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ANNUAL REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND REPORTS OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND THE SECRETARY-GENERAL

Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments*

* Annexes and footnotes are circulated in the language of submission only.

Summary

The present report is submitted pursuant to Human Rights Council decision 2/104 of 27 November 2006 on human rights and access to water in which the Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to conduct a detailed study on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments, taking into account the views of States and other stakeholders.

In conducting the study, OHCHR has sought written submissions from various stakeholders, including States, intergovernmental organizations, national human rights institutions, non-governmental organizations, experts, and representatives of the private sector. OHCHR also organized a one-day open consultation to discuss human rights and access to safe drinking water and sanitation and attended relevant expert and other meetings. The inputs received during the consultation process have informed the preparation of the study.

The present report reviews international human rights obligations related to the provision of safe drinking water and sanitation. It discusses their scope and content, nature and monitoring, and points to areas needing further elaboration. The report ends with conclusions and recommendations to further strengthen and implement human rights obligations related to access to safe drinking water and sanitation.

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INTRODUCTION

1. The present report is submitted pursuant to Human Rights Council decision 2/104 of 27 November 2006 on human rights and access to water. In its decision, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) "... taking into account the views of States and other stakeholders, to conduct, within existing resources, a detailed study on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments, which includes relevant conclusions and recommendations thereon, to be submitted prior to the sixth session of the Council."

2. In conducting the study, OHCHR has sought written submissions from various stakeholders, including States, intergovernmental organizations, national human rights institutions, non-governmental organizations (NGOs), experts, and representatives of the private sector.¹ OHCHR also organized a one-day open consultation to discuss human rights and access to safe drinking water and sanitation and attended relevant expert and other meetings.² The inputs received during the consultation process have informed the preparation of the study.

3. The report is divided into five chapters. Chapter I reviews the legal framework and existing obligations related to equitable access to safe drinking water and sanitation. Chapters II, III and IV review the scope and content of the term "access to safe drinking water and sanitation", the nature of States' obligations in relation to access to safe drinking water and sanitation and the question of monitoring.

¹ The contributions received have been made available on the OHCHR website at: <http://www.ohchr.org>

² The report of the consultation is also available at: <http://www.ohchr.org>

Chapter V discusses issues needing further elaboration and Chapter VI sets out some conclusions and recommendations for consideration by the Council.

I. THE LEGAL FRAMEWORK

A. Introduction

4. The mandate entrusted to OHCHR by the Human Rights Council limits the sources of international law the study may address to international human rights instruments. These are understood as including international and regional treaties, as well as human rights-related declarations, resolutions, principles and guidelines. While these instruments do not have the same binding force as treaties, they may contain elements that already impose or may come to impose obligations on States under customary international law. They also highlight social expectations and commitments expressed by States and provide useful guidance for interpreting States' obligations under human rights treaties. International plans of action and documents adopted by United Nations treaty bodies will be used as sources of interpretations for these instruments. Other bodies of international law, such as international watercourse law, will not form part of the study. Although falling outside the sources outlined by Human Rights Council decision 2/104, the study will address the intersection between humanitarian and environmental treaties and human rights instruments and refer to these two other bodies of international law insofar as

they help clarify the scope and content of human rights obligations in relation to access to safe drinking water and sanitation.³

B. Instruments referring to safe drinking water and sanitation

5. Access to safe drinking water and sanitation are referred to in a range of instruments which can be grouped as follows:

(a) Explicit reference in human rights treaties: explicit references to safe drinking water or sanitation are included in the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the recently adopted Convention on the Rights of Persons with Disabilities and International Labour Organization (ILO) Convention No. 161 of 1985 on Occupational Health Services. At the regional level, the African Charter on the Rights and Welfare of the Child and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa include specific provisions on access to water. Annex I provides further details on these treaties and the obligations they entail.

(b) Implicit reference in human rights treaties: the close connection between access to safe drinking water and sanitation and a range of other human rights is implicitly addressed in various treaties, notably in relation to the right to life, the prohibition of torture, the right to health, the right to education, the right to adequate housing, the right to food and the right to an adequate standard of living.

³ For the relationship between human rights and humanitarian law, See Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, International Court of Justice, Reports 2004, p. 136, available at:

<http://www.icj-cij.org/docket/files/131/1671.pdf>

(c) Explicit reference in human rights principles and guidelines: several principles and guidelines adopted by the United Nations and the ILO highlight the obligation to provide safe drinking water or sanitation to particular groups, including prisoners, juveniles deprived of their liberty, internally displaced persons (IDPs), workers living in housing provided by their employers and old persons. The FAO Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security also highlight the fact that access to water in sufficient quantity and quality for all is essential for life and health. Annex II provides further details on these instruments and the obligations they entail.

(d) Safe drinking water and sanitation as a human right in declarations and resolutions: access to safe drinking water was first declared a human right by United Nations Member States in the Mar del Plata Action Plan (1977) asserting that irrespective of the level of development, all people “have the right to have access to drinking water in quantities and of a quality equal to their basic needs”.⁴ Resolutions adopted by the United Nations General Assembly and the Commission on Human Rights also refer to safe drinking water as a human right.⁵ Members of the Non-Aligned Movement, acknowledged the right to water for all in their 14th Summit final document.⁶ At the regional level, recommendation 14 of the Committee of Ministers of the Council of Europe to member states on the European Charter on Water

⁴ Mar del Plata Action Plan, United Nations Water Conference, 1977, preamble.

⁵ General Assembly resolution 54/175, The right to development, para. 12; Commission on Human Rights resolutions 2004/17 and 2005/15, Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, preamble, paras. 4 and 9.

⁶ Paragraph 226.

Resources provides that everyone has the right to a sufficient quantity of water for his or her basic needs.⁷ This being said, the recognition of water as a human right in declarations and resolutions has been uneven.⁸

(e) Expert documents referring to safe-drinking water and sanitation as a human right: in 2002, the Committee on Economic, Social and Cultural Rights (CESCR) adopted its general comment No. 15 on the right to water (articles 11 and 12 of the Covenant), defined as the right of everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.⁹ General comments provide an authoritative interpretation by an expert body on provisions under various international covenants and conventions, including the International Covenant on Economic, Social and Cultural Rights (ICESCR). In 2006, the Sub-Commission for the Promotion and Protection of Human Rights adopted the draft guidelines for the realization of the right to drinking water supply and sanitation (the Sub-Commission's guidelines), which refer to a right to drinking water and sanitation.¹⁰ The Sub-Commission's guidelines are intended to assist Governments, policymakers, international agencies and members of civil society to implement the right to drinking water and sanitation.

⁷ Recommendation Rec(2001)14 of the Committee of Ministers of the Council of Europe to member States on the European Charter on Water Resource, available at: http://www.coe.int/t/cm/adoptedTexts_en.asp#P47_2021

⁸ For instance, water has not been acknowledged as a human right in the United Nations Millennium Declaration, nor in the ministerial declarations adopted at the World Water Forums

⁹ Paragraph 2.

¹⁰ Realization of the right to drinking water and sanitation: report of the Special Rapporteur, El Hadji Guissé (E/CN.4/Sub.2/2005/25, para. 2).

