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# THE HUMAN RIGHT TO WATER?

*M.A. Dissertation in advanced European and International Studies*

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**I would like to dedicate this paper to the children around the world who lack access to safe drinking water and basic sanitation.**

“Access to safe water is a fundamental human need and, therefore, a basic human right. Contaminated water jeopardizes both the physical and social health of all peoples. It is an affront to human dignity”

Kofi Annan

United Nations Secretary-General.

“In time and with water, everything changes”.

Leonardo da Vinci

## **I) Introduction**

Beyond the focus of public attention, an unseen emergency continues to unfold: Water! Unlike a bomb, it doesn't perish dozens all at once; neither does it carry away whole towns in the blink of an eye, like a flood or an earthquake. It rather kills its victims largely unnoticed, spiriting them one by one from rural villages and urban ghettos in the most under developed parts of the world.

As Antoine de Saint-Exupery explains in his “Little Prince”, grown-ups need numbers to understand the importance of an issue. Today an estimated 1.1 billion

people lack access to safe drinking water. A further 2.6 billion people are without improved sanitation facilities due to a lack of water. Every day this seemingly invisible disaster claims the lives of 3900 children under the age of five and countless others all around the world suffer from poor health. Avoidable diseases such as diarrhea, cholera, dysentery and hepatitis kill over 2 million people every year. What is behind this wholesale loss of life? It is the absence of something that those living in the developed world take for granted: safe drinking water and basic sanitation.

Without claiming to prescribe the answers to these problems, this paper aims to bring a human rights based approach to the water scarcity. Formally acknowledging access to water as a human right could be a good way of encouraging the international community and governments to enhance their efforts to satisfy the basic requirements of people to this fundamental resource without which no human being can live for more than a few days.

The “Human Right to Water” requires some preliminary explications as to the terminology and to the substance.

Human rights are internationally recognized standards that ensure fundamental freedoms and dignity of individuals and communities. They include civil, cultural, economic, political and social rights. They principally concern the relationship between the individual and the State, but they also protect individuals from each other

or dominant groups. They set up a core of inalienable and inviolable rights that must be promoted and protected under all circumstances. Human rights are usually divided into negative and positive rights. Negative human rights contain actions that a government should not take and positive human rights are those rights that the State is obliged to protect and provide.

Water is the source of life. Together with air it constitutes the most basic element indispensable for any form of life. Although its scientific composition is well known as the combination of two molecules of hydrogen and one molecule of oxygen, it can not be reproduced in a laboratory in sufficiently large quantities. For a long time water has been considered as a substance existing in unlimited amounts. However today it is widely recognized that water reserves of our planet are not infinite and their preservation and equal distribution, not only for the present but also in the future, is one of the most fundamental challenges faced by humanity.

Water is needed for a large array of purposes. It is used for producing food and energy, for irrigation, for making cement for constructions, for combating fire and even for recreational activities such as water sports. Although it is possible to link all these usages of water with existing human rights such as right to an adequate housing, right to food, or right to development, the basic amount of water which must be considered as a human right cannot include water used for such purposes. The right to water for the purpose of this paper considers solely the water indispensable for human beings survival. This is the reason why the term "Human

Right to Water” has been adopted in this paper rather than “Water as a Human Right” or “the Right to Water” both of which may include water used for other purposes.

The Human Right to Water considers therefore a strict minimum amount of water that every human being needs in order to survive and must have access regardless his or her country of birth and residence, age, gender, ethnic origin etc.. and under any condition whatsoever.

The Human Right to Water requires therefore a careful management of the resource in order to provide everyone, today and in the future, with a sufficient amount of water for their survival. But critical questions arise in relation to this right. Is such a right recognized by international law and domestic legislations? What mechanisms would be required for its effective implementation? Which amount of water will be considered as fundamental for human existence? What are the duties and obligations of the States to provide water and sanitation?

This paper will focus on two of the major issues arising from the concept of a human right to water. Firstly it seeks to assess whether such a right already exists within the established framework of human rights (I) and then it studies the implications of the recognition of the Human Right to Water through the analysis of its content and the role of the States (II).



## **II) Existing sources for a Human Right to water.**

There has been both express and implied reference to a right to water in public international law. These references can be found in global as well as regional or local agreements. Some of the instruments analyzed below are traditional human rights treaties and humanitarian law conventions which are binding upon their signatories. There is also a substantive amount of non binding declarations and recommendations.

### **A) Does International Law recognize a human right to water?**

#### **1) Implicit recognition of a human right to water by binding legal instruments.**

There is an implicit recognition of the human right to water in major international human rights treaties (a). This recognition becomes more explicit in specialized instruments which are aiming to protect the most vulnerable parts of the population (b).

“People all over the world have a human right to water as the most fundamental prerequisite for living a life in dignity. Without it, the realization of other human rights is impossible”.

Eibe Riedel

Member of the UN Committee on  
Economic, Social and Cultural Rights.

*a) The right to water as an indispensable part of other fundamental human rights.*

Many human rights treaties contain implicit references to the right to water, since they recognize the right, to life, the right to the highest attainable standard of health, the right to adequate housing, the right to an adequate standard of living and the right to food. These implicit references consist in the fact that access to sufficient, safe and affordable water is an essential component of each of these rights.

The United Nations (UN) Charter in its Article 55 promotes higher standards of living, solutions to international health and related problems as well as universal respect for, and observance of, human rights and fundamental freedoms for all without discrimination.

The Universal Declaration of Human Rights (UDHR) adopted by the General Assembly of the UN in 1948 proclaims in its Art. 25 that “ everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services...”. Although the declaration is not a binding instrument many of its provisions, including Art. 25 are considered to be part of customary international law and they have been frequently re-affirmed in other international legal instruments. One may question why water was not explicitly incorporated in the formulation of Art 25. Is water excluded

from the core of human rights? Or is it such a fundamental element for human existence that the drafters didn't feel the necessity to affirm it once again? Peter Gleick, in his analysis of the article 25<sup>1</sup> argues that the term “including” shows that the elements listed were not meant to be all inclusive, but merely representative or indicative of the “component elements of an adequate standard of living”. This argument is supported by the fact that not just water but also air does not figure in the Art 25. Gleick argues that “Logic suggest that the framers of the UDHR considered water to be implicitly included as one of the “component elements” as fundamental as air”.

Eighteen years after the adoption of the UDHR the United Nations finalized the drafting of a more binding human rights instrument which became two separate covenants in 1966: the International Covenant on Civil and Political Rights (ICCPR)<sup>2</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>3</sup>. As of 1<sup>st</sup> of March 2006 more than 142 States parties accepted to ensure to all individuals within their jurisdiction certain human rights and to adopt “the necessary legislative or other measures to give them practical effect”. Both Covenants implicitly recognize a right to water, perhaps more strongly in the ICESCR.

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<sup>1</sup> P. Gleick, *The Human Right to Water*, Pacific Institute for Studies in Development, Environment, and Security, CA, USA, 1999. page 5.

<sup>2</sup> International Covenant on Civil and Political Rights, adopted 16 December 1966, entered into force 23 March 1976, G.A.Res. 2200A (XXI), UN Doc A/6316 (1966).

<sup>3</sup> International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966, entered into force 3 January 1976, G.A.Res. 2200A (XXI), UN Doc. A/6316 (1966).

The ICCPR in its Art 6 recognizes the right to life in the following formulation: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” For a long time the right to life has been narrowly interpreted thus it was limited to a negative obligation of the states to not to take life intentionally. In its sixteenth session held in 1982 the Human Rights Committee of the UN adopted the General Comment No.6 on the Right to Life. In the fifth paragraph the Committee has noted that “the right to life has been too often narrowly interpreted. The expression “inherent right to life” cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures”. The Committee considered that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially by adopting measures to eliminate malnutrition and epidemics<sup>4</sup>. As General Comments are authoritative interpretations of the treaties they refer to, there is no doubt today that States are obliged to take positive action to ensure the right to life. Some authors<sup>5</sup> even argued that even if we stick on to a narrow interpretation of the right to life, it would still include the protection against arbitrary and intentional denial of access to sufficient water, because “this is one of the most fundamental resources necessary to sustain life”.

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<sup>4</sup> In Compilation of General Comments and General Recommendation adopted by human rights treaty bodies, UN doc HRI/GEN/1/REV.7, 12 May 2004.

<sup>5</sup> Scalon, John, Cassar, Angela and Nemes, Noémi (2004). *Water as a Human Right?* IUCN, Gland, Switzerland and Cambridge, UK. p 4.

In the ICESCR it may be argued that the right to water is already apparent in the Articles 11 and 12. Article 11 formalizes the right to food and some minimum quality of life: “The state 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.” Article 12 continues: “The States Parties...recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken ...to achieve the full realization of this right shall include those necessary for...the prevention, treatment and control of epidemic, endemic, occupational and other diseases”.

Once again the right to water does not appear explicitly in the wording of the ICESCR, but as Danielli mentions: “There is nothing ill-defined or fuzzy about being deprived of the basic human rights to food and clean water, clothing, housing, medical care, and some hope for security in old age. As for legal toughness, the simple fact is that 138 [as of today 142] governments which have ratified the [ICESCR] have a legal obligation to ensure that their citizens enjoy these rights”<sup>6</sup>. Other authors including Gleick are in support of this argument, but in its role of authoritative interpreter of the Covenants, the Committee on Social Economic and Cultural Rights (CSECR) remained silent on the issue until 2002.

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<sup>6</sup> Danielli, Y.,E. Stamatopoulou, C.J. Diaz. (1999). *The Universal Declaration of Human Rights: Fifty Years and Beyond*. Baywood Publishing Company, Inc., Amityville, New York.

In November 2002 the CSECR adopted the General Comment No.15 on The Right to Water, the wording of which has left no doubt as to its view of the correct legal position : “The human right to water is indispensable for leading a life in human dignity. It is prerequisite for the realization of other human rights”. Therefore, even though not explicitly mentioned in the wording of the covenant, the right to water exists as a component of the rights guaranteed by the ICESCR and the ICCPR.

*b) Recognizing the right to water for the most vulnerable parts of the population.*

As mentioned above, the right to water is implicitly recognized in major international human rights treaties. There is another series of treaties and conventions in which the right to water is not recognized as a universal human right but as a fundamental right that must be secured especially for the most vulnerable parts of human kind such as women, children and people trapped in a zone of armed conflict.

The four Geneva Conventions of 1949 and their additional protocols of 1977<sup>7</sup>, set upon States and other parties of an armed conflict, obligations to respect and ensure access to water for prisoners of war, interned persons and civilian population.

The Geneva Convention (III) relative to the treatment of prisoners of war<sup>8</sup> mentions in its articles 20, 26 and 46 that the detaining power must provide the prisoners of

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<sup>7</sup> The Geneva Conventions: the core of international humanitarian law.

<http://www.cicr.org/Web/Eng/siteeng0.nsf/html/genevaconventions?OpenDocument>

<sup>8</sup><http://www.cicr.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6fef854a3517b75ac125641e004a9e68>

war with sufficient amount of drinking water. Article 29 requires the detaining power to ensure the hygiene of the prisons and the prisoners including the provision of “sufficient water and soap for their [prisoners] personal toilet and for washing their laundry...”

The article 54 of the additional protocol (I) relating to the protection of victims of international armed conflicts<sup>9</sup> prohibits the attacks against objects that are indispensable to the survival of the civilian population.

“It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive”.

In his highly renowned book *Principes de droits des conflits armées* Professor Eric David comments the article 54: “...un attention particuliere doit etre accordée à l’eau, en tant que moyen de survies de la population, en tant qu’élément indispensable aux installations sanitaires, en tant que force dangeureuse;...or, les resaux de distribution d’eau sont souvent pris pour cibles...”.

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<sup>9</sup><http://www.cicr.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/f6c8b9fee14a77fdc125641e0052b079>

Moreover the additional protocol (II)<sup>10</sup> in its article 14 prohibits the attack or destruction of “drinking water installations and supplies and irrigation works” indispensable to the survival of the civilian population during an armed conflict of a non-international character. If access to water is a fundamental right guaranteed by international law in times of armed conflict, it should be so even more during periods of peace.

The violation of the International Humanitarian Law provisions may be incriminated according to the Statute of the International Criminal Court of 17<sup>th</sup> of July 1998<sup>11</sup>. Article 8 of these statutes describes “intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions;...” as a war crime. Therefore, if analyzed in connection, it is not ill founded to suppose that the Geneva Conventions and the Statute of the International Criminal Court defines the deprivation of the civilian population or prisoners of war from a minimum amount of water as a war crime. This interpretation is yet to be confirmed by the Courts jurisprudence.

To date, only women and children’s right to water has been explicitly recognized by international law.

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<sup>10</sup><http://www.cicr.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/d67c3971bcff1c10c125641e0052b545>

<sup>11</sup> <http://www.un.org/law/icc/statute/romefra.htm>



In 1979 the UN General Assembly Adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>12</sup>. CEDAW obliges States Parties to eliminate discrimination against women, particularly in rural areas to ensure that women “enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications”<sup>13</sup>. The express mentioning of water in CEDAW may be viewed as a testament to the uneven burden traditionally placed on women in developing countries to collect water. Research shows that, on average, households in rural Africa spend 26% of their time collecting water, and it is generally women who perform this duty<sup>14</sup>. According to the WHO women in particular suffer also from the lack of appropriate sanitation facilities, thus taking the risk of being attacked while looking for some privacy in inappropriate location for their basic sanitation<sup>15</sup>.

Explicit recognition of the right to water to the most vulnerable parts of the population continued with the 1989 Convention of the Rights of the Child (CRC)<sup>16</sup>. Article 24 of the CRC provides that a child has the right to enjoy the highest attainable standards of health in order to “combat disease and malnutrition...through the provision of adequate nutritious foods and clean drinking water”.

