



ACF - INTERNATIONAL NETWORK

# THE RIGHT TO WATER

EMERGENCE, DEFINITION, CURRENT SITUATION AND STAKEHOLDERS POSITIONS

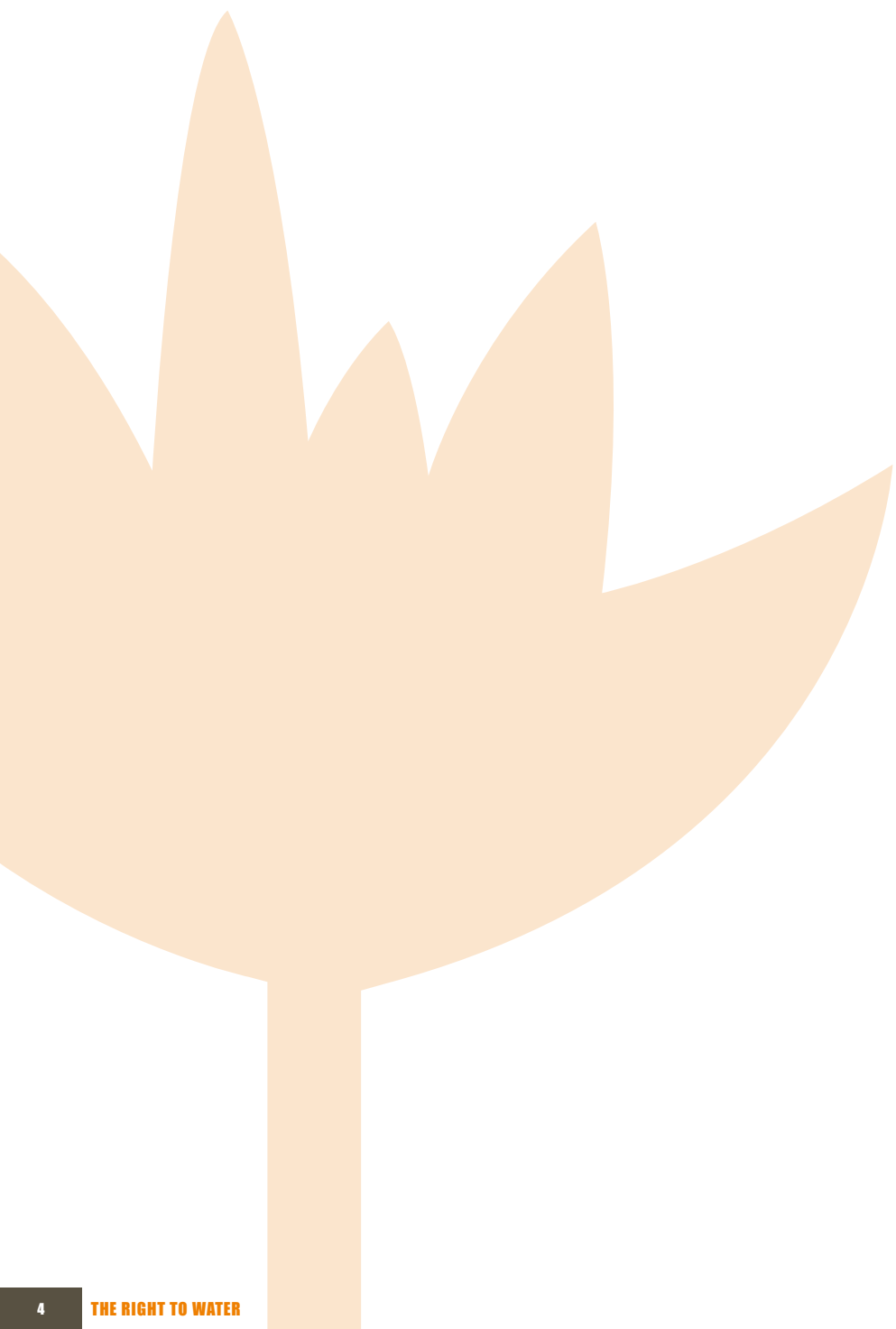




# THE RIGHT TO WATER

EMERGENCE, DEFINITION, CURRENT SITUATION AND STAKEHOLDERS POSITIONS

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# EXECUTIVE SUMMARY

The complex and multidimensional issue of water has received much attention over the past three decades—and especially since the launching of the International Drinking Water Supply and Sanitation Decade (IDWSSD, 1981-1990). Its urgency, from a humanitarian standpoint, is now universally recognised, particularly in the most vulnerable countries. Indeed, according to the experts, approximately 460 million people (8% of the world's population) lack water<sup>1</sup>, and two thirds of humankind is at risk of experiencing moderate to severe water shortage sometime before 2025.