(f) Plans of action referring to safe-drinking water and sanitation as a human right: a number of plans of action have also referred to water and sanitation as a human right. Agenda 21, adopted at the United Nations Conference on Environment and Development (UNCED) in 1992 states that “the commonly agreed premise was 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’”.¹¹ In the Programme of Action of the International Conference on Population and Development (1994), States affirmed that all people have “the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and sanitation”.¹² The UN-Habitat Plan of Action (1996) subsequently recognized water and sanitation as a human right.¹³

(g) Other recognition of safe drinking water and sanitation as a human right: the former United Nations Secretary-General Kofi Annan emphasized that “access to safe water is a fundamental human need and, therefore, a basic human right”.¹⁴ In its 2006 Human Development Report, *Beyond scarcity: Power, poverty and the global water crisis*, the United Nations Development Programme (UNDP) stressed the importance of recognizing and implementing the right to water.¹⁵ The United Nations Children’s Fund (UNICEF) also stressed that “access to sanitation facilities is a fundamental human right that safeguards

¹¹ Agenda 21, United Nations Conference on Environment and Development 1992, chapter 18, para.47.

¹² Programme of Action of the International Conference on Population and Development, Cairo, 1994, Principle 2.

¹³ The Habitat Agenda Goals and Principles, Commitments and the Global Plan of Action, 1996, para.11.

¹⁴ Message of United Nations Secretary-General Kofi Annan on World Water Day 2001, available at:

<http://www.worldwaterday.org/wday/2001/news/msgun.html>

¹⁵ Pages 3-4.

health and human dignity”.¹⁶ The United Nations Millennium Project Task Force on Water and Sanitation highlighted the importance of the right to water for achieving the Millennium Development Goals (MDGs) related to water and sanitation.¹⁷ National constitutions, legislation and jurisprudence have also recognized water as a human right. National experiences brought to the attention of OHCHR also revealed that many countries have adopted specific legislation regulating access to safe drinking water.

6. While human rights treaties do not recognize access to safe drinking water and sanitation as a human right per se, specific obligations in relation to access to safe drinking water and sanitation have been increasingly and explicitly recognized in core human rights treaties, mainly as part of the right to an adequate standard of living and the right to health. With the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), all recently adopted human rights treaties entail specific obligations in relation to access to safe drinking water and, to a lesser extent, sanitation. Obligations in relation to access to safe drinking water and sanitation are also implicit in a number of human rights treaties and are derived from obligations pertaining to the promotion and protection of other human rights.

7. In interpreting the right to life under the International Covenant on Civil and Political Rights, (ICCPR), the Human Rights Committee (HRC) stressed that besides protecting against the active taking of life, the right also places a duty on States to ensure access to the means of survival and requires States to adopt positive measures, notably to reduce infant mortality, increase life expectancy and eliminate

¹⁶ *Sanitation for All*, page 3, UNICEF January 2000.

¹⁷ *Health, dignity and development: what will it take?*, UN Millennium Project Task Force on Water and Sanitation, 2005, p. xiv, available at: <http://www.unmillenniumproject.org/documents/WaterComplete-lowres.pdf>

malnutrition and epidemics.¹⁸ The Inter-American Court of Human Rights also interpreted the right to life as including access to conditions that guarantee a dignified life.¹⁹ This interpretation finds a specific resonance with the impact that lack of access to safe drinking water and sanitation has on peoples' health and life. Diarrhoeal dehydration claims the lives of nearly 2 million children every year and has killed more children in the last 10 years than all the people lost to armed conflict since the Second World War.²⁰ Each and every day, some 3,900 children die because of dirty water, poor hygiene and lack of basic sanitation while 1.6 million deaths per year can be attributed to the same causes.²¹ Lack of access to water and sanitation has also been addressed by the Human Rights Committee and the Committee against Torture.²²

8. The nexus between access to water and sanitation and the enjoyment of the right to an adequate standard of living has been stressed by the Committee on Economic, Social and Cultural Rights (CESCR) in its general comment No. 15 (2002) on the right to water, in which it underlined that water constitutes a

¹⁸ HRC general comment No. 6 (1982) on Article 6 (Right to life), para 5.

¹⁹ Corte Interamericana de Derechos Humanos, *Caso Villagrán Morales y Otros (Caso de los "Niños de la Calle")*, Sentencia de 19 de noviembre de 1999 (Ser. C) N.º 63, párr. 144.

²⁰ *Sanitation for All*, UNICEF January 2000

²¹ *Health, dignity, and development: what will it take?*, UN Millennium Project Task Force on Water and Sanitation, 2005.

²² Concluding observations of the Human Rights Committee: Honduras, 2006 (CCPR/C/HND/CO/1, para 15); Report of the Committee against Torture (A/56/44 (SUPP), para 181 and 183).

fundamental element for securing an adequate standard of living. The strong link with the right to health has also been highlighted by various United Nations treaty bodies, special procedures and regional mechanisms and is acknowledged in the Convention on the Rights of the Child. The CESCR identified access to safe drinking water and sanitation as determinants of the right to health, giving rise to specific obligations to ensure an adequate supply of safe and potable water and adequate sanitation.

9. Access to safe drinking water also constitutes an important element for the enjoyment of the right to food. In extending the mandate of the Special Rapporteur on the right to food, the Commission on Human Rights specifically requested him to “pay attention to the issue of drinking water, taking into account the interdependence of this issue and the right to food”.²³ The Special Rapporteur on the right to food noted, in that respect, that clean drinking water is an essential part of healthy nutrition.²⁴

10. In clarifying the scope and content of the right to adequate housing, CESCR underlined that access to safe drinking water and sanitation represents a fundamental element for the enjoyment of this right.²⁵ States’ obligations under the right to education also entail specific requirements to provide safe drinking water and sanitation facilities for both sexes in educational institutions.²⁶ The Special Rapporteur on the

²³ Commission on Human Rights resolution 2001/25, para 9.

²⁴ See A/56/210, paras. 58-71 and E/CN.4/2003/54, paras. 36-51. See also article 15 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, where access to safe drinking water is an element of the right to nutritious and adequate food.

²⁵ CESCR general comment No. 4 (1991) on the right to adequate housing (art. 11 (1) of the Covenant), para 8.

²⁶ CESCR general comment No. 13 (1999) on The right to education (art. 13), para 43.

right to education followed a similar approach, highlighting the problem of schools lacking adequate sanitation facilities and water supply and the fact that this absence represents a genuine impediment to the right to education.²⁷

11. Access to safe drinking water and sanitation can also create equality concerns, notably in relation to women, as limited access tends to disproportionately affect their health, physical and psychological integrity, privacy and access to education. The time burden of collecting and carrying water, which often falls on women and girls, is one explanation for the very large gender gaps in school attendance in many countries, while girls also commonly miss out disproportionately on an education if school sanitation facilities are inadequate. When girls and women have to walk to a place distant from their home for excreta disposal or water collection, they are also vulnerable to harassment and assault. Under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), States parties have the obligation to address all forms of discrimination against women, including the elimination of the causes and consequences of their de facto or substantive inequality.