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<sup>12</sup> Adopted 18 December 1979, entered into force 3 September 1981, G.A. Res. 34/180.

<sup>13</sup> Convention on the Elimination of All Forms of Discrimination against Women Art. 14(2)(h).

<sup>14</sup> Right to Water, Health and human rights publication series; No.3, WHO, 2003. p25

<sup>15</sup> *supra* note 13.

<sup>16</sup> Adopted by the General Assembly Resolution 44/25 of 20 November 1989, entry into force 2 September 1990.

The right to water has therefore been more explicitly recognized to Women, Children and people affected by armed conflicts. But it is nonetheless still not recognized explicitly by any international instrument as a universal right of every human being.

## **2) Explicit support of a right to water by non binding instruments.**

The right to water is more often expressly recognized within non-legally binding instruments in form of resolutions and declarations (a). Their scope is mostly limited to political commitments, but the lack of political and legal follow up of these commitments hampers the application of the right to water (b).

*a) Courageous affirmation of the human right to water by non binding declarations and comments.*

From the 1970's onwards, attention has been drawn to the importance of water. References to the importance of securing the water reserves of our planet started to appear in environmental declarations. In 1972 the Stockholm Declaration following the UN Conference on the Human Environment states that "the natural resources of earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate".

Five years later the first UN Water Conference was held in Mar Del Plata, Argentina. Here for the first time the right to water has been recognized by the UN and its members. The action plan, whose primary outcome was the launching of the International Drinking Water Supply and Sanitation Decade (1980-1990) with the slogan “Water and Sanitation for All”, states that “all peoples, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs”<sup>17</sup>.

A second wave of more courageous declarations came in the beginning of the 1990’s. The final declaration of the World Summit for Children Plan of Action (1990) calls for an international cooperation for the “universal access to safe drinking water and sanitary means of excreta disposal for the survival, protection and development of children by the year 2000”.

Controversially the most serious qualification of the right to water in international arena started to appear right after the end of the International Drinking Water Supply and Sanitation Decade. In 1992 the International Conference on Water and the Environment has been held in Dublin. The final statement of the conference recognizes an economic value to water. Within this principle it affirms “the basic right of all human beings to have access to clean water and sanitation at an affordable price”. The recognition of water as an economic good has been criticized lately by

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<sup>17</sup> Preamble, UN. (1977). Report of the UN Water Conference, Mar Del Plata. March 14-25, 1977. No E 77 II A 12, United Nations Publications, New York.

most of the socialist Latin American governments<sup>18</sup>, but the Dublin Statement must be given credit as for the first time an international conference suggested a solution to the “wasteful and environmentally damaging uses of the resource” by attributing to it an economic value.

The same year, the report of the United Nations Conference on Environment and Development, commonly known as Agenda 21<sup>19</sup> has been published. In its chapter 18 on freshwater it notes that a right to water entails three elements: access, quality and quantity, including not only a “general objective ...to make certain that adequate supplies of water of good quality are maintained for the entire population of this planet”<sup>20</sup>, but also to provide that “all peoples, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic human needs.”<sup>21</sup> Overall, an integrated approach is promoted throughout the chapter, which emphasizes the three elements of sustainable development as equally important; water is to be viewed as “a natural resource and a social and economic good, whose quantity and quality determine the nature of its utilization.”<sup>22</sup>

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<sup>18</sup> For more information on these critiques: Henri Smets, *The Right To Water at the 4<sup>th</sup> World Water Forum in Mexico*; Water Academy Paris, 2006.

<sup>19</sup> <http://www.un.org/esa/sustdev/documents/agenda21/english/agenda21toc.htm>

<sup>20</sup> Agenda 21, Para 18.2.

<sup>21</sup> Ibid. Para 18.47.

<sup>22</sup> Ibid. Para 18.18.

The Declaration of Amsterdam following the Second International Water Tribunal held in 1992 highlights yet another important aspect of the right to water. In its Art.1 the declaration repeats the existence of a fundamental right to water for the present and future generations. The novelty resides in Art.2 where it is mentioned that “Each human being, collectively and entity which has an interest in a water resource has the right to effective participation in decision making process concerning activities that may in any way affect that water resource”. This is the first affirmation of such a participation right deriving from the right to water.

The right to water has also been expressed in later international declarations such as the Program of Action of the UN International Conference on Population and Development in 1994 and the Ministerial Declaration of The Hague on Water Security in the 21<sup>st</sup> Century in 2000. But none of these declarations ended up into a concrete action for internationally recognizing neither the human right to water, nor to the universal access to safe drinking water.

*b) A lack of concrete political follow up to this commitment.*

At the UN General Assembly Millennium Meeting held in New York in 2000, member states agreed on the establishment of the Millennium Development Goals (MDG's) and all 191 of them have pledged to meet these eight goals. The 7<sup>th</sup> Goal which is entitled “Ensure Environmental Sustainability” involves the reduction by 2015 by one-half the proportion of people without access to adequate quantities of

safe drinking water. The Johannesburg Summit of Sustainable Development in September 2002 extended this goal to include sanitation as well. In 2004 UNICEF and WHO published a report of their joint monitoring program<sup>23</sup>. The report aims to evaluate the progress made since the beginning of the MDG's on water and sanitation. According to the report, progress has been made since 1990 but if the 1990-2002 trend holds, then the world will miss the sanitation and drinking water target by half a billion people. One of the possible explanations of this delay in the MDG's may be the lack of political follow up and legally binding international instruments.

In March 2006 at the 4<sup>th</sup> World Water Forum held in Mexico, although most of the participating States expressed their wish for the recognition of the right to water<sup>24</sup> the final Ministerial Declaration made no reference to it. However the final declaration of the regional and local authorities meeting expressly refers to the importance of the recognition of the right to water. Smets welcomes this initiative as local authorities play often the most important role for the water provision to the population<sup>25</sup>.

As it is the case in most environmental and human rights issues it becomes extremely difficult to oblige States to take positive action for the fulfillment of their engagements in the absence of international binding treaties and a follow up

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<sup>23</sup> WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation: Meeting the MDG drinking water and sanitation target: a mid-term assessment of progress, 2004

<sup>24</sup> *see in* The Right to Water at the 4th World Water Forum in Mexico, Henri Smets, Water Academy Paris.

<sup>25</sup> *Idem*.

organization such as a tribunal or a special council. Thus the explicit and binding recognition of a human right to water is necessary for the achievement of the MDG's on the one hand and the enforcement of this right on the other.

## **B) Regional and local sources for a human right to water.**

The Human Right to Water is better recognized by some regional and national instruments (1) under the constant pressure of judicial courts and academic circles (2).

### **1) Regional treaties and national constitutions recognizing a human right to water.**

Some major regional treaties from Americas, Africa and Europe recognize the right to water as a human right (a). This regional recognition has led to the constitutional recognition of the right to water in some countries (b)

*a) Regional treaties; the most explicit recognition of a human right to water.*

Africa, the Americas and Europe have developed a series of regional treaties and declarations that also provide for or support the right to water. Regional standards are useful as most of the time they offer a more extensive and clear definition of the rights they contain. They may also have more legitimacy among political decision-

makers, civil society and the population and they may be seen to be more closely related to the particular situation of a given State. More over, regional organizations often establish a monitoring organ or judicial court in order to follow up the application of the established standards.

All three regional human rights systems for the Americas, Europe and Africa dispose of a court, commission or committee to which individual complaints of human rights violations can be addressed. This forms a powerful tool for the protection of these rights. But once again the degree of recognition of the human right to water plays a primordial role in this process.

In Africa, the African Charter on Human and People's Rights broadly notes that "all peoples shall have the right to a general satisfactory environment favorable to their development"<sup>26</sup>. Combined with the provision of Art 16 according to which States shall take the necessary measures to protect the health of their people, it becomes clear that States have a duty to protect and provide safe drinking water to their citizens.

The African Charter on the Rights and Welfare of the Child reinforces this theory by stating that "every child shall have the right to enjoy the best attainable state of

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<sup>26</sup> Art 24 of the African Charter on Human and People's Rights, adopted June 27, 1981, OAU, entered into force October 21, 1986.



physical, mental and spiritual health”<sup>27</sup> and States Parties are required to take measures “to ensure the provision of adequate nutrition and safe drinking water...”<sup>28</sup>.

In the Americas, the Additional Protocol to the American Convention on Human Rights known as the Protocol of San Salvador, in its Art. 11 provide that “everyone shall have the right to live in a healthy environment and to have access to basic public services”. It is undoubtable that basic public services include water supply and sanitation. In 1997 the report prepared by the Inter-American Commission on Human Rights on the human rights situation in Brazil clearly proves this by claiming in its chapter two that “there was inequality in the access to basic public services: 20.3% of the population have no access to potable water and 26.6% lack access to sanitary services...”<sup>29</sup>. The right to access to basic public services is a clear example of regional instruments providing a right that is not explicitly covered by international instruments.

In Europe, The Committee of Ministers of the Council of Europe, in October 2001, adopted the European Charter on Water Resources which replaced the European Water Charter of 1968. The Committee recommends<sup>30</sup> to its member States to take

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<sup>27</sup> Art. 14(1) of the African Charter on the Rights and Welfare of the Child, OAU, 1990, entered into force November 29, 1999. <http://www1.umn.edu/humanrts/africa/afchild.htm>

<sup>28</sup> *ibid.* Art 14(2)(c).

<sup>29</sup> Inter-American Commission on Human Rights, Report on the Human Rights Situation in Brazil 1997. <http://www.cidh.oas.org/countryrep/brazil-eng/chaper%202%20.htm>

<sup>30</sup> Recommendation Rec(2001)14 of the Committee of Ministers to member States on the European Charter on Water Resources. [https://wcd.coe.int/ViewDoc.jsp?id=231615&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75#P79\\_7325](https://wcd.coe.int/ViewDoc.jsp?id=231615&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75#P79_7325).

note of the charter and apply its principles as appropriate in the framework of their national policies. The paragraph 5 of the Charter proclaims the right of everyone “to a sufficient quantity of water for his or her basic needs”. The recommendation also notes that “International human rights instruments recognize the fundamental right of all human beings to be free from hunger and to an adequate standard of living for themselves and their families. It is quite clear that these two requirements include the right to a minimum quantity of water of satisfactory quality from the point of view of health and hygiene”.

The UN Economic and Social Council’s Economic Commission for Europe has adopted in October 1999 a Protocol on Water and Health<sup>31</sup>. This is an additional protocol to the 1992 Convention on the Protection and Use of the Transboundary Watercourses and International Lakes. The protocol specifically states in its Art. 6 that “...Parties shall pursue the aims of: (a) access to drinking water for everyone; (b) provision of sanitation for everyone”<sup>32</sup>. It also mentions the three central aspects of a human right to water, stating that “...equitable access to water, adequate in terms of both quantity and of quality, should be provided for all members of the population, especially those who suffer a disadvantage or social exclusion”<sup>33</sup>.

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<sup>31</sup> Protocol on Water and Health to the 1992 Convention on the Protection and Use of the Transboundary Watercourses and International Lakes. EUR/ICP/EHCO 020205/8Fin, 18 October 1999, entry into force 4 August 2005.  
<http://www.unece.org/env/documents/2000/wat/mp.wat.2000.1.e.pdf>

<sup>32</sup> Ibid. Art. 6(1)

<sup>33</sup> Ibid. Art. 5(1)

In its Art 11 concerning the right to protection of health, the European Social Charter of 1961<sup>34</sup> requires the States to remove as far as possible the causes of ill-health, epidemic, endemic and other diseases. WHO and UN statistics shows that an estimated 120 million people in the Council of Europe countries do not have access to safe drinking water and adequate sanitation, making them vulnerable to water-related diseases, such as cholera, bacillary dysentery, coli infections, viral hepatitis A and typhoid<sup>35</sup>. In this context it is once again obvious that the Social Charter requires implicitly the States to take the necessary measures to provide and secure access to a minimum amount of water for drinking and sanitation purposes.

*b) The right to water guaranteed by some constitutions.*

Many national constitutions in various regions of the world contain provisions related to water issues. These provisions can be regrouped for academic purposes in two categories: citizen's right to water and States obligation to provide water.

Since the beginning of the 1990's there is also an increasing tendency in the constitutions around the world to include "a right to a healthy environment". This aspect will not be dealt with in this paper, but a healthy environment undeniably includes the safeguard of water resources.

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<sup>34</sup> <http://conventions.coe.int/treaty/en/treaties/thml/035.htm>, revised version in 1996,  
<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=163&CM=7&DF=26/10/2005&CL=ENG>

<sup>35</sup> [http://www.unece.org/env/water/text/text\\_protocol.htm](http://www.unece.org/env/water/text/text_protocol.htm)

Three constitutions<sup>36</sup>, Ecuador, South Africa and Uganda, explicitly recognize their citizens' right to water.

The Political Constitution of Ecuador of 1998 in its Art 23(20) imposes to the State to recognize and guarantee to the people the right to a quality of life including potable water<sup>37</sup>. Furthermore, the Art 42 of the constitution recognizes the right to life and imposes upon the State to guarantee this right through the provision of potable water and basic sanitation<sup>38</sup>.

The South African Constitution of 1996<sup>39</sup> offers the most simple and explicit recognition of a human right to water. In its Art 27 it states that “everyone has the right to have access to: (b) sufficient food and water” and that “The state must take

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<sup>36</sup> Due to the technical difficulties in analysing all the constitutions around the world, the number given here is the result of research done by the author. There may be other countries who have constitutionally recognized their citizens right to water.

<sup>37</sup> Official english translation of the constitution of Ecuador could not be found. The original text in spanish is as follows: “**Art. 23.-** Sin perjuicio de los derechos establecidos en esta Constitución y en los instrumentos internacionales vigentes, el Estado reconocerá y garantizará a las personas los siguientes: (20.) El derecho a una calidad de vida que asegure la salud, alimentación y nutrición, agua potable, saneamiento ambiental; educación, trabajo, empleo, recreación, vivienda, vestido y otros servicios sociales necesarios”.

