

POLICY BRIEF

How are the Human Rights to Water and Sanitation protected by judicial law?



KEY MESSAGES:

- Recognition of the Human Rights to Water and Sanitation in national constitutions enables people to claim their rights more easily.
- It is possible to make a judicial case that supports the Human Rights to Water and Sanitation in the absence of this recognition, but it is usually limited to really critical or 'life-and-death' cases where there is sufficient legal and financial support for the plaintiff.
- Courts can play a key role in affirming people's rights in various contexts.

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Executive Summary

The human rights to water and sanitation (HRWS) are only recognised in national legislation in a small percentage of countries. Based on a multi-country review of judicial cases in countries where the HRWS is not integrated in the constitution, we have selected a range of example cases to demonstrate how these rights can be protected in other ways.

The examples range from judicial cases under the right to life (India); water pollution laws (Cote d'Ivoire); the right to sanitation through international UN resolutions and National missions such as Swachh Bharat (India); national laws that make discontinuity of water supply illegal (France); and legislation linked to landlord obligations for habitable premises (Australia). This policy brief provides a short overview of the cases, with reference laws.

The main conclusions suggest that lack of recognition of the HRWS in national legislation does not prohibit the ability to protect these rights, as they can also be protected under different mechanisms. The difficulty is for people to know that they are able to claim these rights if they are not clearly outlined in national law, and consequently their ability to make a case is hugely diminished as a result.

Introduction

The human rights to water and sanitation (HRWS) are recognised in international legal frameworks, but they are not always directly reflected in national laws. Very few countries have recognised these rights in their constitution, which begs the question whether the rights are being protected some other way.

After an extensive review of more than 80 national constitutions, even though the HRWS are not being explicitly enshrined in national constitutions, they may still be indirectly protected in practice by some national courts.

HR2W has looked at this question through a case study review of 18 countries¹, where the HRWS are not recognised in the constitution, to see how they might be reflected through the protection of other human rights and national water legislation, through judicial reviews. The overall aim is to review how these people's rights to access clean and safe water and improved sanitation can be protected through other legal implements.

This policy brief outlines six cases in different countries, where the HRWS are not recognised in the constitution, to see how they are protected through other means.

Protection of the right to water under the right to life in Allahabad, India

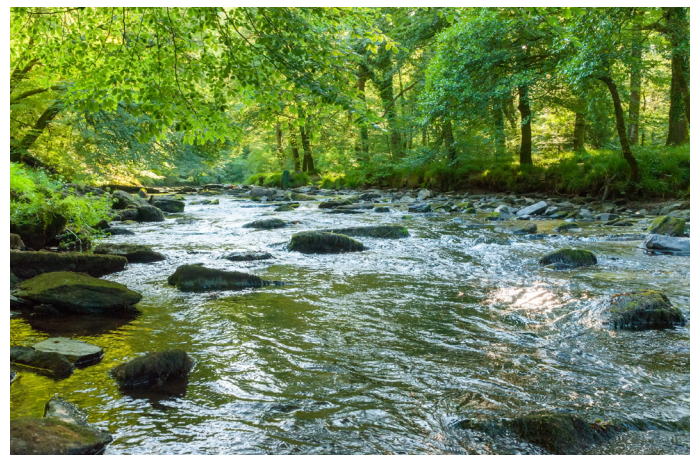
One of the approaches identified in India was the protection of the right to access to water referring to the right to life.

In the case heard by the High Court of Allahabad on January 12, 2021, the plaintiff, Madam S.R, brought a case against the General Manager of Lucknow J.S and others regarding the provision of a water connection.

S.R, after marrying her husband "H" whose previous wife had passed away in 1982, faced difficulties after H's death in 2005. The son of H's first wife disconnected electricity and water supply to S.R's residence, where she lived with two minor children.

The Court examined the constitutional rights, specifically Articles 226 and 21 of the Constitution of India, emphasizing that access to drinking water is a fundamental right to life. Consequently, the Court ruled in favour of the petitioner, stating that the respondent, in this case, the General Manager of Lucknow J.S, is legally obligated to provide a water connection to S.R's residence.