12. A certain number of humanitarian and environmental treaties also entail specific provisions related to access to safe drinking water and sanitation. The Geneva Conventions and their Additional Protocols outline the fundamental importance of access to safe drinking water and sanitation for health and survival in situations of international and non-international armed conflicts. Under the United Nations Economic Commission for Europe (UNECE) Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (UNECE Protocol), States parties have

²⁷ See for instance E/CN.4/1999/49, para . 67.

the obligation to take appropriate measures to provide access to drinking water and sanitation and to protect water resources used as sources of drinking water from pollution.²⁸

II. SCOPE AND CONTENT OF HUMAN RIGHTS OBLIGATIONS

A. The meaning and scope of safe drinking water

1. Sufficient quantity

13. The mandate entrusted to OHCHR by the Human Rights Council limits the type of issues the study can consider to safe drinking water and sanitation. The term “safe drinking water” covers a limited amount of water needed - along with sanitation requirements - to provide for personal and domestic uses, which comprise water for drinking, washing clothes, food preparation and for personal and household hygiene. These personal and domestic uses represent a tiny fraction of the total use of water, usually less than 5 per cent.²⁹ Other domestic water uses, such as water for swimming pools or gardening are therefore not addressed in the study. Access to water for other purposes, notably for agriculture or industry, also falls outside the remit of the study.

14. Similarly, the study does not examine human rights obligations related to access to water for livelihood or as a natural resource, notably in relation to indigenous territories or small-scale farming, nor does it consider issues related to water management and the protection of ecosystems. UNDP’s 2006

²⁸ Articles 1, 4, para. 2 (a) and (b) and 6, para. 1 (a) and (b) available at: http://www.unece.org/env/water/text/text_protocol.htm

²⁹ *Beyond scarcity: Power, poverty and the global water crisis*, UNDP Human Development Report 2006, p. 2.

Human Development Report made a comparable distinction between water for life in the household on the one hand and water to sustain ecological systems and for livelihoods on the other. Declarations and plans of action recognizing access to safe drinking water as a human right also highlight the right of individuals to access water in quantities equal to their basic needs.³⁰ Other documents, while not recognizing access to safe drinking water as a human right, present it as a basic need or requirement, highlighting the fact that the access of individuals to a sufficient quantity of water should be enhanced.

15. The direct corollary of this approach is that the term “safe drinking water” does not refer to an unlimited amount of water. While it is up to each country to determine the minimum reasonable amount of water needed to cover personal and domestic uses, the figures provided in World Health Organization (WHO) publications can provide useful guidance. Accordingly, between 50 and 100 litres of water per person per day are needed to ensure that all health concerns are met.³¹ The threshold of 25 litres per person per day represents the lowest level to maintain life, but this amount raises health concerns because it is insufficient to meet basic hygiene and consumption requirements.³² In cases of emergencies - such as natural disasters, conflict or post-conflict situations - the Sphere Handbook suggests a basic provision of 7.5 to 15 litres minimum per person and per day, as there may not be sufficient water available to cover all personal and domestic uses.³³ These different amounts are indicative, as they might change depending on a

³⁰ Mar del Plata Action Plan, 1977, preamble; Agenda 21, 1992, chapter 18, para. 47.

³¹ G. Howard and J. Bartram, *Domestic Water Quantity, Service Level and Health*, World Health Organization 2003, p.22.

³² Guy Hutton and Lawrence Haller, *Evaluation of the costs and benefits of water and sanitation improvements at the global level*, World Health Organization 2004.

³³ See <http://www.sphereproject.org>

particular context, and might differ for some groups due to health status, work, climate conditions, cultural requirements or other factors.

2. Water quality

16. International declarations, resolutions and plans of action that include commitments to expand access to water also encompass specific quality requirements. Various instruments refer, alternatively, to clean water, drinking water, clean drinking water, safe drinking water, potable water, safe water, safe and clean water, or fresh water. According to CESCR general comment No.15, water for personal and domestic uses must be safe, therefore free from substances constituting a threat to a person's health. Access to adequate sanitation constitutes one of the principal mechanisms for protecting the quality of drinking water.³⁴ The Sub-Commission's guidelines also mention that water must be of a culturally acceptable quality.

17. The WHO Guidelines for Drinking-water Quality (the WHO Guidelines) constitute an international reference point for drinking water quality regulation and standard setting. They define safe drinking water as water that does not represent any significant risk to health over a lifetime of consumption and that is free

³⁴ The absence of sanitation systems in many parts of the world has led to widespread pollution and contamination of water sources that individuals rely upon for survival.

of microbial pathogens, chemical and radiological substances.³⁵ These requirements apply to all sources of water provision.³⁶

B. The meaning and scope of sanitation

18. Human rights instruments offer little guidance as to the scope and content of the term “sanitation”. The Sub-Commission’s guidelines refer to a right to sanitation, defined as the right of everyone to have access to adequate and safe sanitation that is conducive to the protection of public health and the environment.³⁷ Accordingly, sanitation and sanitation facilities should be physically accessible, affordable, of a sufficient and culturally acceptable quality and in a location where physical security can be ensured.

19. Overall, human rights instruments refer to various concepts to describe the kind of sanitation facilities people should have access to and do not elaborate upon the specific requirements these various concepts carry. As such, the contour of the human rights framework for sanitation remains imprecise. The Sub-Commission’s guidelines alternatively refer to adequate, basic, acceptable and appropriate sanitation of a culturally acceptable quality without clearly defining what these various requirements mean and encompass and what the differences between these terms are. CESCR general comment No. 15 refers to

³⁵ *Guidelines for Drinking-water Quality*, WHO, available at: http://www.who.int/water_sanitation_health/dwg/guidelines/en/

³⁶ These include not only piped water sources, but also tanker sources, vendor-provided water and protected wells.

³⁷ See E/CN.4/Sub.2/2005/25, para 1.2

adequate sanitation and safe sanitation services, without defining these two terms and clarifying whether they carry different obligations.³⁸

20. The UNECE Protocol provides a definition of sanitation, described as the collection, transport, treatment and disposal or reuse of human excreta or domestic waste water, whether by collective systems or by installations serving a single household or undertaking. It emphasizes that it should be of an adequate standard that is sufficient to protect human health and the environment.³⁹

21. Some guidance might be provided regarding the meaning of sanitation under international human rights instruments by virtue of applying existing standards and principles - such as the right to privacy and respect for human dignity and personal integrity- to sanitation.

C. The meaning and scope of access

1. Equitable access

22. The consultation process carried out by OHCHR outlined several interpretations of the term “equitable” used in Human Rights Council’s decision 2/104 on human rights and access to water when referring to access to safe drinking water and sanitation. CESCR general comment No. 15 highlights the principle of equity that demands that poorer households should not be disproportionately burdened with

³⁸ International declarations and plans of action refer alternatively to sanitary measures of excreta disposal, effective management of waste, adequate, proper or basic sanitation.

³⁹ See articles 2.8 and 6 (b).

water expenses as compared to richer households.⁴⁰ However, considerations of equity are often broader than the question of how to distribute water expenses. Equitable access considered within a human rights framework refers to equal and non-discriminatory access and it is on this basis that the term is understood and used.