<sup>38</sup> Official English translation of the constitution of Ecuador could not be found. The original text in spanish is as follows: “**Art. 42.-** El Estado garantizará el derecho a la salud, su promoción y protección, por medio del desarrollo de la seguridad alimentaria, la provisión de agua potable y saneamiento básico, el fomento de ambientes saludables en lo familiar, laboral y comunitario, y la posibilidad de acceso permanente e ininterrumpido a servicios de salud, conforme a los principios de equidad, universalidad, solidaridad, calidad y eficiencia”.

<sup>39</sup> <http://www.info.gov.za/documents/constitution/index.htm>

reasonable legislative and other measures, within its available resources, to achieve the progressive realization of ... [this] ... right". Accordingly, the Water Services Act of 1997<sup>40</sup> expands this constitutional right by imposing to all water services institutions to take reasonable measures to realize these rights<sup>41</sup>. Furthermore the Act mentions that in case of impossibility for a water services provider to meet the requirements of all its consumers, it "must give preference to the provision of basic water supply and basic sanitation to them"<sup>42</sup>. Thus the Water Services act ensures *in jure* the provision of water to every person living in South Africa.

The Constitution of Uganda (1995) also recognizes its people's right to access to water in the preamble. "All Ugandans enjoy rights and opportunities and access to education, health services, clean and safe drinking water, work ..."<sup>43</sup>.

The Constitutions of 5 other countries impose on the State the obligation to provide clean and safe drinking water.

The Ethiopian Constitution of 1995<sup>44</sup>, in its Art 90 provides that "to the extent the country's resources permit, policies shall aim to provide all Ethiopians access to public health and education, clean water, housing, food and social security". The Gambian Constitution imposes upon the State the duty of facilitating "equal access to

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<sup>40</sup> <http://www.info.gov.za/gazette/acts/1997/a108-97.pdf>

<sup>41</sup> South African Water Services Act, Act 108 of 1997, section 3(2)

<sup>42</sup> *Idem*, Section 5.

<sup>43</sup> [http://www.parliament.go.ug//index.php?option=com\\_content&task=view&id=23&Itemid=38](http://www.parliament.go.ug//index.php?option=com_content&task=view&id=23&Itemid=38)

<sup>44</sup> <http://www.ethiopianembassy.org/constitution.doc>

clean and safe water.” The Constitution of Panama adopted in 1994 also imposes on the State in the area of health to “combat transmissible diseases by means of rehabilitating the environment, taking measures to make drinking water available...”<sup>45</sup> The Zambian State has also a constitutional duty to “endeavor to provide clean and safe water”<sup>46</sup> to the people living under its jurisdiction.

It is worth mentioning that the constitutions cited above which provide a right to water or the obligation for the State to ensure access to water are all drafted after 1995. It is therefore possible to conclude that in the past 10 years water related rights are getting evermore attention by the drafters of the constitutions especially in Africa and South America where water scarcity is an important factor for child mortality and short life expectancy.

## **2) The interpretation of the right to water by judicial courts and academic experts.**

Whether explicit or implicit, as the right to water started to make its place in regional treaties and national legislations, national and supra national courts try to define this right by applying it to concrete cases (a). This progress has been welcomed by

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<sup>45</sup> The Constitution of The Republic of Panama, Art 106. Available at <http://www.asamblea.gob.pa/asamblea/constitucion/index9.htm>

<sup>46</sup> The Constitution of Zambia, Art 112(d). Available at <http://www.parliament.gov.zm/laws/volume1.pdf>

academic circles and authors who have been advocating for the recognition of the right to water (b).

*a) The concrete application of the right to water by some national courts.*

The lack of a clear cut affirmation of a human right to water in international instruments combined with States profound attachment to their sovereignty makes it difficult for supra-national courts to base their judgments on a violation of the right to water. However in countries where the right to water is explicitly recognized, courts don't hesitate to enforce this right. In other countries where the right to water is not legally recognized some national courts did mention the right to water as part of other existing human rights such as the right to life or the right to a healthy environment.

In a ground breaking decision<sup>47</sup> in 2002, the High Court of South Africa ordered a Local Council who disconnected the water supply of a an entire block of houses to restore the water connection on the basis of Art 27 of the constitution. In its verdict the court stated that the disconnection by the State of an existing water supply “is prima facie a breach of its constitutional duty to respect the right of access to water and requires constitutional justification”. The water supply to the flats was subsequently reinstated.

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<sup>47</sup> Residents of Bon Vista Mansions v. Southern Metropolitan Local Council, Hight Court of South Africa, Case no: 01/12312, 2001.  
[http://www.communitylawcentre.org.za/ser/casereviews/2002\\_6\\_BCLR\\_625.php](http://www.communitylawcentre.org.za/ser/casereviews/2002_6_BCLR_625.php)

Whereas in India, where there is no explicit recognition of a right to water, courts interpreted in several cases<sup>48</sup> the access to safe and clean drinking water as an integrated part of the right to life guaranteed by the Art 21 of the constitution.

The Supreme Court of Nepal in its *Leaders, Inc. v. Godawi Marble Industries* judgment has adopted a similar approach and concluded that a marble mining company violated the citizens' constitutional right to life by contaminating the water supplies and the soil<sup>49</sup>.

In Belgium the Court of Arbitration in evaluating the competences of public authorities on the distribution of a minimum amount of water free of charge, recognized the right of everyone to a minimum supply of drinking water through the constitutional right of each person to live a life in dignity (Art 23)<sup>50</sup>. Following this jurisprudence the Belgian federal government has adopted a "water resolution" on April 2005 in which it recognizes access to safe water as a human right that should be included in the Belgian Constitution<sup>51</sup>. If such a constitutional revision takes place Belgium will become the first European Union country to include the right to water in its Constitution. This is an encouraging step towards the explicit recognition of a right

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<sup>48</sup> inter alia. *Attakoya Thangal v. Union of India*, High Court of India, 1990. *Subhash Kumar v. State of Bihar*, Supreme Court of India, 1991.

<sup>49</sup> *Leaders, Inc. v. Godawi Marble Industries*, Supreme Court of Nepal, 31.10.1995.

<sup>50</sup> Arrêt no: 36/98, 1er Avril 1998, *Commune de Wemmel, Moniteur belge*, 24/4/98.  
<http://www.arbitrage.be/public/f/1998/1998-036f.pdf>

<sup>51</sup> This information has been taken from the World Water Council.  
(<http://www.worldwatercouncil.org/index.php?id=1019&L=0>)



to water and a good example of the contribution of the case law of higher courts in the legislative process.

*b) The continuous pressure by academic circles for the recognition of the human right to water.*

The Article 38 of the statutes of the International Court of Justice<sup>52</sup> lists the sources of international law which govern the relations between States. These sources also include “judicial decisions and the teachings of the most highly qualified publicists...”<sup>53</sup>. Bearing this in mind, it should be noted that the opinions or recommendations of these experts generally do not have official legal value. However, they can be influential in judicial decisions and for the adoption of legislative acts or conventions. It is therefore worthwhile to consider their position and expertise in the recognition of the human right to water.

Peter Gleick’s “The Human Right to Water” should probably be credited as the first publication specifically addressing the issue<sup>54</sup>. Gleick concludes his work by assessing the necessity to consider the access to a basic water requirement as a fundamental human right. He argues that major human rights treaties already contain an implicit reference to such a human right. He goes further by stating that “If the framers of early human rights language had foreseen that reliable provision of a

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<sup>52</sup> [http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicstatute.htm#CHAPTER\\_II](http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicstatute.htm#CHAPTER_II)

<sup>53</sup> *Idem.* Art. 38(1)(d)

<sup>54</sup> *Supra* note 1

resource as fundamental as clean water would be so problematic, it is reasonable now to suggest that the basic rights documents would have more explicitly included a right to water”. He even suggests a formulation which has been repeated in the General Comment 15 on the right to water:

“All human beings have an inherent right to have access to water in quantities and of a quality necessary to meet their basic needs.

This right shall be protected by law”.

He urges international organizations, national and local governments and non governmental organizations to recognize explicitly the right to water and to take the necessary steps to ensure its enforcement.

Another eminent author who has published prestigious work to enhance water as a human right is Henri Smets. He is also in favor of the theory according to which existing human rights instruments already recognize the right to water. In his work “Le Droit à l’Eau”<sup>55</sup> Smets tempts to define the content and the realization of the right to water on national level. He concludes by the following:

« Il faut en outre reconnaître aux personnes en situations de précarité la possibilité de faire valoir des droits sur un bien essentiel à leurs vie. A cette fin, il faudra prendre diverses

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<sup>55</sup> Henri Smets, Le Droit à l’Eau, Conseil Européen du Droit de l’Environnement, 2002.

mesures législatives et réglementaires pour que le droit à l'eau soit susceptible d'être invoqué devant les tribunaux, notamment lorsque les pouvoirs publics n'interviennent pas pour respecter, protéger et assurer ce droit .»

On the contrary Scalon, Cassar and Nemes, argue that the human right to water only exists as a component of the right to life. Their conclusions show that the present instruments do not clearly define the right to water in international law and therefore it is not yet recognized as a fundamental human right.

“If we are to consider the possibility of formulating a human right to water as a separate notion, then consolidation and clear definition of scope will be necessary, particularly as it will potentially relate to present international environmental principles and conventions.”<sup>56</sup>

Besides their previous writings experts also present reports and recommendations to international and governmental organizations. These are very useful documents as they offer technical analysis of the subject matter which is often far too complex for politicians.

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<sup>56</sup> Scalon, John, Cassar, Angela and Nemes, Noémi (2004). *Water as a Human Right?* IUCN, Gland, Switzerland and Cambridge, UK

The Dublin Statement on Water and Sustainable Development<sup>57</sup> of 1992 which was prepared by some 500 experts before the Rio Summit on Environment and Development has influenced not only the Summit but also the subsequent official documents in the field of water, sanitation and sustainable development, notably the Millennium Declaration and the Millennium Development Goal's.

The European Council on Environmental Law resolution of 2004 on the recognition of the right to drinking water in the member States of the European Union provides specific guidelines on means to implement the right to water in a developed country.

The recommendations of NGO's and independent experts also have a persuasive value in the adoption of text at the UN. Such was the case during the debates on the General Comment 15 where numerous NGO's presented their written statements to the Commission on Human Rights. Some of them have official consultative status and they play an important part in the policy making. A good example is the written statement of the International Council on Environmental Law<sup>58</sup> which contains the essential elements of the right to water and it has been referred to on multiple occasions by speakers in the commission<sup>59</sup>.

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<sup>57</sup> <http://www.gdrc.org/uem/water/dublin-statement.html>

<sup>58</sup> <http://www.unhchr.ch/huridocda/huridoca.nsf/6d123295325517b2c12569910034dc4c/cc44adbac8d8c3c2c125694c00520ba6?OpenDocument>

<sup>59</sup> UNCESCR twenty-ninth session, Summary Record of the first part of the 50<sup>th</sup> meeting. E/C.12/2002/SR.50, 28 November 2002.

<http://www.unhchr.ch/huridocda/huridoca.nsf/6d123295325517b2c12569910034dc4c/cc44adbac8d8c3c2c125694c00520ba6?OpenDocument>

Other reports and recommendations include the final declaration of the Second International Water Tribunal<sup>60</sup> held in 1992 and the Brazzaville Declaration of the Africa 2000 Initiative for Water and Sanitation<sup>61</sup> and they are all urging the international community to recognize the right to water and implement the necessary action plans in order to effectively manage the resource and provide safe and clean water to everyone.

**C) Conclusion: The dilemma around the explicit recognition of a human right to water.**

It comes out of the foregoing that The Human Right to Water already exists as water is the most essential element of life. Assuming the contrary would mean that the existing human rights treaties have neglected the single most essential right which is fundamental for the enjoyment of the entire core of human rights. However, this right has not yet been clearly defined in international law. The adoption of the General Comment 15 constitutes an important step towards its explicit recognition as it leaves no doubt as to the existence of this right within the ICESCR and the ICCPR. At the current state of international law, the right to water is considered to be an implicit component of other generally accepted human rights. Therefore its enforcement is only possible indirectly through the right to life, the right to a healthy environment or the right to development.

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<sup>60</sup> <http://www.worldwaterday.org/wwday/2001/thematic/hrannex.html>

<sup>61</sup> <http://www.afro.who.int/wsh/af2000/declaration.html>

As shown by the South African example, the explicit recognition of a right to water would enable the means and mechanisms available in the UN human rights system and regional and national courts to monitor the effective realization of this right and if necessary hold governments accountable for any violation.

### **III) The implications of the Human Right to Water.**

The effective implementation of the human right to water as a separate notion requires a clear definition of its content (A) and the obligations which fall upon the States for the full realization of this right (B). The Content of the right to water and the respective duties of the States have been summarized by the General Comment 15, the practice of States who already recognize this right and the comments and propositions of academicians.

#### **A) The Content of the human right to water.**

The content of a Human Right to Water includes a definition of normative rules on the one hand (1) and the procedural rights that must be secured for the individuals on the other (2).

## 1) The normative content of the Human Right to Water.

Recognizing the Human Right to Water doesn't mean that water must be free for all users. It also doesn't imply a right to an unlimited amount of water. It means only that everyone's access to water must be guaranteed in terms of availability and affordability (a) as well as quantity and quality (b).

*a) Accessibility of water: physical distance and price.*

“By means of water we give life to everything.”

*Koran 21:30*

According to the WHO and UNICEF joint monitoring program report published in 2004<sup>62</sup> 1.1 billion people around the world are still using water collected from unimproved sources which are way too far from their households. This means that 1 over 6 people around the world are deprived from basic access to water. As a result the content of the right to water should be defined as a right to access to water of an adequate quality and in sufficient quantity to meet basic human needs.