The claim was for a legal obligation to the relatives of a widowed relative, to provide water connection to the widow and her children after her husband's death. The decision was made that the disconnection was illegal, under **Article 21 of the Constitution of India, which states that water is a basic need for the survival of human beings and part of the right to life.**²



1 Australia, Benin, Tchad, Ivory Coast, France, Germany, Guatemala, Ghana, India, Indonesia, Ireland, Netherlands, Nigeria, Philippines, Senegal, Singapore, Turkey, United Kingdom.

2 India: Allahabad High Court; Misc. Bench Case No. 24807 of 2020, January 12, 2021. Parties: Plaintiff: S.R, Defendant: General Manager, Lucknow J.S and Ors.



Water pollution and the environment

Ship pollutes water quality through dumping of toxic waste, Abidjan, Ivory Coast

Another way to protect the right to clean and safe drinking water can be through the laws relating to the pollution of water caused by dumping of toxic wastes.

In the Abidjan Appeal Court Case No. 359, known as the “Probo Koala case,” multiple successors and a substantial number of individuals (around 16,500) sued Trafigura Beehr BV Amsterdam, Trafigura Ltd, Puma Energy Ci, and the Ivory Coast State. They sought damages for deaths caused by water pollution from toxic waste dumped by the Probo Koala ship in the Port of Abidjan.

Initially, the court partially supported some plaintiffs’ claims, directing the defendants to pay varied amounts to specific plaintiffs. However, it dismissed other claims due to a lack of evidence establishing a direct link between their damages and the toxic waste dumping. The court also found the State accountable for the damages.

On appeal, the Court overturned the initial judgment. It cited a settlement between the State and Trafigura companies, absolving the defendants from liability, as the State had committed to address arising claims and compensate victims. Although the Court did not explicitly acknowledge the right to water, it emphasized the **State’s duty to ensure the well-being of its populace, including managing continental waters**. As the ship unloaded hazardous waste with authorization and in light of its severe health risks, the **Court upheld the State’s liability in the matter**.³

³ Ivory Coast: Abidjan Appeal Court; Case No.359 “Probo Koala case”, Dec 24, 2010. Defendants: 1) The company Trafigura Beehr BV Amsterdam, 2) The Company Trafigura Ltd, 3) The Company Puma Energy Ci, 4) The State of Ivory Coast.

Human right to sanitation

Toilet and restroom amenities required on new highway, Bihar, India

In the Patna High Court Case No. 8900 of 2020, decided on May 10, 2022, the dispute centred on whether the State of Bihar and associated governmental bodies, along with major oil corporations, were obligated to establish petrol pumps and maintain sanitation facilities on highways for the benefit of travellers.

The court deliberated on three key issues:

- Whether the absence of finalized petrol pumps violated the rights of travellers.
- If there exists a right to sanitation, particularly on highways, within the broader right to life.
- The nature and obligation of the State concerning the provision and maintenance of sanitation facilities on highways.

The court recognized the right to sanitation as a fundamental right, drawing support from various sources such as constitutional provisions (Articles 21: **right to life**, 39, 41, 42, 47, and 51-A), the Swachh Bharat Mission launched in 2014 to achieve a cleaner India by October 2, 2019, and international legal frameworks like UN Resolution 64/292.

The court concluded that the **State holds an obligation to furnish essential amenities to citizens on highways, ensuring their right to sanitation**. This includes establishing restrooms and toilets at fuel outlets. It emphasized that National Highway projects should incorporate such facilities to honour citizens’ rights, particularly highway users, and to adhere to the State’s national and international obligations.