23. The human rights framework prohibits discriminatory policies, laws or practices that affect individuals' access to safe drinking water and sanitation, including discrimination on the basis of housing or land status.⁴¹ De jure and de facto discrimination should be addressed immediately in a way that takes into account the water and sanitation needs of disadvantaged and marginalized individuals.⁴²

24. The principles of equality and non-discrimination require that no population group is excluded and that priority in allocating limited public resources is given to those who do not have access or who face discrimination in accessing safe drinking water and sanitation.⁴³ In the case of indigenous peoples, guaranteeing their access to safe drinking water might require action to secure their customary arrangements for managing water and the protection of their natural water resources, as provided for

⁴⁰ Paragraph 27.

⁴¹ See CESCR general comment No. 15, para. 16; Human Rights Committee, general comment No. 18 (1989) on non-discrimination; Committee on the Elimination of Racial Discrimination, general recommendation XX (1996) on article 5 of the Convention.

⁴² See Human Rights Committee, general comment No. 18 (1989) on non-discrimination, para. 10.

⁴³ The poor and marginalized - notably women, children, minority groups, indigenous peoples, refugees, asylum seekers, internally displaced persons (IDPs), migrant workers, prisoners, detainees, informal settlers and those living in rural and deprived areas - usually bear the brunt of a lack of access to safe drinking water and sanitation

under ILO Convention No. 169 of 1989 on Indigenous and Tribal Peoples.⁴⁴ Priority should also be given to institutions serving vulnerable groups such as schools, hospitals, and refugee camps.

2. Physical access

25. A human rights approach to safe drinking water and sanitation underlines the importance of securing safe physical access to water and sanitation facilities. Access to safe drinking water and sanitation should be provided within or in close proximity to the home in a way that provides regular water and prevents excessive collection time.⁴⁵ Accordingly, human rights obligations related to safe drinking water and sanitation do not require States to provide access in every house. However, water and sanitation facilities have to be in close proximity to each house, educational institution and workplace and must be within safe reach for all sectors of the population, taking into account the needs of particular groups, including persons with disabilities, children, the elderly and women. Securing access to safe drinking water in rural areas might require safeguarding access by domestic users to traditional water sources and protecting these sources from unsustainable extraction by industry or agriculture. CESCR general comment No. 15 and the Sub-Commission's guidelines also stress that the physical security of individuals should not be threatened while accessing water and sanitation facilities and services.⁴⁶ This requirement is implicit in several human rights treaties protecting respect for privacy, human dignity and the integrity of the person, as well as protecting against violence against women and girls.

⁴⁴ This link between access to safe drinking water by indigenous peoples and protection of their natural water resources has been highlighted in contributions received by indigenous groups as part of the consultation process OHCHR carried out in relation to the study.

⁴⁵ See E/CN.4/Sub.2/2005/25, para. 12 (c) (i) and 37 (c).

⁴⁶ See E/CN.4/Sub.2/2005/25, para. 37.

26. Figures provided in WHO publications give useful guidance as to what is meant by the requirement of a reasonable distance and highlight the correlation between physical access and the requirement of a sufficient quantity of safe drinking water to fulfil personal and domestic uses. Accordingly, a water source with capacity to provide sufficient, safe and regular water should normally be within less than 1,000 meters of the household and collection time should not exceed 30 minutes in order for around 20 litres a day of water to be collected.⁴⁷

3. Economic access - affordability

27. Considering safe drinking water and sanitation from a human rights perspective highlights the importance of economic access or affordability. The Plan of Implementation of the World Summit on Sustainable Development (2002) underlines that cost-recovery objectives should not become a barrier to access to safe drinking water by poor people.⁴⁸ Agenda 21 underlines that beyond the provision of safe drinking water for the satisfaction of basic needs, water users should be charged appropriately.⁴⁹ Recommendation 14 (2001) of the Committee of Ministers of the Council of Europe to member states on the European Charter on Water Resources states that “without prejudice to the right to water to meet basic

⁴⁷ G. Howard & J. Bartram, *Domestic Water Quantity, Service Level and Health*, World Health Organization, 2003, pp 22-26. The UNICEF and WHO Joint Monitoring Programme on Water Supply and Sanitation also highlighted the fact that research in rural areas found that individuals satisfy their basic needs for water if the source can be reached in a round trip of 30 minutes or less.

⁴⁸ Paragraph 26.b.

⁴⁹ Agenda 21, United Nations Conference on Environment and Development, 1992, chapter 18, para.8.

needs, the supply of water shall be subject to payment in order to cover financial costs associated with the production and utilisation of water resources”.⁵⁰

28. Affordability requires that direct and indirect costs related to water and sanitation should not prevent a person from accessing safe drinking water and should not compromise his or her ability to enjoy other rights, such as the right to food, housing, health and education. These costs include both connection and delivery costs. The human rights framework does not imply, therefore, a right to free water and sanitation but highlights the fact that nobody should be deprived of access because of an inability to pay. It therefore contemplates the possibility that safe drinking water and sanitation should be provided for free in certain circumstances but does not set this as a rule. Consequently, the affordability requirement is not incompatible with the principle of cost recovery for water and sanitation services, which is also recognized in several international declarations. However, it defines limits to cost recovery and highlights the fact that it should not become a barrier to access to safe drinking water and sanitation, notably by the poor.⁵¹

29. CESCR general comment No. 15 stresses that the most critical target is to ensure the affordability of the minimum amount of water sufficient for essential personal and domestic uses to prevent disease.⁵² Governments have a wide margin of discretion in choosing the most appropriate means to make water affordable.

⁵⁰ Recommendation Rec(2001) 14, para. 19, available at http://www.coe.int/t/cm/adoptedTexts_en.asp#P47_2021

⁵¹ See Salman M.A. Salman and Sioban McInerney-Lankford, *The Human Right to Water: Legal and Policy Dimensions*, The World Bank (Law, Justice and Development series), pp 70-72.

⁵² Paragraphs 12, 27 and 37 (a).

III. NATURE OF HUMAN RIGHTS OBLIGATIONS

A. Duty bearers

30. International human rights law places obligations on States to promote and protect human rights. While States carry legal obligations in relation to human rights, either as a result of ratifying human rights treaties or under customary international law, other actors such as transnational corporations and other business enterprises, intergovernmental organizations and individuals also have a role in respecting and promoting human rights.

31. The consultation process raised the question of the responsibilities of transnational corporations and other business enterprises in relation to access to safe drinking water and sanitation. It identified the increasing societal expectation that companies ensure that their operations do not compromise access to safe drinking water and sanitation. The nature and scope of the responsibilities of business enterprises under international human rights law is currently being explored by the Human Rights Council through the mandate of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises.⁵³ Through the United Nations Global Compact and other voluntary initiatives, a number of companies have also committed to respect and ensure respect for human rights in the conduct of their operations. Submissions received by the private sector during the consultation process also highlight the fact that various private water providers support recognition of access to safe drinking water as a human right.

⁵³ See for instance A/HRC/4/35.

B. Obligations

32. Human rights obligations in relation to access to safe drinking water and sanitation can be derived from various treaties, notably the International Covenant on Civil and Political Rights (ICCPR) (the right to life and the prohibition of torture) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (the right to an adequate standard of living, the right to adequate housing, the right to food and the right to health).