The accessibility is a key element of the right to water. Recognizing the right to water would mean above all that every person has a right of access to water in law and in

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<sup>62</sup> WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation: Meeting the MDG drinking water and sanitation target: a mid-term assessment of progress, 2004.

fact. Water must be available from a source that is at least in a reasonable distance from the house and it must be affordable without causing an unbearable economic burden over the family. Keeping in mind that water has an economic value; its price must be adapted to the end users budget. In other words the cost of water must not reduce a person's capacity to buy other essential goods, such as food, housing, education and health care. On this issue, Smets suggest the establishment of a "lifeline tariff" which involves the provision of a basic amount of water at a very low cost so that it can be affordable even to the poorest of our communities<sup>63</sup>. In practice this means that water must be subsidized for poor communities and provided free where necessary<sup>64</sup>.

It should also be noted that the amount of water collected and consumed by a household is largely determined by how far the source of water is from the house. As Howard and Bartam<sup>65</sup> point out, if water is collected from a source which is more than 1 kilometer away from home, the per capita consumption often falls below 5 liters per day (see table 1). This corresponds to a true minimum amount of drinking water required to sustain life in moderate climatic conditions and average activity levels<sup>66</sup>. The accessibility criteria therefore requires the public authorities to ensure

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<sup>63</sup> Henri Smets, *Le Droit à l'Eau*, Conseil Européen du Droit de l'Environnement, 2002. p45

<sup>64</sup> Langford, Khalfan, Fairstein, Jones, *Legal Resources for the Right To Water: International and National Standards*, Centre on Housing Rights and Evictions, Geneva Switzerland, 2004. p8.

<sup>65</sup> Guy Howard, Jamie Bartram, *Domestic Water Quantity, Service Level and Health*, World Health Organization, 2003.

<sup>66</sup> Peter Gleick notes that a daily average of 25 liters per person is required to meet the most basic human needs. This include drinking (5L) sanitation and hygiene (20L) . P. Gleick, *The Human Right to Water*, Pacific Institute for Studies in Development, Environment, and Security, CA, USA, 1999.



progressively that every person under their jurisdiction will have basic access to clean water, and that priority must be given to this issue over other uses of water.

Table 1: Access to water and consumption amount.

Service level	Access measure	Needs met
No access (quantity collected often below 5 l/c/d)	More than 1000m or 30 minutes total collection time	Consumption – cannot be assured Hygiene – not possible (unless practiced at source)
Basic access (average quantity unlikely to exceed 20 l/c/d)	Between 100 and 1000m or 5 to 30 minutes total collection time	Consumption – should be assured Hygiene – hand washing and basic food hygiene possible; laundry/ bathing difficult to assure unless carried out at source
Intermediate access (average quantity about 50 l/c/d)	Water delivered through one tap on-plot (or within 100m or 5 minutes total collection time)	Consumption – assured Hygiene – all basic personal and food hygiene assured; laundry and bathing should also be assured
Optimal access (average quantity 100 l/c/d and above)	Water supplied through multiple taps continuously	Consumption – all needs met Hygiene – all needs should be met

Source: Howard and Bartam

Accessibility in law also means that there must be no discrimination on the access to water. Even “the most vulnerable and marginalized sections of the population”<sup>67</sup> should have access to water and water services. Research shows that poor often pay 12 times more per liter of water than their counterparts with a municipal supply<sup>68</sup>.

Another key element is that information regarding water distribution and water policy should be accessible to the consumers. This is a procedural necessity for the implementation of the right to water and thus will be discussed further below.

However it should be noted here that access to information by the general public will force authorities to adopt the best solutions for good governance on water provision.

*b) Quality and quantity of water.*

The Human Right to water also involves access to water of a good quality and in sufficient quantity.

As a minimum, people must be provided with a sufficient amount of water to meet their “basic needs”. How much water constitutes “basic human needs” is an issue under debate. Although the basic water requirement of a person may vary largely according to the climate in which he is living, his physical work or his health condition, Gleick suggests that at least 25 liters per person and per day is the strict

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<sup>67</sup> General Comment 15, paragraph 13.

<sup>68</sup> Right to Water, Health and human rights publication series; No.3, WHO, 2003.

minimum for meeting basic human needs which includes drinking and sanitation. An additional 25 liters will be required for bathing and cooking <sup>69</sup>(see table 2). WHO and the World Bank are recommending 20 to 40 liters per person per day, excluding water for cooking, bathing and basic cleaning<sup>70</sup>.

Table 2: Recommended basic water requirements for a person.

<b>Purpose</b>	<b>Recommended amount (in liters per person per day)</b>
Drinking Water	5
Sanitation	20
Bathing	15
Food Preparation	10

Source: Gleick 1996.

As mentioned above, the amount of water required for meeting the basic needs must be evaluated on a case by case basis. What must be of greater concern here is the fact that water is also necessary for other purposes such as food production, irrigation, industrial use etc... Although these are important activities for ensuring an adequate standard of living, they require huge amounts of water and it is clear that the human right to water does not cover the provision of water for these purposes. Thus where

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<sup>69</sup> Supra note 66.

<sup>70</sup> Henri Smets, The Right to Water as a Human Right, Environmental Policy and Law, 30(5), 2000.

water or the water distribution services are limited priority must be given to meeting the basic requirements of persons, and water for agricultural or industrial use must be provided only after basic human needs are satisfied.

This approach has also been adopted by the Committee on Economic, Social and Cultural Rights in the General Comment 15 which recognizes that some other uses of water are also protected by relevant human rights. For example, the right to food includes the water necessary to produce food, the right to health includes the water necessary to ensure the hygienic conditions necessary for people's health and the right to take part in cultural life includes water used for some cultural practices. As for the relationship between the right to water and these other rights, the Committee notes that "Priority in the allocation of water must be given to the right to water for personal and domestic uses. Priority should also be given to the water resources required to prevent starvation and disease, as well as water required to meet the core obligations of each of the Covenant rights"<sup>71</sup>.

Providing the basic water requirements is not sufficient by its own to achieve the human right to water. Approximately 2 million people, mostly children in developing countries, are losing their lives every year due to a lack of safe drinking water. Diarrhoeal diseases and other water related illnesses constitute the greatest and

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<sup>71</sup> General Comment 15 paragraph 6.

continuous threat to human life, greater than natural disasters and HIV/Aids<sup>72</sup>. Therefore poor quality of water is a severe and widespread problem. It is quite likely that although people receive sufficient drinking water it can be contaminated and unhealthy. Water provided for personal and domestic use must hence be free from micro organisms, chemical substances and other polluting elements that constitute a threat to people's health. The General Comment 15 refers States to the WHO's Guidelines for drinking-water quality "that are intended to be used as a basis for the development of national standards that will ensure the safety of drinking water supplies through the elimination of, or reduction to a minimum concentration, of constituents of water that are known to be hazardous to health"<sup>73</sup>. Therefore the UN Committee on Economic Social and Cultural rights encourages States to properly implement these guidelines or equivalent norms in order to ensure the quality requirements of the human right to water.

## **2) The Procedural Human Right to Water.**

Procedural rights are essential because they enable the enforcement of the substantial right of access to a sufficient amount of good quality water. These involve the right of the citizens to be informed and to participate in the decision making on water issues (a) as well as their ability to seek judicial or administrative enforcement of their right to water (b).

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<sup>72</sup> Guy Howard, Jamie Bartram, Domestic Water Quantity, Service Level and Health, World Health Organization, 2003.

<sup>73</sup> WHO, Guidelines for drinking-water quality, 2nd edition, vol.1-3, Geneva 1993.

*a) The right to information and participation to the decision making.*

The citizen's right to information and their participation in to the decision making processes is a key element of the human right to water. A parallel can be drawn here with the Universal Declaration of Human Rights and the European Convention on Human Rights, both of which contain procedural rights for the realization of the rights they aim to protect.

The Universal Declaration codifies the right to participation in its Art 21 and the right to information in Art 19, whereas the European Convention contains the right to information in Art 10. The ICCPR which also contains these rights (in Articles 25 and 19 respectively) set them forth as fundamental human rights.

The right to information enables citizens to obtain information about water-related issues such as proposed projects and laws on water protection and distribution and policies affecting water resources. It includes the right to seek, receive and impart information. Not only full access to information must be provided but an equal access must also be ensured in order to avoid any discrimination<sup>74</sup>. The information provided must be understandable and verifiable<sup>75</sup>. If citizens enjoy a true right to information on water issues, it is highly probable that the human right to water will be

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<sup>74</sup> General Comment 15, para 48.

<sup>75</sup> Henri Smets, *Le Droit à l'Eau*, Conseil Européen du Droit de l'Environnement, 2002. p49

correctly implemented in a given country. It enables citizens to participate in decisions that affect their access to water thus promoting accountability and transparency in the decision-making. Moreover the General Comment 15 notes that “the right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, programme or strategy concerning water”<sup>76</sup>.

Access to information and public participations is also useful for a better understanding and acceptance of positively discriminating pricing methods which may be chosen by public authorities in order to ensure the basic water requirements of under favored parts of the population<sup>77</sup>.

*b) Judicial or administrative enforcement of the right to water.*

Just like any other right, the human right to water will be nothing but a *lettre morte* without the possibility for the individuals to seek effective remedy for the violation of their rights before an administrative authority or a judicial court. The procedural right to an effective remedy guarantees that victims of a violation of a human right to water can initiate and rely on meaningful enforcement measures. These measures must be provided by law. This doesn't mean that any individual without access to water will be able to seek redress against the public authorities. However those public

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<sup>76</sup> General Comment 15, para 48.

<sup>77</sup> *Idem*.

authorities that fail to meet their obligations in terms of taking the necessary steps to ensure the effective realization of this right may be liable to sanctions. As Gleick notes “resource limitations, ecological constraints, and economic and political factors limit water availability and human use”. It is therefore unreasonable to consider that once the human right to water enters into its legal framework, a State will immediately be liable for not providing safe, clean and affordable water to its citizens. Thus legal battles will be few as States will be allowed to progressively implement the human right to water. However, States may face some legal actions if they fail to comply with their negative obligation<sup>78</sup> deriving from the human right to water such as an unreasonable interruption in the water provision or distribution of a water of poor quality which will be hazardous for the health of the consumers.

On the other hand, the way to administrative action must be open as soon as possible to allow citizens to complain about their situation and being informed of the programmes and strategies which will enable their full enjoyment of the human right to water. It is worth noting that the General Comment 15 omits this procedural component. One possible explanation to this may be the fact that the right to effective remedy is considered to be a fundamental right guaranteed under Art 2 of the ICCPR which requires each State Party to the Covenant “...to ensure that any person whose

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<sup>78</sup> States obligations deriving from the human right to water may be divided into two categories; positive and negative obligation. Positive obligations are those according to which public authorities must take action in order to provide the full enjoyment of the right, as opposed to negative obligations in which they must refrain from interfering in the citizens enjoyment of a right. These obligations will be analysed in section (B) below.



rights or freedoms as herein recognized are violated shall have an effective remedy...”

As mentioned earlier, these procedural rights already exist in all basic human rights declarations and conventions. Therefore the procedural remedies that look at practical dimensions of the water problem are already in place. Thus we can conclude that the establishment and effectiveness of procedural rights regarding the human right to water will constitute the less problematic aspect of the recognition of this right.

#### **B) States obligations for the realization of the human right to water.**

In order to analyze States obligation deriving from the human right to water we can once again draw a parallel with other existing human rights conventions and the mechanisms in place for their empowerment.

Human rights in general impose on States two categories of obligations. States have negative obligations which aim to protect the citizens from interference in the enjoyment of their rights (1) and positive obligations aiming to provide the necessary means for the citizen’s full enjoyment of their rights (2).

## **1) Negative obligations of the States.**

States negative obligations consist of the duty to respect (a) and the duty to protect (b) the right to water of people under their jurisdiction.

*a) Obligations to respect the enjoyment of the right to water.*

The obligation to respect the enjoyment of the right to water requires governments to ensure that the activities of its institutions and officials do not interfere with a person's access to water.

Governments and their agents must refrain from impinging upon people's existing access to water. For instance, a public company may pollute a drinking water source, a local authority may unfairly disconnect the water supply of a residence or a law may prevent access to a water source traditionally used by the population. In such cases it is the State's duty to adopt necessary laws and regulations to prevent these interferences and to render possible a judicial remedy in case of a violation of the right to water. Where interference cannot be avoided, individuals should be given reasonable notice, full information, a chance to consult with authorities, and the opportunity to make an effective formal complaint to a tribunal or a court<sup>79</sup>.

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<sup>79</sup> Guy Howard, Jamie Bartram, Domestic Water Quantity, Service Level and Health, World Health Organization, 2003. p28.

State's duty to respect also means that they must ensure to maintain individual's existing access to water. Access today does not necessarily mean access tomorrow. Therefore where access to clean water already exists, the removal of this service should only be permitted in very restricted circumstances such as severe economic conditions or where an adequate alternative is provided. The South African bill of rights and water services act provides a good example on this issue. The legislation ensures everyone's access to basic water supply and there are strict guidelines concerning disconnection. In the Residents of Bon Vista Mansions case<sup>80</sup> the High Court of South Africa held that disconnection was only permissible if there were good reasons and the procedure was fair and equitable.

The General Comment 15 further notes that during armed conflicts or emergency situations States are bound by their obligations under International Humanitarian Law which includes the protection of objects indispensable for the survival of the civilian population such as drinking water installations and supplies and irrigation works<sup>81</sup>.

*b) Obligations to protect the enjoyment of the right to water.*

States are obviously not the only actors which may endanger people's full enjoyment of their human right to water. Individuals as well as private undertakers or corporations active in the field of water may also prevent or endanger the access to

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<sup>80</sup> Supra note 46.

