecuador** ratified a new Constitution through a nationwide vote. The new Constitution secures the rights of nature – making Ecuador the first country in the world to recognize such rights in its Constitution. In addition, the Constitution recognizes the human right to water. Translated from the Spanish, key provisions of the Ecuador Constitution include:

Article 12. The human right to water is essential and cannot be waived. Water constitutes a national strategic asset for use by the public and it is unalienable, not subject to a statute of limitations, immune from seizure and essential for life.

Article 71. Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.

In **India**, the campaign to establish rights of the Ganga River – through the proposed National Ganga River Rights Act – would secure inalienable rights of both the river and the people who depend on it. This includes:

- The inalienable right of the river and basin to “exist, thrive, and regenerate their own vital cycles, structure, functions, and evolutionary processes”;
- The inalienable rights of human and natural communities to a healthy environment; and
- The inalienable rights of human and natural communities to water.

With the growing recognition of the integral relationship between humankind and nature, we believe it would be tremendously beneficial to include this burgeoning area of law-making and constitution drafting in the Handbook’s discussion. This may present an ideal opportunity for an additional sub-chapter, which focuses on the shared futures of human and natural communities, and how municipal and national governments in different parts of the world are expanding the body of legal rights to secure both the human right to water alongside the rights of natural communities to water and life.

## 2. *Reflections on Rights to Remedy*

Page 8 of the Handbook begins the section on the “right to remedy.” We fully support establishing broad rights to remedy, such that people and communities can protect and defend their own rights and the rights of the ecosystems upon which they depend.

Much of the difficulty with accountability measures, however, is that they are very limited and difficult to access. Establishing legal standing – the test for which generally involves demonstrating direct injury from an action in order to bring a case for remedy – can be very time consuming and expensive. It is often enough of a barrier that many do not pursue remedy at all.

Further, even if standing is recognized, those seeking remedy are generally doing so *after the fact*. That is, they are only able to seek remedy after harm has occurred, not stop it before it happens.

To address this, municipal laws in the United States which establish the right to water for human and natural communities, also establish the right of any person to seek remedy. That is, by virtue of living in a community, an individual *automatically has standing* to bring a case for remedy. This recognizes that all members of a community are harmed when human and natural communities are harmed. The Ganga River legislation similarly empowers all people to bring forward cases to seek remedy of harm to human and natural communities.

Further, these laws and legislation empower people, as well as their governments, to bring forward cases for remedy *before harm has occurred*. That is, they may bring cases forward to

enjoin and prevent imminent harm – so it establishes a method for remedy that prevents harm, as well as allows for remedy after harm has occurred.

### *3. Enforceability*

Whilst legislation and constitutional amendments are exceptionally positive steps towards ensuring the right to water and sanitation, we have concerns which have precedence in the Indian context, as to their actual enforceability.

We were gladdened, for example, to see examples of legislation in your draft that covers sewage treatment. In Delhi, India, the entire Yamuna River (the water source for nearly 60 million people) is emptied of all of its water. The empty riverbed is then filled with Delhi's raw sewage, which oozes downstream, becoming somewhat diluted by tributaries before serving as the drinking water of municipalities such as Agra (population 1.275 million), the home of the famous Taj Mahal. This is discussed in greater detail in the GIWA white paper, "The Yamuna River: Life and Death of a Principal Waterway," which can be downloaded in the publications section of the GIWA website, [www.i-wash.org](http://www.i-wash.org).

In addition, the Ganga River system, of which the Yamuna is part, is inundated with billions of litres of chemical and sewage waste every day. Some of the chemicals which are dumped untreated into the aquifers are exceptionally toxic, leading to some of the world's most prolific cancer clusters.

While India has legislatively prohibited such polluting actions since 1974, the problem has nonetheless escalated, and the human right to clean drinking water remains, in far too many instances, a distant dream. For this reason, we suggest the consideration that recommendations and case studies regarding enforcement, outside of the right of remedy, might be addressed somewhere in your document.

It might additionally be added that whilst the **"India, Policy Circular No. 46, Pay and Use Toilets, Ministry of Railways"** is cited on Page 31 of the Handbook, it should be considered that the downfall of this particular policy is that there are far too few public toilets within the stations of India's rail system, leading to regular public instances of open urination and open defecation. So while the policy reads nicely on paper, it is in far too many instances a paper tiger, given that there are often no toilets to maintain.

### *4. Open Defecation*

On Page 28, the draft Handbook states that open defecation is a serious human rights issue. We agree. We further believe that it is a serious issue impacting the rights of ecosystems, which support human life, as well. That is, so long as open defecation continues, the health and well-being of water-based and other ecosystems will be compromised, and thus the human right to water will likewise be compromised.

## *5. Approaches towards penalties and remediation to support sustainability*

Finally, we submit for consideration the concept of incorporating recommendations and case studies concerning methodologies for penalizing repeat offenders in order to promote the sustainability of life-giving ecosystems. For example, rules may be legislatively built in that ensure penalties are exclusively or nearly-exclusively utilized for the remediation of damages done to aquifers and other natural systems, so that the rights to water may be upheld well into the future by ensuring the soundness and sustainability of natural water systems.

In the United States, where over three dozen municipalities have now established the rights of nature in law, these laws require that penalty or damages for violating the rights of water and other ecosystems be paid to the municipality for use in restoring those ecosystems. Those damages must be calculated in the full amount which is required to complete restoration.

**Barnstead, New Hampshire, in 2006** became the first community in the U.S. to ban the privatization of water and establish the rights of nature. Barnstead's law reads in part:

Section 5.1 *Rights*. Natural communities and ecosystems possess inalienable and fundamental rights to exist and flourish within the Town of Barnstead. Ecosystems shall include, but not be limited to, wetlands, streams, rivers, aquifers, and other water systems.

Section 7.6 *Liability*. Compensatory and punitive damages paid to remedy the violation of the rights of natural communities and ecosystems shall be paid to the Town of Barnstead for restoration of those natural communities and ecosystems.

We thank you for your sharing your laudable draft Handbook and for allowing us the opportunity to share our thoughts on the right to water and sanitation. We welcome further discussion with you on these matters and are at your service.

Sincerely,



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Swami Chidanand Saraswati  
Co-Founder  
Global Interfaith WASH Alliance  
Parmarth Niketan, PO Swargashram  
Rishikesh (Himalayas), Uttarakhand- 249304  
+91-135-244-0077, +91-783-045-4761  
[swamiji@i-wash.org](mailto:swamiji@i-wash.org), [www.i-wash.org](http://www.i-wash.org)



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Mari Margil  
Associate Director  
Community Environmental Legal Defense Fund  
P.O. Box 360  
Mercersburg, Pennsylvania, USA 17236  
+1-717-498-0054  
[mmargil@celdf.org](mailto:mmargil@celdf.org)  
[www.celdf.org](http://www.celdf.org)