33. The ICCPR requires States parties to respect and ensure civil and political rights and to prohibit discrimination in law or in fact in any field regulated and protected by public authorities.⁵⁴ Under the ICESCR, States parties have the obligation to ensure that economic, social and cultural rights are enjoyed without discrimination and to take steps, progressively and to the maximum of their available resources, to realize these. The term “maximum of available resources” refers to both financial and other resources existing within a State and those available through international cooperation.

34. Obligations in relation to access to safe drinking water and sanitation derived from the ICCPR are of an immediate nature, even when there are resource implications. Under the ICESCR, the obligations are of both an immediate and progressive nature. While universal access to safe drinking water and sanitation can be achieved over time within the limits of available resources, the obligations of non-discrimination and “to take steps” have immediate effect. Accordingly, States have to take immediate, deliberate, concrete and targeted steps to move as expeditiously and effectively as possible towards ensuring access to safe drinking water and sanitation, making the most efficient use of available resources.

⁵⁴ Human Rights Committee, general comment No. 18 (1989) on non-discrimination.

35. The nature of States parties' obligations under the ICESCR gives rise to three types of obligations, namely the obligations to respect, protect and fulfil.

1. The obligation to respect

36. The obligation to respect requires that Governments refrain from interfering with access to safe drinking water and sanitation. It includes, for instance, the obligation to avoid engaging in any practice or activity that denies or limits access to safe drinking water and sanitation, or that pollutes water. States must also guarantee that individuals have access to effective judicial or other appropriate remedies providing adequate reparation, including restitution, compensation, satisfaction or guarantee of non-repetition.

2. The obligation to protect

37. International law firmly establishes that States have a duty to protect against non-State human rights abuses within their jurisdiction.⁵⁵ This duty requires steps by States to regulate and adjudicate abuses by all social actors. The obligation to protect requires that Governments ensure that third parties, including individuals, groups, corporations and other entities under their jurisdiction do not interfere with access to safe drinking water and sanitation. This obligation includes, for instance, the adoption of necessary and effective legislative and other measures to prevent third parties from denying access to safe drinking water and sanitation.

⁵⁵ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, 2007 (A/HRC/4/35).

38. When water or sanitation services are operated by the private sector, States should ensure that such private provision does not compromise equal, affordable and physically accessible water and sanitation of a good quality. States must therefore regulate and control private water and sanitation providers through an effective regulatory system which includes independent monitoring, participation, and imposition of penalties in case of non-compliance.

39. When water services and facilities are operated by local authorities, States retain the obligation to ensure that these have at their disposal sufficient resources, authority and capacity to maintain and extend the necessary water and sanitation services. States should also ensure that local authorities do guarantee equal access to affordable and physically accessible water and sanitation of a good quality.

3. The obligation to fulfil

40. The obligation to fulfil requires States to adopt the necessary measures - legislative, administrative, policies, programmes and others - to facilitate and promote universal access to safe drinking water and sanitation. A number of States have, in this respect, recognized safe drinking water as a human right in their national laws.⁵⁶ Many countries have also adopted specific legislation regulating particular aspects of water and sanitation - notably the quality of water, water services pricing policies and subsidies, prioritisation among various uses, minimum amounts needed for domestic consumption, or disconnections - although these are often not formulated in human rights terms.⁵⁷

⁵⁶This recognition has been emphasized in various submissions to the consultation process for the study.

⁵⁷This has been highlighted in various submissions to the consultation process for the study.

41. The obligation to fulfil can be disaggregated into the obligations to facilitate, promote and provide. The obligation to facilitate requires States to take positive measures to assist individuals to access safe drinking water and sanitation. The obligation to promote obliges the State to take steps to ensure that there is appropriate education about hygiene, notably concerning hygienic use of water and the protection of water. The obligation to provide demands that States ensure access to safe drinking water and sanitation for individuals when they are unable, for reasons beyond their control, to do so themselves and through the means at their disposal. Overall, public resources should prioritize those without basic access to safe drinking water and sanitation, rather than those who already have some sort of access.

42. As part of the obligation to fulfil, the CESCR has highlighted certain procedural obligations, such as the obligations to ensure access to information concerning safe drinking water and sanitation issues, and participation in decision-making processes related to safe drinking water and sanitation.⁵⁸

IV. MONITORING

43. Relevant mechanisms for the monitoring of human rights obligations in relation to access to safe drinking water and sanitation include the following:

(a) United Nations treaty bodies: several treaty bodies, including CESCR, the Committee on the Rights of the Child, the Committee on the Elimination of all Forms of Discrimination against Women and the Committee on the Elimination of Racial Discrimination have addressed access to safe drinking water and

⁵⁸ These procedural obligations are recognized in several human rights treaties and declarations (Rio Declaration on Environment and Development, 1992, principle 10), as well as in environmental treaties specifically addressing water and sanitation issues. See for instance ICCPR, article 25; CEDAW, article 7; the Convention on the Rights of Persons with Disabilities, art. 29.

sanitation in their review of State parties' reports and have formulated specific recommendations thereon. Their concluding observations shed light on some key concerns, e.g. on issues related to lack of water in slum areas, lower standards for minorities, restrictions regarding access, the situation of IDPs, water pollution, environmental problems and their impact on access to water, imbalances in water supply between urban and rural areas, the failure of States to ensure the supply of safe drinking water to vulnerable groups such as children, restrictions on access to water for persons living under foreign occupation, and cases where large segments of the population are left without safe drinking water.⁵⁹

(b) Special procedures of the Human Rights Council: several special procedures have looked at the relevance to their mandates of the issue of access to safe drinking water and sanitation. In particular, the Special Rapporteurs on the right to food and to the highest attainable standard of physical and mental health and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living have dedicated attention to the issue during their country visits and in individual communications and annual reports. The Special Rapporteur on the right to health has considered safe drinking water and sanitation as determinants of the right to health, while the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living has analysed these issues within the context of accessibility to services.⁶⁰ In 2001, the Commission on Human Rights asked the

⁵⁹ See for instance CESCR concluding observations on Azerbaijan (E/C.12/1/Add.20, paras. 23 and 37), Bolivia (E/C.12/1/Add. 60, para. 13), Cameroon (E/C.12/1/Add. 40, para. 22), Canada (E/C.12/1/Add.31, para. 17) and China (Hong Kong) (E/C.12/Add.58, para. 6).

⁶⁰ See the contribution of the Special Rapporteur on the right to the highest attainable standard of physical and mental health to the High Commissioner's study available at <http://www.ohchr.org> and also his reports on missions to Peru (E/CN.4/2005/51/Add.3, paras. 10, 15, 19, 54, 62, 63) and Romania (E/CN.4/2005/51/Add.4, para.73). See also the reports of

Special Rapporteur on the right to food to pay attention in his reports to the issue of drinking water and its interdependence with the right to food.⁶¹

(c) Regional mechanisms: judicial or quasi-judicial human rights mechanisms at the regional level have also addressed and developed specific jurisprudence on issues related to safe drinking water and sanitation, notably in relation to the pollution of water and access to safe drinking water for detainees.⁶² The European Committee on Social Rights has also addressed issues related to access to safe drinking water in relation to article 16 of the European Social Charter which provides for the right of the family to social, legal and economic protection.⁶³

(d) National courts: a number of courts have adjudicated certain aspects of human rights obligations in relation to access to safe drinking water - notably in relation to the pollution of water resources and

the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (E/CN.4/2002/59, paras. 49-65, E/CN.4/2003/5, paras. 39-46, E/CN.4/2006/41/Add.2, para 105 and A/HRC/4/18, annex II).