<sup>81</sup> States obligations relating to water under international humanitarian law are discussed in section I, A (b).

water. Therefore States have an obligation to protect the access to water of the persons under their jurisdiction.

The duty to protect requires States to prevent third parties from interfering in any way with the enjoyment of the right to water<sup>82</sup>. Typical interferences by third parties include pollution of water sources, denial of access to water or unreasonable increase of prices for water services by private service providers. States have a duty to take the necessary legislative and other measures to restrain these interferences. The Committee on Economic Social and Cultural Rights has stated in the General Comment 15 that this should include independent monitoring, genuine public participation and imposition of penalties for non-compliance with the rules.

States duty to protect by regulating the activities of third parties becomes ever more important in areas where water distribution services are handled by private undertakers. Privatization may take different forms. In developing countries private sector is involved in water supply mostly by means of selling water from trucks or dwells, such as in developed countries private sector involvement goes as far as the full operation and management of the water delivery systems. Privatization is allowed and may even be in the advantage of the population as competition usually brings along lower prices and larger geographical areas of distribution. However a private entrepreneur, if not carefully regulated, will tend to neglect the basic water requirements of the most unfortunate parts of the population as they may be unable to

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<sup>82</sup> General Comment 15, paragraph 23.

pay for the service even if it is provided at a very low cost. Therefore public authorities must take measures to ensure that the sufficiency, safety, affordability and accessibility of water are maintained by private operators.

## **2) Positive obligations of the States.**

A part from their negative obligations that ensure the non interference in the enjoyment of the right to water States also have positive obligations aimed to make the human right to water a reality domestically and internationally. Within the area under their jurisdiction, States have obligations to fulfill, by taking the necessary actions for effectively ensuring the right to water (a) and on the international level they must be under constant dialogue and cooperation in order to facilitate the equal access to water all around the world (b).

### *a) Obligations to fulfill for the enjoyment of the right to water.*

State's obligations to fulfill require that governments take active steps to ensure that everyone can enjoy the right to water as soon as possible. The General Comment 15 imposes upon States three obligations; facilitating the access to water, promoting the right to water and providing water.

The obligation to facilitate means that public authorities must take positive measures to assist individuals and communities to enjoy their right. In order to do so, States

may for instance have to adopt appropriate pricing policies such as free or low-cost water for poorer communities. They must also take the necessary legislative and administrative rules adapted to the social, economic and political realities of the country, aimed to facilitate people's access to water.

The obligation to promote obliges the States to take steps to ensure there is appropriate education concerning the hygienic use of water, protection of water sources and methods to minimize the wastage of water<sup>83</sup>. Education is a key factor in achieving a human right to water. Improvement in health conditions and use of safe drinking water may only be achieved through educating people, especially children, on how to obtain clean and safe water. Some governments lack the financial resources to implement extensive programmes, but relatively low-cost sensibilisation campaigns, for instance in order to encourage the use of boiled water for drinking or food preparation may significantly diminish water related diseases and thus constitute a first step towards achieving the goals perused by the human right to water<sup>84</sup>.

States are also required to provide the necessary means when an individual or a group is unable, for reasons beyond their control, to realize their right to water

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<sup>83</sup> General Comment 15, paragraph 25

<sup>84</sup> Boiling the water collected from an unprotected source may seem to be a natural reflex for most of the readers of this paper. It is sadly not the case for a lot of people living in sub Saharan Africa where water scarcity forces them to collect water from unhygienic sources. Such is the case of Naoga Gurigo from rural Ghana who doesn't feel the necessity to boil the water collected from a water hole before drinking it because "it doesn't contain any living things". Right to Water, Health and human rights publication series; No.3, WHO, 2003. p 6.

themselves<sup>85</sup>. This may be the case for rural communities who do not have access to piped water in or close to their homes. In such situations it is the public authority's duty to progressively extend safe water distribution towards these areas.

Another aspect of the duty to provide may be the continuity in access to water. The right to water in a sufficient quantity and quality can not be satisfied by discontinued access to water. Therefore authorities must take all the precautions for an equal and continued access to water. The obligation to provide is also a key element of the right to water concerning public institutions such as schools and hospitals. WHO and UNICEF data shows that lack of access to water and basic sanitation is an important reason for children, especially girls, missing school<sup>86</sup>. As for the hospitals, it is obvious that water is indispensable for hygiene and patient's health. Therefore priority and special care in providing water must be given to such institutions.

*b) Obligation to cooperate in international level for the promotion of the Human Right to Water.*

On the international level, States are required to cooperate and assist each other in order to ensure the achievement of the right to water everywhere and for everyone. The Committee on Economic Social and Cultural Rights has noted that Articles 2, 11 and 23 of the ICCPR recognizes the essential role of international cooperation and

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<sup>85</sup> General Comment 15, paragraph 25.

<sup>86</sup> WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation: Meeting the MDG drinking water and sanitation target: a mid-term assessment of progress, 2004. p 6.

assistance and requires States to take joint and separate action to achieve the full realization of the right to water<sup>87</sup>.

First of all they must make certain that their actions do not deprive individuals of their right to water in other parts of the world. In practice this means that they must refrain from polluting shared water sources such as transboundary rivers or lakes as well as altering significantly the natural flow or debit of a watercourse which will deprive the population of an other country from their access to water. The UN Convention on the Law of Non-Navigational Uses of Watercourses requires the social and human needs be taken into account in determining the equitable utilization of watercourses<sup>88</sup>. Water should neither be used as an instrument of political or economic pressure. On this issue the Committee on Economic Social and Cultural Rights has noted in the General Comment 8 that States must refrain from jeopardizing by means of economic sanctions the “quality of food and the availability of clean drinking water”<sup>89</sup>.

Secondly, States must, as much as possible, facilitate the realization of the right to water in other countries by means of financial and technical assistance. They must

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<sup>87</sup> General Comment 15, paragraph 30.

<sup>88</sup> UN Convention on the Law of Non-Navigational Uses of Watercourses, 1997, Art 5, 7 and 10.

<sup>89</sup> UN Committee on Economic Social and Cultural Rights, General Comment 8 on the relationship between economic sanctions and respect for economic and social rights. E/C.12/1997/8, CESCR 1997, paragraph 3.



also bring assistance to each other in disaster situation by giving priority to the supply of adequate water<sup>90</sup>.

Finally, they must ensure that the right to water is given due attention in international negotiations and agreements. Special care must be shown in concluding international agreements to the right to water. “Agreements concerning trade liberalization should not curtail or inhibit a country’s capacity to ensure the full realization of the right to water”<sup>91</sup> and international financial organizations must encourage the right to water by their lending policies and credit agreements.

### **C) Final conclusion and key recommendations.**

Access to safe and clean drinking water is recognized by the international community as a necessity to achieve universal health and development. Countries that have officially recognized this right are attributing a bigger attention to the social and economic inequalities caused by the water scarcity. They are taking solid steps towards the protection of misfortunated members of their societies. However the lack of an explicit recognition of the Human Right to Water in a legally binding international document has led people without access to this fundamental resource in other parts of the world in a very weak position towards their States. The Recognition

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<sup>90</sup> General Comment 15, paragaraph 34.

<sup>91</sup> General Comment 15, paragaraph 35.

of a Human Right to Water will not achieve by its own, the ultimate goal of universal access to a basic amount of water and sanitation for all, everywhere and always. The way to such an achievement may be so long and complex that even the Millennium Declaration and the Millennium Development goals only aim to halve the number of people without access to water until 2015. Today even this target seems to be out of reach. However recognizing people's right to access water as human right by an international binding treaty<sup>92</sup> would have a highly symbolic effect. It would constitute a solid proof for the international community's commitment to the realization of the MDG's. But more importantly it will provide people with a legal basis for challenging their governments in order to take the necessary steps for assuring such access. Only through an explicit recognition of the Human Right to Water the responsibility of the public authorities for failing on their duties to respect, protect and fulfill may be established.

Even though it took the Committee on Economic, Social and Cultural Rights thirty seven years to give the correct legal interpretation of the twin-covenants, the General Comment 15 on the right to water must be welcomed as an important step forward. It lays down the principles which must be adopted by the international community for the recognition of the Human Right to Water. Universal access to safe water and sanitation is one of the fundamental conditions for survival and it is indispensable for leading a life in human dignity. Very little water is needed to meet the basic needs of individuals, compared to the amount that is used for economic development. The

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<sup>92</sup> A draft work on an International Treaty on The Right to Water prepared and released by the "Friends of the Right to Water" is Annexed to this paper.

water absolutely necessary to meet those basic human needs should be guaranteed for all and poorer communities and households should not be disproportionately burdened with water expenses. Legal disposition in order to protect every individual's right to access water must be taken before economic gains take over social consideration on water issues. An important lesson must be drawn out of the current trade liberalization tendencies. Water cannot be considered as an ordinary good. States must adopt the necessary legal frameworks before any further privatization on the water sector in order to prevent a greater human catastrophe. A failure to take concrete action may have irreversible consequences. As Charles Darwin once said: "If the misery of our poor be caused not by the laws of nature, but by our institutions, great is our sin".

The End



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#### **Useful web sites:**

- World Water Council: <http://www.worldwatercouncil.org/>
- The Fourth World Water Forum: <http://www.worldwaterforum4.org.mx/>
- Right to Water : <http://www.righttowater.org.uk/>
- Institute for Agriculture and Trade Policy's Water Observatory: <http://www.waterobservatory.org/>
- The United Nations: <http://www.un.org/>
- World Water Assessment Programme: <http://www.unesco.org/water/wwap/>
- The UNHCHR: <http://www.unhchr.ch/>
- The United Nations Development Programme: <http://www.undp.org/>

- World Health Organization's web page on the right to water: [http://www.who.int/water\\_sanitation\\_health/rightwater/en/](http://www.who.int/water_sanitation_health/rightwater/en/)
- The UN Millennium Project: <http://www.unmillenniumproject.org/>
- Center on Housing Rights and Eviction: <http://www.cohre.org/>
- UNICEF: <http://www.unicef.org/>

**Annexes:**

- Friends of the Right to Water, Key Principles for an International Treaty on the Right to Water, draft work in progress for consultation, April 2005.
- UN, ECOSOC, Committee on Economic Social and Cultural Rights; General Comment 15 (2002). The right to water. E/C.12/2002/11

Friends of the Right to Water, Key Principles for an International Treaty on the Right to Water, draft work in progress for consultation, April 2005.

**Key Principles for an International Treaty on  
the  
Right to Water**

**DRAFT WORK IN PROGRESS FOR CONSULTATION AND  
REVISION**

**14 APRIL 2005**



This document has been prepared and released for wide consultation by the ‘*Friends of the Right to Water*,’ a group of national and international civil society organizations.

Most of the principles in this document are drawn from the General Comment No. 15 on the Right to Water in paraphrased direct language. Items that are NOT directly contained in the General Comment are in italics.

## **1. Objective**

*The objective of the treaty is to create a legally binding instrument to:*

- *re-affirm the human right to water*
- *strengthen and ensure the implementation of the human right to water*
- *make the right to water fully enforceable under national and international law*
- *ensure management of water as a public trust<sup>3</sup> and, where water resources lie completely within the borders of a particular State, as part of that State’s national patrimony.*
- *ensure sustainable consumption of water and that sufficient water is left for non-human species, to the greatest extent possible*
- *help prevent conflicts over water resources at the national level*

## **2. Components of the Right to Water**

Each person has the right to water for personal and domestic uses that is:

Sufficient: An adequate quantity must be available for personal and domestic uses.

The first priority in water allocation should be for essential personal and domestic uses.

Safe: Water must be safe for personal and domestic uses.<sup>6</sup>

Physically accessible: Water must be within safe physical reach, in or near the house, school, *workplace or health facility*. Water services must be culturally appropriate and sensitive to gender requirements.

Affordable: Water must be affordable, therefore not reducing a persons' capacity to buy other essential goods. *Essential amounts of water must be provided free for those without capacity to pay for it. Each person has the right to water necessary for securing their basic livelihood.* Marginalized and subsistence farmers as well as small-scale fisher folk, indigenous peoples and other vulnerable social sectors should be given significant priority in terms of access to water resources and appropriate water technologies. Access to water for reasonable amounts of irrigation by subsistence and marginalized farmers is part of the right to adequate food. Such access should be guaranteed in a way that does not lead to violations of the right to water and sanitation for personal and domestic uses of water. *Each person has the right to adequate sanitation.* The State must ensure that each person has access to a safe, *physically accessible and affordable* sanitation facility. The right to water must be realized in a sustainable way to ensure that the right can be realized for present and future generations.

### **3. Nature of State Obligations**

In the implementation of the obligations in this treaty, States shall take all the necessary steps to ensure that everyone has access to water as soon as possible. State shall take concrete, targeted and deliberate steps to achieve these rights to the maximum available resources in an expeditious and effective manner.

Within a year after ratification of the treaty, States shall:

- put in place a plan of action, with targets, adequate policies, indicators and time-frames, to achieve the full realization of the right to water.
- ensure that all actions to implement the Treaty ensure non-discrimination, as contained in the various human rights treaties including the International Covenant on Economic, Social and Cultural Rights.
- *recognize the right to water in the Constitution or in a relevant national law and establish effective administrative and judicial procedures so that individuals may make complaints about the actions of any public bodies with regard to the rights and obligations contained in this treaty. States shall also ensure that the implementation of the rights and obligations in this treaty are monitored by an independent human rights commission or Ombudsman.*

*States shall report on their progress in implementing the treaty to their citizens and make publicly available all information in this regard.*

#### **4. Vulnerable and Marginalized Groups**

States shall ensure that they address the requirements of vulnerable and marginalized groups including women, children, indigenous peoples, deprived urban and rural areas, nomadic and traveler communities, refugees, asylum seekers, internally displaced persons and returnees, prisoner and detainees, and groups facing difficulties with physical access to water.