The rights of local communities and indigenous peoples to clean water

Landlord obligation to provide habitable accommodation includes drinking water, Laramba, Australia

In the Northern Territory Supreme Court case NTSC 90 dated October 2, 2023, involving Pepperill and Anor vs Chief Executive Officer (Housing), the dispute stemmed from an appeal made by tenants of premises in Laramba, NT. The tenants complained about high uranium levels in drinking water supplied to their premises by Power and Water Corporation, not directly controlled by the landlord. They argued that this breached the Residential Tenancies Act's obligation to provide habitable premises. The Tribunal ruled that the landlord isn't responsible for utilities provided by others, like water, deeming them beyond the scope of premises. Three applicants appealed this decision, considered test cases among 24 similar applications.

The appeal presented three grounds:

- Tribunal's failure to grasp s 48(1)(a) of the RTA, indicating no breach if third parties cause health risks.
- The Tribunal's failure to correctly assess health and safety standards based on the landlord's responsibility.
- Lack of consideration for the tenants' contractual disconnection from the water supplier chosen by the landlord.

Justice Barr deliberated whether the Tribunal made legal errors, not re-examining factual findings. The **Judge established that despite the landlord's lack of direct involvement in water supply, their obligation to ensure habitable premises includes providing running water.** As the tenants had no contract or payment for water, the Judge inferred that the quality of water affected habitability. The Tribunal erred by excluding the uranium content issue, considering it a habitability concern. Consequently, the Judge allowed the appeal on the first ground, highlighting legal mistakes, while deferring on the other grounds pending Tribunal assessment of long-term health risks from uranium.⁵

Continuity of water supply

Interruption of water supply due to inability to pay is illegal, Limoges, France

Unlike electricity or gas, water in France is considered as an essential resource, its supply cannot be stopped or diminished.

In the Limoges Appeal Court Case No. 16/00093 of September 15, 2016, two individuals along with *Fondation France Libertés and Association Coordination Eau-Ile-de-France* filed a lawsuit against SAUR S.A.S, their water provider, claiming that the reduction of water supply to their main residence due to unpaid bills was unlawful.

The plaintiffs, residents whose water volume was reduced due to bill non-payment, provided examples illustrating the severe limitations this reduction caused in their daily water use. For instance, plaintiffs argued they would need an extensive amount of time to refill their toilets (30 minutes) or 5 hours to take a bath considering the reduced water flow to 1 litre per 2 minutes and 40 seconds.

The Court referenced Article L. 115-3 of the Code of Social Action and Families, the Constitutional Court's decision of May 29, 2015, and the UN General Assembly Resolution of July 28, 2010. Based on The Court referenced Article L. 115-3 of the Code of Social Action and Families, the Constitutional Court's decision of May 29, 2015, and the UN General Assembly Resolution of July 28, 2010. Based on these references, the Court concluded that SAUR's decision to **diminish the water supply to the plaintiffs' main residence, stemming from their inability to pay the bill, was illegal.**⁶

⁵ Australia: Northern Territory Supreme Court ; Case number NTSC 90, Oct 02,2023, Parties : Pepperill and Anor vs Chief Executive Officer (Housing).

⁶ France : Limoges Appeal Court, Case No. 16/00093, Sept 15, 2016, Parties : Plaintiffs : 1) Mrs X and Mrs Y, two individuals, 2) Fondation France Libertés, 3) Association Coordination Eau-Ile de-France / Defendant: SAUR S.A.S.

Conclusions

These cases illustrate that courts can play a key role in legal landscape concerning the human rights to water and sanitation, with courts increasingly recognizing and affirming others' rights in various contexts, particularly in the face of government policies, or actions that impede access to these essential resources.

While not exhaustive, this policy brief highlights a handful of cases where the HRWS can be protected through other legal frameworks, either through other human rights or through different legal pathways. In each case selected, the situation was really critical or 'life-or-death' important, and there was legal support to enable the plaintiffs to make a claim. If there can be one conclusion to be drawn from this analysis, it is that the lack of recognition of the HRWS in national law does not exclude the possibility of making a claim for violation of these rights, but it is going to be much more difficult, costly and complicated for people to know who to turn to for help in claiming these rights.

If you know someone in a similar position to any of these cases, please suggest to them that they contact their national ombudsman or National Human Rights Institute, as these agencies have a duty to support violations of any human right.