⁶¹ See E/CN.4/2001/25, para.21, A/56/210, paras. 58-71 and E/CN.4/2003/54, paras. 36-51.

⁶² African Commission on Human and Peoples' Rights: *Free Legal Assistance Group et. al. v. Zaire*, Communication 25/89, 47/90, 56/91 and 100/93; *The Social and Economic Rights Action center and the Center for Economic and Social Rights v. Nigeria*, Communication 155/96. See also decisions of the European Court of Justice case C-266/99 (1999/C-281/06) and case 69/99 (1999/C 1999/069); *Menores Comunidad Paynemil s/accion de amparo*, Expte. 311-CA-1997. Sala II. Camara de Aplicaciones en lo Civil, Neuquen, 19 May 1997.

⁶³ *European Roma Rights Centre v Greece*, complaint No. 15/2003 (8 December 2004).

disconnections - or have derived a right to access safe drinking water from the enjoyment of other human rights, such as the right to life or the right to a healthy environment.⁶⁴

(e) National human rights institutions (NHRIs): a number of national human rights institutions have a specific mandate for economic, social and cultural rights.⁶⁵ Submissions received from NHRIs highlight the fact that some of them already work on issues pertaining to safe drinking water and sanitation and monitor related States' obligations.⁶⁶

(f) Alternative dispute settlement mechanisms: various national laws provide for remedies that allow water users to make use of non-court mechanisms to submit complaints.⁶⁷ Further information regarding these mechanisms would provide useful information on the role of non-court avenues to secure access to safe drinking water and sanitation.

⁶⁴ See for instance, *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi 1981 (2) SCR 516*; *Narmada Bachao Andolan v. Union of India (2000) 10 SCC 664*, at 767; *Residents of Bon Vista Mansions v Southern Metropolitan Local Council 2002 (6) BCLR 625 (W)*; Bill of Review, 0208625-3, Special Jurisdiction Appellate Court of Parana; *Quevedo Miguel Angel y otros c/Agua Cordobesas SA. Amparo, Cordoba City Juez Sustituta de Primera Instancia y 51 Nominacion e4n 10 Civil y Comercial de la Ciudad de Cordoba*, 8 April 2002; *Menores Comunidad Paynemil s/acción de amparo* *ibid.*

⁶⁵ *Economic, social and cultural rights: a handbook for national human rights institutions*, OHCHR 2005.

⁶⁶ See for instance the submissions received from NHRIs in Honduras, Panama, Paraguay, Peru, Puerto Rico and Venezuela. The Kenya National Commission on Human Rights (KNCHR) has assessed the implementation of the right to water in Kenya in one of its annual reports: Kenya National Commission on Human Rights, *The State of Human Rights Report 2003-2004* (Nairobi 2005).

⁶⁷ The Australian Utilities Act provides for instance for a Consumer Council that protects users' rights. Finland's Water Services Act establishes a consumer Ombudsman to ensure compliance with the law.

V. ISSUES REQUIRING FURTHER ELABORATION

44. This section highlights a number of issues that arose throughout the consultation process regarding the nature of human rights obligations in relation to access to safe drinking water and sanitation that might require further elaboration.

A. Access to safe drinking water and sanitation as a human right

45. As noted in chapter I, human rights treaties entail explicit and implicit obligations in relation to access to safe drinking water and sanitation. Obligations are also found in other human rights instruments, as well as under humanitarian and environmental law treaties. While access to safe drinking water and sanitation is not explicitly recognised as a human right per se in human rights treaties, it has been acknowledged by two expert bodies (CESCR and the Sub-Commission for the Promotion and Protection of Human Rights), as well as by States in several resolutions, declarations and plans of action.

46. However, the debate is still open as to whether access to safe drinking water and sanitation is a human right, notably in relation to the following points: (a) whether access to safe drinking water is a right on its own or whether obligations in relation to access to safe drinking water and sanitation are derived from other human rights, such as the right to life, the right to health, the right to food or the right to an adequate standard of living; (b) the normative content of human rights obligations in relation to access to sanitation.

47. In the High Commissioner's view, international human rights law entails clear obligations in relation to access to safe drinking water. These obligations demand that States ensure everyone's access to a sufficient amount of safe drinking water for personal and domestic uses - defined as water for

drinking, personal sanitation, washing of clothes, food preparation and personal and household hygiene - to sustain life and health. It is up to each country to determine what this sufficient amount is, relying on guidance provided by WHO and others. This access should be prioritized over other water uses and should be premised on equality and non-discrimination. States should take steps to ensure that this sufficient amount is of good quality, affordable for all and can be collected within a reasonable distance from a person's home. The primary target should be to ensure everyone's access to a minimum amount of water to prevent disease.

48. While the human rights framework does not dictate a particular form of service delivery or pricing policy, it requires States to adopt adequate measures and to put in place effective regulations to ensure the access of individuals to sufficient, affordable and physically accessible and safe drinking water and sanitation. Effective judicial or other appropriate remedies should be available to individuals who have been denied this access.

49. Given the clarity of these obligations, the open debate as to whether the human right to access safe drinking water is a stand-alone right or is derived from other human rights should not impair the recognition of access to safe drinking water as a human right. As noted in chapter II, the normative content of human rights obligations in relation to access to sanitation would need further elaboration.

B. National strategy on water and sanitation

50. CESCR general comment No. 15 identifies the adoption of a national strategy on safe drinking water as a priority and as a key element to ensure and monitor access to safe drinking water, and sets a certain number of parameters this strategy should entail.⁶⁸ UNDP's 2006 Human Development Report also

⁶⁸ Paragraph 47..

stresses that each country should have a national water and sanitation strategy and offers further guidance as to the specific elements this strategy should encompass. It suggests that every national strategy should include clear goals backed by adequate financing, minimum provision levels and policies to reach the strategy's goals, as well as pro-poor regulations.

51. Further elaboration may be desirable to clarify whether the development of a national human rights strategy forms part of States' obligations in relation to access to safe drinking water and sanitation and if so, the specific issues it should address.

C. Private provision of water and sanitation services

52. A number of submissions to the consultation process for the study have highlighted the potential impact that the private provision of water and sanitation services can have on access to safe drinking water and sanitation. Some submissions suggested that human rights obligations in relation to access to safe drinking water and sanitation should prevent the private provision of these basic services. The approach of United Nations treaty bodies and special procedures has been to stress that the human rights framework does not dictate a particular form of service delivery and leaves it to States to determine the best ways to implement their human rights obligations.⁶⁹ While remaining neutral as to the way in which water and sanitation services are provided, and therefore not prohibiting the private provision of water and sanitation services, human rights obligations nonetheless require States to regulate and monitor private water and sanitation providers.