*Within a year of ratification of the treaty, States shall put in place specific programmes to assist vulnerable and marginalized groups and to monitor the acts of States and other actors to ensure that they treat all groups in an equitable manner.*

States should protect the access of indigenous peoples to water resources on their ancestral lands, and provide resources for indigenous peoples to design, deliver and control their access to water.

#### **5. Obligations to Respect**

States shall refrain from interfering with people's access to water. States shall not interfere with any person's water supply when any person is unable to pay. In no circumstances may a person be deprived of the minimum essential amount of water. No household should be denied water on the grounds of their housing or land status.

## **6. Obligations to Protect**

States shall safeguard the right of everyone to water from interference by private parties, including domestic and multinational corporations. States must prevent pollution and inequitable extraction of water. States must regulate non-State actors that provide water services, such as small-scale vendors and community groups.

*In order to ensure accountability to the public, all decisions relating to the management of water and sanitation services shall be made by the relevant State authority. Such decisions include, but are not limited to:*

- Levels of investment in infrastructure,*
- Priorities for extending access,*
- Restrictions of access to water,*
- The level and form of subsidies for low-income groups,*
- Preferential treatment for vulnerable and marginalized groups,*
- Tariffs and connection costs charged for water and sanitation,*
- Any necessary remedies ordered by the relevant public body in response to complaints by members of the public.*

*Any arrangements for private sector participation in water and sanitation services shall stipulate that these arrangements are subject to revision by the relevant public body. Such arrangements shall be governed solely by the State's law and be subject to the country's jurisdiction. Recourse to international investment tribunals shall be*

*excluded.* States shall ensure that the public fully participates in the design of any arrangements with private sector providers.

## **7. Obligations to Fulfill**

States shall fulfil all aspects of the right to water, including the following:

- a). States shall guarantee that water is provided to everyone in a sufficient quantity and quality and that access must be affordable to all residents and citizens at all times; and is progressively provided *on a not-for profit basis*.
- b). State shall take all steps necessary to guarantee access to water for all, including equitable pricing policies and programmes to expand access to water and monitoring of programmes. *Water tariffs shall not be tied to a foreign currency.*
- c). States shall ensure that everyone has access to adequate sanitation, and progressively extend safe sanitation services.

*Developing countries may permit small-scale vendors to provide water services on a profit-making basis. They are obliged to take concrete steps towards ensuring the right to water is provided on a not-for-profit basis for everyone.*

*Definition of 'not-for-profit: This provision precludes the provision of essential water services where profits are provided to private shareholders. This provision not intended to prevent situations in which a publicly owned water utility makes a profit*

*which is then paid to a public shareholder such a municipal government. This provision does not preclude the provision of non-essential water services, such as bottled water, or riparian rights.*

## **8. Environmental Aspects**

States shall adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations, *and for non-human species, in accordance with the precautionary principles and polluter-pays principles.*

States shall ensure that the right to water is realized in a manner that does not unnecessarily deplete water resources required by future generations *and by non-human species. Once essential human needs are met, States shall ensure that sufficient water is left for the use of non-human species. States must put in place measures to prevent over-consumption of water. Such measures may include, for example, public education and increasing charges for water after consumption of a reasonable amount.*

*Each individual, corporation and other organized group has a duty to avoid over-use of water.*

## **9. International Obligations**

States shall respect the right to water by refraining from cutting off access to water sources that satisfy vital human needs in other countries. States shall protect the right to water by ensuring the issue of international watercourses, which is covered by other treaties (with the potential exception of not cutting over vital flows of water). It only addresses freshwater and not marine areas. States shall protect the right to water by ensuring that their own citizens and companies do not violate the right to water of people in other countries. *States shall provide a remedy in their own jurisdiction for complaints by affected people about the actions of their citizens or corporations.*

State must fulfill the right to water by providing sufficient and appropriately directed international financial and technical assistance. *States shall establish a multilateral fund with a specific mandate to assist the poorest, based on the principle of country ownership of the design of development programmes.*

## **10. International Organizations**

States must ensure that their actions as members of international organizations, including the international financial, trade and investment agencies, comply with the right to water. International organizations *are obliged to* implement the right to water in all their actions. *In the case of conflict with other treaties, the obligations of this treaty shall prevail.*

## **11. Participation**



Each individual and community has the right to participate in decision-making processes that affect their right to water. *Communities have the right to a significant role in management of water and sanitation services that serve them, and the right to reasonable assistance from the State.*

Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties.

Note: Communities are defined as democratically-elected local government units or neighborhood cooperatives or organizations.

## **12. Implementation**

States shall ensure that domestic law is consistent with the treaty. States will take all necessary steps to ensure compliance by sub-national governments and non-State actors with the rights and duties in this treaty.

*The treaty shall have a system for individual complaints to a treaty body.*

*The treaty body shall monitor State implementation of the treaty, and the States shall report on progress to this treaty body.*

*There shall also be conferences of the parties to cooperate on further implementation.*

## **13. Relationships with other Instruments**

This treaty may not be seen as taking away from human rights contained in other human rights treaties. This treaty and the Conventions on Biological Diversity, the Desertification Convention and the Framework Convention on Climate Change (and its Protocols) should be applied in a manner ensures that the objectives of each treaty can be met.

The obligations in this treaty take precedence over obligations in trade and investment agreements.

States shall protect and promote the goals of this treaty in all international instruments that could negatively affect the right to water, *and if necessary, shall seek to amend those instruments to accord with the principles and requirements of this treaty.*

States shall take steps to ensure that the principles and requirements of this treaty are reflected in the policies and practices of international organizations, in particular international financial institutions, including the International Monetary Fund, the World Bank and the regional development banks.

**UN, ECOSOC, Committee on Economic Social and Cultural Rights; General Comment 15 (2002). The right to water. E/C.12/2002/11**

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Agenda item 3

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE  
INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL  
RIGHTS

**General Comment No. 15 (2002)**

**The right to water (arts. 11 and 12 of the International Covenant  
on Economic, Social and Cultural Rights)**

**I. INTRODUCTION**

- 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. It is a prerequisite for the realization of other human rights. The Committee has been confronted continually with the widespread denial of the

right to water in developing as well as developed countries. Over one billion persons lack access to a basic water supply, while several billion do not have access to adequate sanitation, which is the primary cause of water contamination and diseases linked to water.<sup>93</sup> The continuing contamination, depletion and unequal distribution of water is exacerbating existing poverty. States parties have to adopt effective measures to realize, without discrimination, the right to water, as set out in this general comment.

#### *The legal bases of the right to water*

- The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.
- Article 11, paragraph 1, of the Covenant specifies a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living “including adequate food, clothing and housing”. The use of the word “including” indicates that this catalogue of rights was not intended to be exhaustive. 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. Moreover, the Committee has previously recognized that water is a human right contained in article 11, paragraph 1, (see General Comment No. 6 (1995)).<sup>94</sup> The right to water is also inextricably related to the right to the highest attainable standard of health (art. 12, para. 1)<sup>95</sup> and the rights to adequate housing and adequate food (art. 11, para. 1).<sup>96</sup> The right should also

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<sup>93</sup> In 2000, the World Health Organization estimated that 1.1 billion persons did not have access to an improved water supply (80 per cent of them rural dwellers) able to provide at least 20 litres of safe water per person a day; 2.4 billion persons were estimated to be without sanitation. (See WHO, *The Global Water Supply and Sanitation Assessment 2000*, Geneva, 2000, p.1.) Further, 2.3 billion persons each year suffer from diseases linked to water: see United Nations, Commission on Sustainable Development, *Comprehensive Assessment of the Freshwater Resources of the World*, New York, 1997, p. 39.

<sup>94</sup> See paras. 5 and 32 of the Committee’s General Comment No. 6 (1995) on the economic, social and cultural rights of older persons.

<sup>95</sup> See General Comment No. 14 (2000) on the right to the highest attainable standard of health, paragraphs 11, 12 (a), (b) and (d), 15, 34, 36, 40, 43 and 51.

<sup>96</sup> See para. 8 (b) of General Comment No. 4 (1991). See also the report by Commission on Human Rights’ Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr. Miloon Kothari (E.CN.4/2002/59), submitted in accordance with Commission resolution 2001/28 of 20 April 2001. In relation to the right to adequate food, see the report by the Special Rapporteur of

be seen in conjunction with other rights enshrined in the International Bill of Human Rights, foremost amongst them the right to life and human dignity.

- The right to water has been recognized in a wide range of international documents, including treaties, declarations and other standards.<sup>97</sup> For instance, Article 14, paragraph 2, of the Convention on the Elimination of All Forms of Discrimination Against Women stipulates that States parties shall ensure to women the right to “enjoy adequate living conditions, particularly in relation to [...] water supply”. Article 24, paragraph 2, of the Convention on the Rights of the Child requires States parties to combat disease and malnutrition “through the provision of adequate nutritious foods and clean drinking-water”.
- The right to water has been consistently addressed by the Committee during its consideration of States parties’ reports, in accordance with its revised general guidelines regarding the form and content of reports to be submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, and its general comments.
- Water is required for a range of different purposes, besides personal and domestic uses, to realize many of the Covenant rights. For instance, water is necessary to produce food (right to adequate food) and ensure environmental hygiene (right to health). Water is essential for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take

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the Commission on the right to food, Mr. Jean Ziegler (E/CN.4/2002/58), submitted in accordance with Commission resolution 2001/25 of 20 April 2001.

<sup>97</sup> See art. 14, para. 2 (h), Convention on the Elimination of All Forms of Discrimination Against Women; art. 24, para. 2 (c), Convention on the Rights of the Child; arts. 20, 26, 29 and 46 of the Geneva Convention relative to the Treatment of Prisoners of War, of 1949; arts. 85, 89 and 127 of the Geneva Convention relative to the Treatment of Civilian Persons in Time of War, of 1949; arts. 54 and 55 of Additional Protocol I thereto of 1977; arts. 5 and 14 Additional Protocol II of 1977; preamble, Mar Del Plata Action Plan of the United Nations Water Conference; see para. 18.47 of Agenda 21, *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (A/CONF.151/26/Rev.1 (Vol. I and Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1) (United Nations publication, Sales No. E.93.I.8), vol I: *Resolutions adopted by the Conference*, resolution 1, annex II; Principle No. 3, The Dublin Statement on Water and Sustainable Development, International Conference on Water and the Environment (A/CONF.151/PC/112); Principle No. 2, Programme of Action, *Report of the United Nations International Conference on Population and Development, Cairo, 5-13 September 1994* (United Nations publication, Sales No. E.95.XIII.18), chap. I, resolution 1, annex; paras. 5 and 19, Recommendation (2001) 14 of the Committee of Ministers to Member States on the European Charter on Water Resources; resolution 2002/6 of the United Nations Sub-Commission on the Promotion and Protection of Human Rights on the promotion of the realization of the right to drinking water. See also the report on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation (E/CN.4/Sub.2/2002/10) submitted by the Special Rapporteur of the Sub-Commission on the right to drinking water supply and sanitation, Mr. El Hadji Guissé.

part in cultural life). Nevertheless, priority in the allocation of water must be given to the right to water for personal and domestic uses. Priority should also be given to the water resources required to prevent starvation and disease, as well as water required to meet the core obligations of each of the Covenant rights.<sup>98</sup>

### *Water and Covenant rights*

- The Committee notes the importance of ensuring sustainable access to water resources for agriculture to realize the right to adequate food (see General Comment No.12 (1999)).<sup>99</sup> Attention should be given to ensuring that disadvantaged and marginalized farmers, including women farmers, have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology. Taking note of the duty in article 1, paragraph 2, of the Covenant, which provides that a people may not “be deprived of its means of subsistence”, States parties should ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples.<sup>100</sup>
- Environmental hygiene, as an aspect of the right to health under article 12, paragraph 2 (b), of the Covenant, encompasses taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions.<sup>101</sup> For example, States parties should ensure that natural water resources are protected from contamination by harmful substances and pathogenic microbes. Likewise, States parties should monitor and combat situations where aquatic eco-systems serve as a habitat for vectors of diseases wherever they pose a risk to human living environments.<sup>102</sup>
- With a view to assisting States parties' implementation of the Covenant and the fulfilment of their reporting obligations, this General Comment focuses in

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<sup>98</sup> See also World Summit on Sustainable Development, Plan of Implementation 2002, paragraph 25 (c).

<sup>99</sup> This relates to both *availability* and to *accessibility* of the right to adequate food (see General Comment No. 12 (1999), paras. 12 and 13).

<sup>100</sup> See also the Statement of Understanding accompanying the United Nations Convention on the Law of Non-Navigational Uses of Watercourses (A/51/869 of 11 April 1997), which declared that, in determining vital human needs in the event of conflicts over the use of watercourses “special attention is to be paid to providing sufficient water to sustain human life, including both drinking water and water required for production of food in order to prevent starvation”..

<sup>101</sup> See also para. 15, General Comment No. 14.

<sup>102</sup> According to the WHO definition, vector-borne diseases include diseases transmitted by insects (malaria, filariasis, dengue, Japanese encephalitis and yellow fever), diseases for which aquatic snails serve as intermediate hosts (schistosomiasis) and zoonoses with vertebrates as reservoir hosts.

Part II on the normative content of the right to water in articles 11, paragraph 1, and 12, on States parties' obligations (Part III), on violations (Part IV) and on implementation at the national level (Part V), while the obligations of actors other than States parties are addressed in Part VI.

## II. NORMATIVE CONTENT OF THE RIGHT TO WATER

- The right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.
- The elements of the right to water must be *adequate* for human dignity, life and health, in accordance with articles 11, paragraph 1, and 12. The adequacy of water should not be interpreted narrowly, by mere reference to volumetric quantities and technologies. Water should be treated as a social and cultural good, and not primarily as an economic good. The manner of the realization of the right to water must also be sustainable, ensuring that the right can be realized for present and future generations.<sup>103</sup>
- While the adequacy of water required for the right to water may vary according to different conditions, the following factors apply in all circumstances:

(a) *Availability*. The water supply for each person must be sufficient and continuous for personal and domestic uses.<sup>104</sup> These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.<sup>105</sup> The quantity of water available for each person should correspond to

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<sup>103</sup> For a definition of sustainability, see the *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 1992*, Declaration on Environment and Development, principles 1, 8, 9, 10, 12 and 15; and Agenda 21, in particular principles 5.3, 7.27, 7.28, 7.35, 7.39, 7.41, 18.3, 18.8, 18.35, 18.40, 18.48, 18.50, 18.59 and 18.68.

<sup>104</sup> “Continuous” means that the regularity of the water supply is sufficient for personal and domestic uses.

<sup>105</sup> In this context, “drinking” means water for consumption through beverages and foodstuffs. “Personal sanitation” means disposal of human excreta. Water is necessary for personal sanitation where water-based means are adopted. “Food preparation” includes food hygiene and preparation of food stuffs, whether water is incorporated into, or comes into contact with, food. “Personal and household hygiene” means personal cleanliness and hygiene of the household environment.

World Health Organization (WHO) guidelines.<sup>106</sup> Some individuals and groups may also require additional water due to health, climate, and work conditions;

(b) *Quality*. The water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health.<sup>107</sup> Furthermore, water should be of an acceptable colour, odour and taste for each personal or domestic use.

(c) *Accessibility*. Water and water facilities and services have to be accessible to *everyone* without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

(i) *Physical accessibility*: water, and adequate water facilities and services, must be within safe physical reach for all sections of the population. Sufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace.<sup>108</sup> All water facilities and services must be of sufficient quality, culturally appropriate and sensitive to gender, life-cycle and privacy requirements. Physical security should not be threatened during access to water facilities and services;

(ii) *Economic accessibility*: Water, and water facilities and services, must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realization of other Covenant rights;

(iii) *Non-discrimination*: Water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds; and

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<sup>106</sup> See J. Bartram and G. Howard, "Domestic water quantity, service level and health: what should be the goal for water and health sectors", WHO, 2002. See also P.H. Gleick, (1996) "Basic water requirements for human activities: meeting basic needs", *Water International*, 21, pp. 83-92.

<sup>107</sup> The Committee refers States parties to WHO, *Guidelines for drinking-water quality*, 2nd edition, vols. 1-3 (Geneva, 1993) that are "intended to be used as a basis for the development of national standards that, if properly implemented, will ensure the safety of drinking water supplies through the elimination of, or reduction to a minimum concentration, of constituents of water that are known to be hazardous to health."

<sup>108</sup> See also General Comment No. 4 (1991), para. 8 (b), General Comment No. 13 (1999) para. 6 (a) and General Comment No. 14 (2000) paras. 8 (a) and (b). Household includes a permanent or semi-permanent dwelling, or a temporary halting site.



(iv) *Information accessibility*: accessibility includes the right to seek, receive and impart information concerning water issues.<sup>109</sup>

### **Special topics of broad application**

#### *Non-discrimination and equality*

- The obligation of States parties to guarantee that the right to water is enjoyed without discrimination (art. 2, para. 2), and equally between men and women (art. 3), pervades all of the Covenant obligations. The Covenant thus proscribes any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to water. The Committee recalls paragraph 12 of General Comment No. 3 (1990), which states that even in times of severe resource constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes.
- States parties should take steps to remove de facto discrimination on prohibited grounds, where individuals and groups are deprived of the means or entitlements necessary for achieving the right to water. States parties should ensure that the allocation of water resources, and investments in water, facilitate access to water for all members of society. Inappropriate resource allocation can lead to discrimination that may not be overt. For example, investments should not disproportionately favour expensive water supply services and facilities that are often accessible only to a small, privileged fraction of the population, rather than investing in services and facilities that benefit a far larger part of the population.
- With respect to the right to water, States parties have a special obligation to provide those who do not have sufficient means with the necessary water and water facilities and to prevent any discrimination on internationally prohibited grounds in the provision of water and water services.
- Whereas the right to water applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, indigenous peoples, refugees, asylum seekers, internally displaced persons, migrant workers, prisoners and detainees. In particular, States parties should take steps to ensure that:

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<sup>109</sup> See para. 48 of this General Comment.

(a) Women are not excluded from decision-making processes concerning water resources and entitlements. The disproportionate burden women bear in the collection of water should be alleviated;

(b) Children are not prevented from enjoying their human rights due to the lack of adequate water in educational institutions and households or through the burden of collecting water. Provision of adequate water to educational institutions currently without adequate drinking water should be addressed as a matter of urgency;

(c) Rural and deprived urban areas have access to properly maintained water facilities. Access to traditional water sources in rural areas should be protected from unlawful encroachment and pollution. Deprived urban areas, including informal human settlements, and homeless persons, should have access to properly maintained water facilities. No household should be denied the right to water on the grounds of their housing or land status;

(d) Indigenous peoples' access to water resources on their ancestral lands is protected from encroachment and unlawful pollution. States should provide resources for indigenous peoples to design, deliver and control their access to water;

(e) Nomadic and traveller communities have access to adequate water at traditional and designated halting sites;

(f) Refugees, asylum-seekers, internally displaced persons and returnees have access to adequate water whether they stay in camps or in urban and rural areas. Refugees and asylum-seekers should be granted the right to water on the same conditions as granted to nationals;

(g) Prisoners and detainees are provided with sufficient and safe water for their daily individual requirements, taking note of the requirements of international humanitarian law and the United Nations Standard Minimum Rules for the Treatment of Prisoners;<sup>110</sup>

(h) Groups facing difficulties with physical access to water, such as older persons, persons with disabilities, victims of natural disasters, persons living in disaster-prone areas, and those living in arid and semi-arid areas, or on small islands are provided with safe and sufficient water.

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<sup>110</sup> See arts. 20, 26, 29 and 46 of the third Geneva Convention of 12 August 1949; arts. 85, 89 and 127 of the fourth Geneva Convention of 12 August 1949; arts. 15 and 20, para. 2, United Nations Standard Minimum Rules for the Treatment of Prisoners, in *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.88.XIV.1).

### III. STATES PARTIES' OBLIGATIONS

#### *General legal obligations*

- While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect. States parties have immediate obligations in relation to the right to water, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2, para. 2) and the obligation to take steps (art. 2, para.1) towards the full realization of articles 11, paragraph 1, and 12. Such steps must be deliberate, concrete and targeted towards the full realization of the right to water.
- States parties have a constant and continuing duty under the Covenant to move as expeditiously and effectively as possible towards the full realization of the right to water. Realization of the right should be feasible and practicable, since all States parties exercise control over a broad range of resources, including water, technology, financial resources and international assistance, as with all other rights in the Covenant.
- There is a strong presumption that retrogressive measures taken in relation to the right to water are prohibited under the Covenant.<sup>111</sup> If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party's maximum available resources.

#### *Specific legal obligations*

- The right to water, like any human right, imposes three types of obligations on States parties: obligations to *respect*, obligations to *protect* and obligations to *fulfil*.

##### *(a) Obligations to respect*

- The obligation to *respect* requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to water. The obligation includes, inter alia, refraining from engaging in any practice or activity that denies or limits equal access to adequate water; arbitrarily interfering with customary or traditional arrangements for water allocation; unlawfully

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<sup>111</sup> See General Comment No. 3 (1990), para. 9.

diminishing or polluting water, for example through waste from State-owned facilities or through use and testing of weapons; and limiting access to, or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts in violation of international humanitarian law.

- The Committee notes that during armed conflicts, emergency situations and natural disasters, the right to water embraces those obligations by which States parties are bound under international humanitarian law.<sup>112</sup> This includes protection of objects indispensable for survival of the civilian population, including drinking water installations and supplies and irrigation works, protection of the natural environment against widespread, long-term and severe damage and ensuring that civilians, internees and prisoners have access to adequate water.<sup>113</sup>

*(b) Obligations to protect*

- The obligation to *protect* requires State parties to prevent third parties from interfering in any way with the enjoyment of the right to water. Third parties include individuals, groups, corporations and other entities as well as agents acting under their authority. The obligation includes, inter alia, adopting the necessary and effective legislative and other measures to restrain, for example, third parties from denying equal access to adequate water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems.
- Where water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable, and physical access to sufficient, safe and acceptable water. To prevent such abuses an effective regulatory system must be established, in conformity with the Covenant and this General Comment, which includes independent monitoring, genuine public participation and imposition of penalties for non-compliance.

*(c) Obligations to fulfil*

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<sup>112</sup> For the interrelationship of human rights law and humanitarian law, the Committee notes the conclusions of the International Court of Justice in *Legality of the Threat or Use of Nuclear Weapons (Request by the General Assembly)*, ICJ Reports (1996) p. 226, para. 25.

<sup>113</sup> See arts. 54 and 56, Additional Protocol I to the Geneva Conventions (1977), art. 54, Additional Protocol II (1977), arts. 20 and 46 of the third Geneva Convention of 12 August 1949, and common article 3 of the Geneva Conventions of 12 August 1949.

- The obligation to *fulfil* can be disaggregated into the obligations to facilitate, promote and provide. The obligation to facilitate requires the State to take positive measures to assist individuals and communities to enjoy the right. The obligation to promote obliges the State party to take steps to ensure that there is appropriate education concerning the hygienic use of water, protection of water sources and methods to minimize water wastage. States parties are also obliged to fulfil (provide) the right when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal.
- The obligation to fulfil requires States parties to adopt the necessary measures directed towards the full realization of the right to water. The obligation includes, inter alia, according sufficient recognition of this right within the national political and legal systems, preferably by way of legislative implementation; adopting a national water strategy and plan of action to realize this right; ensuring that water is affordable for everyone; and facilitating improved and sustainable access to water, particularly in rural and deprived urban areas.
- To ensure that water is affordable, States parties must adopt the necessary measures that may include, inter alia: (a) use of a range of appropriate low-cost techniques and technologies; (b) appropriate pricing policies such as free or low-cost water; and (c) income supplements. Any payment for water services has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with water expenses as compared to richer households.
- States parties should adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations.<sup>114</sup> Such strategies and programmes may include: (a) reducing depletion of water resources through unsustainable extraction, diversion and damming; (b) reducing and eliminating contamination of watersheds and water-related eco-systems by substances such as radiation, harmful chemicals and human excreta; (c) monitoring water reserves; (d) ensuring that proposed developments do not interfere with access to adequate water; (e) assessing the impacts of actions that may impinge upon water availability and natural-ecosystems watersheds, such as climate changes, desertification and increased soil salinity, deforestation and loss of

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<sup>114</sup> See footnote 5 above, Agenda 21, chaps. 5, 7 and 18; and the World Summit on Sustainable Development, Plan of Implementation (2002), paras. 6 (a), (l) and (m), 7, 36 and 38.

biodiversity;<sup>115</sup> (f) increasing the efficient use of water by end-users; (g) reducing water wastage in its distribution; (h) response mechanisms for emergency situations; (i) and establishing competent institutions and appropriate institutional arrangements to carry out the strategies and programmes.

- Ensuring that everyone has access to adequate sanitation is not only fundamental for human dignity and privacy, but is one of the principal mechanisms for protecting the quality of drinking water supplies and resources.<sup>116</sup> In accordance with the rights to health and adequate housing (see General Comments No. 4 (1991) and 14 (2000)) States parties have an obligation to progressively extend safe sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children.

#### *International obligations*

- Article 2, paragraph 1, and articles 11, paragraph 1, and 23 of the Covenant require that States parties recognize the essential role of international cooperation and assistance and take joint and separate action to achieve the full realization of the right to water.
- To comply with their international obligations in relation to the right to water, States parties have to respect the enjoyment of the right in other countries. International cooperation requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries. Any activities undertaken within the State party's jurisdiction should not deprive another country of the ability to realize the right to water for persons in its jurisdiction.<sup>117</sup>

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<sup>115</sup> See the Convention on Biological Diversity, the Convention to Combat Desertification, the United Nations Framework Convention on Climate Change, and subsequent protocols.

<sup>116</sup> Article 14, para. 2, of the Convention on the Elimination of All Forms of Discrimination Against Women stipulates States parties shall ensure to women the right to “adequate living conditions, particularly in relation to [...] sanitation”. Article 24, para. 2, of the Convention on the Rights of the Child requires States parties to “To ensure that all segments of society [...] have access to education and are supported in the use of basic knowledge of [...] the advantages of [...] hygiene and environmental sanitation.”

<sup>117</sup> The Committee notes that the United Nations Convention on the Law of Non-Navigational Uses of Watercourses requires that social and human needs be taken into account in determining the equitable utilization of watercourses, that States parties take measures to prevent significant harm being caused, and, in the event of conflict, special regard must be given to the requirements of vital human needs: see arts. 5, 7 and 10 of the Convention.

- States parties should refrain at all times from imposing embargoes or similar measures, that prevent the supply of water, as well as goods and services essential for securing the right to water.<sup>118</sup> Water should never be used as an instrument of political and economic pressure. In this regard, the Committee recalls its position, stated in its General Comment No. 8 (1997), on the relationship between economic sanctions and respect for economic, social and cultural rights.
- Steps should be taken by States parties to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries. Where States parties can take steps to influence other third parties to respect the right, through legal or political means, such steps should be taken in accordance with the Charter of the United Nations and applicable international law.
- Depending on the availability of resources, States should facilitate realization of the right to water in other countries, for example through provision of water resources, financial and technical assistance, and provide the necessary aid when required. In disaster relief and emergency assistance, including assistance to refugees and displaced persons, priority should be given to Covenant rights, including the provision of adequate water. International assistance should be provided in a manner that is consistent with the Covenant and other human rights standards, and sustainable and culturally appropriate. The economically developed States parties have a special responsibility and interest to assist the poorer developing States in this regard.
- States parties should ensure that the right to water is given due attention in international agreements and, to that end, should consider the development of further legal instruments. With regard to the conclusion and implementation of other international and regional agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to water. Agreements concerning trade liberalization should not curtail or inhibit a country's capacity to ensure the full realization of the right to water.
- States parties should ensure that their actions as members of international organizations take due account of the right to water. Accordingly, States parties that are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should take steps to ensure that the right to water is taken into account in their lending policies, credit agreements and other international measures.