53. An implicit dimension of this duty to regulate is that privatization of water and sanitation services should not take place in the absence of a clear and efficient regulatory framework that can maintain

⁶⁹ See for instance, CESCR general comment No. 3 (1990) on the nature of States parties' obligations.

sustainable access to safe, sufficient, physically accessible and affordable water and sanitation. The role of individuals in decision-making on who supplies water and sanitation services, the type of services supplied and how these should be managed raises questions concerning the right to take part in the conduct of public affairs and other rights, and is an important element to take into account when making decisions on private sector delivery. Further elaboration is needed regarding the human rights response and requirements concerning the private provision of water and sanitation services and the type of regulatory system that States must put in place in that respect.

D. Obligations of local authorities

54. Local authorities are often responsible for the supply of safe drinking water and sanitation. Where safe drinking water and sanitation are provided at the local level, the WHO Guidelines outline a certain number of responsibilities of local governments to secure water quality, notably in relation to catchment inspection and consumer education.⁷⁰ Local governments represented at the Fourth World Water Forum in Mexico also recognized that all human beings have the right to water in the quantity and quality required to meet their essential needs, as well as to sanitation.⁷¹

⁷⁰ *Guidelines for Drinking-water Quality*, pp. 11-12, WHO, available at:

http://www.who.int/water_sanitation_health/dwq/guidelines/en/

⁷¹ Local government declaration on water on the occasion of the Fourth World Water Forum, Mexico, 21 March 2006, available at: http://www.worldwaterforum4.org.mx/files/Declaraciones/Local_Authorities.pdf

55. Further clarification is needed regarding the role, responsibilities and specific obligations of local authorities responsible for the provision of water and sanitation services. At the same time, as the State remains accountable under international law, its specific responsibilities vis-à-vis local authorities should also be further elaborated upon in the context of human rights obligations in relation to access to safe drinking water and sanitation.

E. The question of disconnections and due process

56. Considering access to safe drinking water and sanitation from a human rights perspective and its close nexus with the right to life, health, an adequate standard of living and the protection of human dignity, implies a need for procedural safeguards in case of water and sanitation disconnections.⁷²

57. Procedures for the disconnection of water and sanitation services must comprise (a) timely and full disclosure of information on the proposed measures; (b) reasonable notice of the proposed action; (c) legal recourse and remedies for those affected; (d) legal assistance for obtaining legal remedies. Disconnections for non-payment should not result in a person being denied access to a minimum amount of safe drinking water where that person proves that he or she is unable to pay for these basic services.

58. Recommendation 14 (2001) of the Committee of Ministers of the Council of Europe to member states on the European Charter on Water Resources provides that social measures should be put in place to prevent the supply of water to destitute persons from being cut off.⁷³ A number of national laws restrict

⁷² This section refers to disconnections defined as the interruption of delivery due to non-payment. It does not refer to disconnections due to the pollution of water sources or emergencies.

⁷³ Recommendation Rec(2001) 14, available at http://www.coe.int/t/cm/adoptedTexts_en.asp#P47_2021.

disconnections of water services, in particular those that occur due to the user's inability, rather than unwillingness to pay.⁷⁴ Courts have also reversed water supply disconnection orders on the grounds that these were endangering people's health and life.⁷⁵

59. While human rights obligations in relation to access to safe drinking water and sanitation do not prohibit disconnections, they require that States respect commonly agreed principles of due process, take into account a person's capacity to pay, and do not deprive an individual who is unable to pay of the minimum essential level of water and basic sanitation. Accordingly, the quantity of safe drinking water a person can access may be reduced, but full disconnection may only be permissible if there is access to an alternative source which can provide a minimum amount of safe drinking water needed to prevent disease. In this respect, there is a strong presumption that disconnections of institutions serving vulnerable groups, such as schools, hospitals and refugee camps are prohibited.

F. Prioritization between various kinds of water use

60. Considering access to safe drinking water from a human rights perspective highlights the need to give precedence in water distribution to water for personal and domestic uses for all. Various submissions to the consultation process for the study have highlighted the fact that national laws, regulations or policies do give priority to water for human consumption over other water uses.

⁷⁴ See the 1999 UK Water Industry Act and the South Africa Water Services Act (1997) for instances where disconnection of water services may or may not be permitted.

⁷⁵ See examples cited in footnote 64 above.

61. The Plan of Implementation of the World Summit on Sustainable Development (2002) calls for water to be allocated among competing uses in a way that gives priority to the satisfaction of basic human needs.⁷⁶ This prioritization of human consumption over other water uses bears certain implications in terms of water management and might require specific systems to manage competing demands and to ensure that access to water for personal and domestic uses is prioritized.

62. Beyond the clear basic principle that safe drinking water for personal and domestic uses should be given precedence over other water uses, questions remain regarding the prioritization between various kinds of water use, particularly in situations of water scarcity. Once a sufficient amount of safe drinking water to prevent disease has been secured for all, allocation of water among various uses - water for personal and domestic uses beyond this sufficient amount, water to produce food, water to sustain livelihoods, or water to ensure environmental hygiene - remains unclear. CESCR general comment No. 15 notes that priority in the allocation of water should also be given to water resources to prevent starvation and disease and that attention should be given to ensuring that disadvantaged and marginalized farmers have equitable access to water and water management systems. The Human Rights Council may wish to clarify obligations in this regard.

G. Human rights obligations in the context of trade and investment agreements

63. Submissions received during the consultation process highlighted some concerns regarding the relationship between the obligations of States under bilateral investment treaties and their human rights obligations in relation to access to safe drinking water and sanitation. Some of the current proceedings before the International Centre for the Settlement of Investment Disputes (ICSID) opposing private water

⁷⁶ Paragraph 26 (c).

companies to States, draw attention to the potential impact that obligations arising from bilateral investment treaties can have on the duty of States to regulate companies in the context of private provision of water or sanitation services. It remains unclear whether and how the obligations of Governments under international human rights instruments will be taken into account in ICSID judgments.⁷⁷

64. While the High Commissioner has already explored aspects of this issue - including in relation to access to safe drinking water - and concluded, *inter alia*, that the duty of Governments should be guaranteed, this research would benefit from further analysis.⁷⁸

VI. CONCLUSIONS AND RECOMMENDATIONS

65. Access to safe drinking water and sanitation is an issue of great importance to the international community. The considerable number of submissions received from Governments,

⁷⁷ For the first time an ICSID tribunal agreed to receive *amicus curiae* briefs from civil society organizations in a pending case opposing private water providers to Argentina, noting that the circumstances of the case raised issues of public interest as “those systems provide basic public services to millions of people and as a result may give rise to a variety of complex public and international law questions, including human rights considerations”. See ICSID cases No. ARB/03/19 and ARB/03/17.