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<sup>118</sup> In General Comment No. 8 (1997), the Committee noted the disruptive effect of sanctions upon sanitation supplies and clean drinking water, and that sanctions regimes should provide for repairs to infrastructure essential to provide clean water.

### *Core obligations*

- In General Comment No. 3 (1990), the Committee confirms that States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant. In the Committee's view, at least a number of core obligations in relation to the right to water can be identified, which are of immediate effect:

(a) To ensure access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease;

(b) To ensure the right of access to water and water facilities and services on a non-discriminatory basis, especially for disadvantaged or marginalized groups;

(c) To ensure physical access to water facilities or services that provide sufficient, safe and regular water; that have a sufficient number of water outlets to avoid prohibitive waiting times; and that are at a reasonable distance from the household;

(d) To ensure personal security is not threatened when having to physically access to water;

(e) To ensure equitable distribution of all available water facilities and services;

(f) To adopt and implement a national water strategy and plan of action addressing the whole population; the strategy and plan of action should be devised, and periodically reviewed, on the basis of a participatory and transparent process; it should include methods, such as right to water indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all disadvantaged or marginalized groups;

(g) To monitor the extent of the realization, or the non-realization, of the right to water;

(h) To adopt relatively low-cost targeted water programmes to protect vulnerable and marginalized groups;

(i) To take measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation;

- For the avoidance of any doubt, the Committee wishes to emphasize that it is particularly incumbent on States parties, and other actors in a position to



assist, to provide international assistance and cooperation, especially economic and technical which enables developing countries to fulfil their core obligations indicated in paragraph 37 above.

#### IV. VIOLATIONS

- When the normative content of the right to water (see Part II) is applied to the obligations of States parties (Part III), a process is set in motion, which facilitates identification of violations of the right to water. The following paragraphs provide illustrations of violations of the right to water.
- To demonstrate compliance with their general and specific obligations, States parties must establish that they have taken the necessary and feasible steps towards the realization of the right to water. In accordance with international law, a failure to act in good faith to take such steps amounts to a violation of the right. It should be stressed that a State party cannot justify its non-compliance with the core obligations set out in paragraph 37 above, which are non-derogable.
- In determining which actions or omissions amount to a violation of the right to water, it is important to distinguish the inability from the unwillingness of a State party to comply with its obligations in relation to the right to water. This follows from articles 11, paragraph 1, and 12, which speak of the right to an adequate standard of living and the right to health, as well as from article 2, paragraph 1, of the Covenant, which obliges each State party to take the necessary steps to the maximum of its available resources. A State which is unwilling to use the maximum of its available resources for the realization of the right to water is in violation of its obligations under the Covenant. If resource constraints render it impossible for a State party to comply fully with its Covenant obligations, it has the burden of justifying that every effort has nevertheless been made to use all available resources at its disposal in order to satisfy, as a matter of priority, the obligations outlined above.
- Violations of the right to water can occur through *acts of commission*, the direct actions of States parties or other entities insufficiently regulated by States. Violations include, for example, the adoption of retrogressive measures incompatible with the core obligations (outlined in para. 37 above), the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to water, or the adoption of legislation or policies which are manifestly incompatible with pre-existing domestic or international legal obligations in relation to the right to water.
- Violations through *acts of omission* include the failure to take appropriate steps towards the full realization of everyone's right to water, the failure to have a national policy on water, and the failure to enforce relevant laws.

- While it is not possible to specify a complete list of violations in advance, a number of typical examples relating to the levels of obligations, emanating from the Committee’s work, may be identified:

(a) Violations of the obligation to respect follow from the State party’s interference with the right to water. This includes, inter alia: (i) arbitrary or unjustified disconnection or exclusion from water services or facilities; (ii) discriminatory or unaffordable increases in the price of water; and (iii) pollution and diminution of water resources affecting human health;

(b) Violations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to water by third parties.<sup>119</sup> This includes, inter alia: (i) failure to enact or enforce laws to prevent the contamination and inequitable extraction of water; (ii) failure to effectively regulate and control water services providers; (iv) failure to protect water distribution systems (e.g., piped networks and wells) from interference, damage and destruction; and

(c) Violations of the obligation to fulfil occur through the failure of States parties to take all necessary steps to ensure the realization of the right to water. Examples includes, inter alia: (i) failure to adopt or implement a national water policy designed to ensure the right to water for everyone; (ii) insufficient expenditure or misallocation of public resources which results in the non-enjoyment of the right to water by individuals or groups, particularly the vulnerable or marginalized; (iii) failure to monitor the realization of the right to water at the national level, for example by identifying right-to-water indicators and benchmarks; (iv) failure to take measures to reduce the inequitable distribution of water facilities and services; (v) failure to adopt mechanisms for emergency relief; (vi) failure to ensure that the minimum essential level of the right is enjoyed by everyone (vii) failure of a State to take into account its international legal obligations regarding the right to water when entering into agreements with other States or with international organizations.

## V. IMPLEMENTATION AT THE NATIONAL LEVEL

- In accordance with article 2, paragraph 1, of the Covenant, States parties are required to utilize “all appropriate means, including particularly the adoption of legislative measures” in the implementation of their Covenant obligations. Every State party has a margin of discretion in assessing which measures are most suitable to meet its specific circumstances. The Covenant, however, clearly imposes a duty on each State party to take whatever steps are necessary to ensure that everyone enjoys the right to water, as soon as

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<sup>119</sup> See para. 23 for a definition of “third parties”.

possible. Any national measures designed to realize the right to water should not interfere with the enjoyment of other human rights.

*Legislation, strategies and policies*

- Existing legislation, strategies and policies should be reviewed to ensure that they are compatible with obligations arising from the right to water, and should be repealed, amended or changed if inconsistent with Covenant requirements.
- The duty to take steps clearly imposes on States parties an obligation to adopt a national strategy or plan of action to realize the right to water. The strategy must: (a) be based upon human rights law and principles; (b) cover all aspects of the right to water and the corresponding obligations of States parties; (c) define clear objectives; (d) set targets or goals to be achieved and the time-frame for their achievement; (e) formulate adequate policies and corresponding benchmarks and indicators. The strategy should also establish institutional responsibility for the process; identify resources available to attain the objectives, targets and goals; allocate resources appropriately according to institutional responsibility; and establish accountability mechanisms to ensure the implementation of the strategy. When formulating and implementing their right to water national strategies, States parties should avail themselves of technical assistance and cooperation of the United Nations specialized agencies (see Part VI below).
- The formulation and implementation of national water strategies and plans of action should respect, inter alia, the principles of non-discrimination and people's participation. The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, programme or strategy concerning water. Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties.
- The national water strategy and plan of action should also be based on the principles of accountability, transparency and independence of the judiciary, since good governance is essential to the effective implementation of all human rights, including the realization of the right to water. In order to create a favourable climate for the realization of the right, States parties should take appropriate steps to ensure that the private business sector and civil society are aware of, and consider the importance of, the right to water in pursuing their activities.
- States parties may find it advantageous to adopt framework legislation to operationalize their right to water strategy. Such legislation should include:

(a) targets or goals to be attained and the time-frame for their achievement; (b) the means by which the purpose could be achieved; (c) the intended collaboration with civil society, private sector and international organizations; (d) institutional responsibility for the process; (e) national mechanisms for its monitoring; and (f) remedies and recourse procedures.

- Steps should be taken to ensure there is sufficient coordination between the national ministries, regional and local authorities in order to reconcile water-related policies. Where implementation of the right to water has been delegated to regional or local authorities, the State party still retains the responsibility to comply with its Covenant obligations, and therefore should ensure that these authorities have at their disposal sufficient resources to maintain and extend the necessary water services and facilities. The States parties must further ensure that such authorities do not deny access to services on a discriminatory basis.
- States parties are obliged to monitor effectively the realization of the right to water. In monitoring progress towards the realization of the right to water, States parties should identify the factors and difficulties affecting implementation of their obligations.

#### *Indicators and benchmarks*

- To assist the monitoring process, right to water indicators should be identified in the national water strategies or plans of action. The indicators should be designed to monitor, at the national and international levels, the State party's obligations under articles 11, paragraph 1, and 12. Indicators should address the different components of adequate water (such as sufficiency, safety and acceptability, affordability and physical accessibility), be disaggregated by the prohibited grounds of discrimination, and cover all persons residing in the State party's territorial jurisdiction or under their control. States parties may obtain guidance on appropriate indicators from the ongoing work of WHO, the Food and Agriculture Organization of the United Nations (FAO), the United Nations Centre for Human Settlements (Habitat), the International Labour Organization (ILO), the United Nations Children's Fund (UNICEF), the United Nations Environment Programme (UNEP), the United Nations Development Programme (UNDP) and the United Nations Commission on Human Rights.
- Having identified appropriate right to water indicators, States parties are invited to set appropriate national benchmarks in relation to each indicator.<sup>120</sup>

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<sup>120</sup> See E. Riedel, "New bearings to the State reporting procedure: practical ways to operationalize economic, social and cultural rights – The example of the right to health", in S. von Schorlemer (ed.),

During the periodic reporting procedure, the Committee will engage in a process of “scoping” with the State party. Scoping involves the joint consideration by the State party and the Committee of the indicators and national benchmarks which will then provide the targets to be achieved during the next reporting period. In the following five years, the State party will use these national benchmarks to help monitor its implementation of the right to water. Thereafter, in the subsequent reporting process, the State party and the Committee will consider whether or not the benchmarks have been achieved, and the reasons for any difficulties that may have been encountered (see General Comment No.14 (2000), para. 58). Further, when setting benchmarks and preparing their reports, States parties should utilize the extensive information and advisory services of specialized agencies with regard to data collection and disaggregation.

### *Remedies and accountability*

- Any persons or groups who have been denied their right to water should have access to effective judicial or other appropriate remedies at both national and international levels (see General Comment No. 9 (1998), para. 4, and Principle 10 of the Rio Declaration on Environment and Development).<sup>121</sup> The Committee notes that the right has been constitutionally entrenched by a number of States and has been subject to litigation before national courts. All victims of violations of the right to water should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition. National ombudsmen, human rights commissions, and similar institutions should be permitted to address violations of the right.
- Before any action that interferes with an individual’s right to water is carried out by the State party, or by any other third party, the relevant authorities must ensure that such actions are performed in a manner warranted by law, compatible with the Covenant, and that comprises: (a) opportunity for genuine consultation with those affected; (b) timely and full disclosure of information on the proposed measures; (c) reasonable notice of proposed actions; (d) legal recourse and remedies for those affected; and (e) legal

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*Praxishandbuch UNO*, 2002, pp. 345-358. The Committee notes, for example, the commitment in the 2002 World Summit on Sustainable Development Plan of Implementation to halve, by the year 2015, the proportion of people who are unable to reach or to afford safe drinking water (as outlined in the Millennium Declaration) and the proportion of people who do not have access to basic sanitation.

<sup>121</sup> Principle 10 of the Rio Declaration on Environment and Development (*Report of the United Nations Conference on Environment and Development*, see footnote 5 above), states with respect to environmental issues that “effective access to judicial and administrative proceedings, including remedy and redress, shall be provided”.

assistance for obtaining legal remedies (see also General Comments No. 4 (1991) and No. 7 (1997)). Where such action is based on a person's failure to pay for water their capacity to pay must be taken into account. Under no circumstances shall an individual be deprived of the minimum essential level of water.

- The incorporation in the domestic legal order of international instruments recognizing the right to water can significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases. Incorporation enables courts to adjudicate violations of the right to water, or at least the core obligations, by direct reference to the Covenant.
- Judges, adjudicators and members of the legal profession should be encouraged by States parties to pay greater attention to violations of the right to water in the exercise of their functions.
- States parties should respect, protect, facilitate and promote the work of human rights advocates and other members of civil society with a view to assisting vulnerable or marginalized groups in the realization of their right to water.

## **VI. OBLIGATIONS OF ACTORS OTHER THAN STATES**

60. United Nations agencies and other international organizations concerned with water, such as WHO, FAO, UNICEF, UNEP, UN-Habitat, ILO, UNDP, the International Fund for Agricultural Development (IFAD), as well as international organizations concerned with trade such as the World Trade Organization (WTO), should cooperate effectively with States parties, building on their respective expertise, in relation to the implementation of the right to water at the national level. The international financial institutions, notably the International Monetary Fund and the World Bank, should take into account the right to water in their lending policies, credit agreements, structural adjustment programmes and other development projects (see General Comment No. 2 (1990)), so that the enjoyment of the right to water is promoted. When examining the reports of States parties and their ability to meet the obligations to realize the right to water, the Committee will consider the effects of the assistance provided by all other actors. The incorporation of human rights law and principles in the programmes and policies by international organizations will greatly facilitate implementation of the right to water. The role of the International Federation of the Red Cross and Red Crescent Societies, International Committee of the Red Cross, the Office of the United Nations High Commissioner for Refugees (UNHCR), WHO and UNICEF, as well as non-governmental organizations and other associations, is of particular importance in relation to disaster relief and humanitarian assistance in times of emergencies. Priority in the provision of aid, distribution and management of water and water facilities should be given to the most vulnerable or marginalized groups of the population.