⁷⁸ Liberalization of trade in services and human rights: report of the High Commissioner (E/CN.4/Sub.2/2002/9); Human rights, trade and investment: report of the High Commissioner (E/CN.4/Sub.2/2003/9).

inter-governmental organizations, national human rights institutions and civil society are evidence not only of the interest in this issue, but also of the growing recognition that access to safe drinking water and sanitation must be addressed within a human rights framework. The increasing references to safe drinking water in human rights instruments as a component of other human rights similarly highlights the growing importance of this issue to the international community, as does the inclusion of access to safe drinking water and sanitation amongst the Millennium Development Goals. Importantly, an increasing number of States are recognizing safe drinking water as a human right in their constitutions, as well as national legislation, while national courts are enforcing it as a justiciable right.

66. The United Nations High Commissioner for Human Rights believes that it is now time to consider access to safe drinking water and sanitation as a human right, defined as the right to equal and non-discriminatory access to a sufficient amount of safe drinking water for personal and domestic uses - drinking, personal sanitation, washing of clothes, food preparation and personal and household hygiene - to sustain life and health. States should prioritize these personal and domestic uses over other water uses and should take steps to ensure that this sufficient amount is of good quality, affordable for all and can be collected within a reasonable distance from a person's home.

67. The High Commissioner notes that there is a need for further elaboration of certain aspects of human rights obligations attached to access to safe drinking water and sanitation. Existing human rights instruments have provided the basis for expert human rights bodies to elaborate on States' obligations, but the study has highlighted the fact that detailed practical advice is required on the following issues: the normative content of human rights obligations in relation to access to sanitation; the human rights obligations attached to the elaboration of a national strategy on water

and sanitation; the regulation of the private sector in the context of private provision of safe drinking water and sanitation; criteria to protect the right to safe drinking water and sanitation in case of disconnection; and the specific obligations of local authorities.

68. Debate is still needed on a number of questions, including the following: whether access to safe drinking water and sanitation is a self-standing right or is derived from other human rights; prioritization among various water uses; interaction with other areas of international law, including trade and investment law.

69. Although various mechanisms at the international, regional and national level monitor certain aspects and dimensions of human rights obligations in relation to access to safe drinking water and sanitation, this issue is currently being neglected. While United Nations special procedures and treaty bodies have contributed to clarifying human rights obligations in relation to access to safe drinking water and sanitation, their work also highlights the difficult task of covering these issues in a comprehensive and continuous way. Specific, dedicated and sustained attention to safe drinking water and sanitation is currently lacking at the international level, given the broad range of issues that special procedures and treaty bodies have to address within their mandate and the specific questions that arise in relation to access to safe drinking water and sanitation.

70. To this end, the High Commissioner:

(a) Encourages the Human Rights Council to continue its consideration of human rights obligations in relation to access to safe drinking water and sanitation as set out above;

(b) Encourages States, inter-governmental organizations, national human rights institutions, civil society and business enterprises to identify good practices in the field of safe drinking water,

sanitation and human rights and make them available to the Office of the United Nations High Commissioner for Human Rights.

ANNEX I

Relevant treaties with explicit reference to safe drinking water and sanitation

Instruments	Reference
<p>Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)</p>	<p>Article 14 (2)</p> <p>State parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular shall ensure to women the right;</p> <p>...</p> <p>(h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.</p> <p>The Committee on the Elimination of Discrimination against Women considered that this article obliges State parties to take all appropriate measures to ensure adequate living conditions in relation to water and sanitation, which are critical for the prevention of diseases and the promotion of good healthcare. ^a</p>
<p>Convention on the Rights of the Child (CRC)</p>	<p>Article 24</p> <p>1. State Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health...</p> <p>2. State Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:</p> <p>c) to combat disease and malnutrition, including within the framework of primary healthcare, through, inter alia, (...) the provision of adequate nutritious foods and clean drinking water (...)</p> <p>The UN Committee on the Rights of the Child underlined that under article 24 States have a responsibility to ensure access to clean drinking water and that such access is particularly essential for young children's health.^b</p>

^a Committee on the Elimination of Discrimination Against Women general recommendation No. 24 (1999) on article 12 of the Convention (women and health), para. 28.

^b Committee on the Rights of the Child, general comment No. 7 (2006) on implementing child rights in early childhood, para. 27.

Convention on the Rights of Persons with Disabilities (CRPD)

Article 28 – Adequate standard of living and social protection

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

(a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs

ANNEX I (continued)

Instruments	Reference
<p>ILO Convention No. 161 of 1985 on Occupational Health Services</p>	<p>Article 5 Without prejudice to the responsibility of each employer for the health and safety of the workers in his employment, ... occupational health services shall have such of the following functions ... :</p> <p>(b) surveillance of the factors in the working environment and working practice which may affect workers' health, including sanitary installations, ...</p>
<p>African Charter on the Rights and Welfare of the Child</p>	<p>Article 14</p> <p>1. Every child shall have the right to enjoy the best attainable standard of physical, mental and spiritual health.</p> <p>2. State Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:...</p> <p>(c) to ensure the provision of adequate nutrition and safe drinking water.</p>
<p>Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa</p>	<p>Article 15: Right to Food Security</p> <p>States Parties shall ensure that women have the right to nutritious and adequate food. In this regard, they shall take appropriate measures to:</p> <p>(a) provide women with access to clean drinking water, ...</p>

ANNEX II

Relevant guidelines and principles with explicit reference to safe drinking water and sanitation

Instruments	Reference
Standard Minimum Rules for the Treatment of Prisoners	<p>15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.</p> <p>20. (2) Drinking water shall be available to every prisoner whenever he needs it.</p>
United Nations Rules for the Protection of Juveniles Deprived of their Liberty	<p>Article 34 Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.</p> <p>Article 37 Every detention facility shall ensure that every juvenile receives food that is suitably prepared ... Clean drinking water should be available to every juvenile at any time.</p>
United Nations Principles for Old Persons	<p>Independence</p> <p>1. Older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help.</p>
Guiding Principles on Internal Displacement	<p>Principle 18</p> <p>1. All internally displaced persons have the right to an adequate standard of living.</p> <p>2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:</p> <p>(a) Essential food and potable water;</p> <p>...</p> <p>(d) Essential medical services and sanitation.</p> <p>3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic</p>

	supplies.
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ANNEX II (continued)

Instruments	Reference
<p>ILO Recommendation No. 115 of 1961 on Workers' Housing</p>	<p>Suggestions concerning methods of application ...</p> <p>7. The housing standards referred to in Paragraph 19 of the General Principles should relate in particular to...</p> <p>(b) the supply of safe water in the workers' dwelling in such ample quantities as to provide for all personal and household uses;</p> <p>(c) adequate sewage and garbage disposal systems; ...</p> <p>8. Where housing and accommodation for single workers or workers separated from their families is collective, the competent authorities should establish housing standards providing, as a minimum, for: ...</p> <p>(c) adequate supply of safe water;</p> <p>(d) adequate drainage and sanitary conveniences; ...</p>
<p>Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national security (FAO)</p>	<p>3.6 In their poverty reduction strategies, States should also give priority to providing basic services for the poorest, and investing in human resources by ensuring access to ... clean drinking water, adequate sanitation ...</p> <p>8.1 States should facilitate sustainable, non-discriminatory and secure access and utilization of resources consistent with their national law and with international law and protect the assets that are important for people's livelihoods. States should respect and protect the rights of individuals with respect to resources such as land, water, ...</p>