In the face of this global challenge, the concept of the “right to Water” has emerged over the past few years, promoting a human-centred approach focused on the satisfaction of basic needs. This concept took on true scope in 2002<sup>2</sup>, when the Committee on Economic, Social and Cultural Rights (CESCR) adopted General Comment No. 15, which, for the first time, recognised the right to Water as a fundamental human right. Indeed, the 151 countries parties that ratified the ICESCR (1966)<sup>3</sup> must ensure that their entire population has access to “sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses”<sup>4</sup>. This text, which defines a corpus of States’ obligations relative to the right to Water, played a major role in defining the concept, now clearly recognised at the international level.

Adoption of the Millennium Development Goals (2000), a joint political commitment by 189 nations, played a key role in the emergence of the debate on the right to Water, putting water back into the world political spotlight after a doctrine favouring private sector management had largely depoliticised the water issue in the 1990s.

Since then, the issue has been discussed in every international forum: summit conferences, activist gatherings, etc. A broad range of actors is mobilising in favour of the recognition of the right to Water as a fundamental and inalienable human right; various groups are pressing for inclusion of the right to Water in national legislation and constitutions; others are arguing in favour of the right to Water being adopted in a UN international convention. To reinforce this mobilisation, the UNDP, in its *Human Development Report 2006*, which is focused on access to water, offered four general recommendations for achieving the MDGs, including recognition of the right to Water in national statutes.

An increasing number of militant and lobby groups are getting involved in the global struggle for access to water and sanitation for all, spurred by the occasionally well-publicised failures of the public-private partnerships (PPPs) favoured by international financial institutions since the early 1990s.

Initiatives from various spheres are coming together to demand the adoption of a United Nations Convention on water, just like those on desertification and climate change that came out of the Rio Conference (1992). In the meantime, the Office of the United Nations High Commissioner for Human Rights has started work on this issue, issuing a report in September 2007, 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, and especially under the Universal De-

1 / Tazi Sadeq (H.) L'incontournable question de l'eau, Special issue for the Johannesburg Summit (2002), Institut de l'Energie et de l'Environnement de la Francophonie et Organisation Internationale de la Francophonie, numéros 55-56-57, pp. 150-160

2 / Adoption of General Comment No. 15 on 26 November 2002 by the CESCR. This is an interpretation of the 1966 ICESCR. It refers, more particularly, to Articles 11 and 12, which make implicit reference to the right to water, as the Committee explains.

3 / The International Covenant on Economic, Social and Cultural Rights (ICESCR) was implemented in 1976.

4 / Definition given by General Comment No. 15



claration of Human Rights (1948). The present study, which involved all water, sanitation and hygiene stakeholders (States, institutional donors, civil society, NGOs and international organisations), shows that, of all donors, the DFID has gone the furthest in recognising the right to Water and promoting its implementation.

Nations of the South are increasingly taking ownership of this issue, despite the fact that access to water is seen more as a technical and economic challenge than one of individual or collective rights.

Testimonies coming out of African civil society show that the most pressing need remains the political will to achieve this right, whether recognised in national statutes or not. The ultimate guarantee of respect for the right to Water will come from the States themselves, even though an international tool (such as a UN convention) could be a substantial advantage.

France offers a dynamic and complementary panorama (between field action and advocacy) with a quite considerable number of organisations active in this area. The recognition of the right to Water at the national level in December 2006 has obviously been instrumental in facilitating these activities<sup>5</sup>.

In addition, while the humanitarian NGOs—similar to ACF-IN in their methods of action—have very little involvement in this area, they are all mobilised and familiar with the concept. Most intend to consider integrating this concept into their policies and strategies.

A growing number of different initiatives aim at gaining recognition for, applying, and implementing the right to Water, particularly at the national level. Rather than a vital human need, or a basic need, access to water is increasingly being presented as a fundamental right, which means that local public authorities are required to create the conditions for its attainment. Concepts, responsibilities and duties—particularly governmental—are thus undergoing significant change. So much so that, according to Professor Amidou Garane explains: «*The need to establish the right to water as a fundamental human right has become increasingly evident, on both the international and national level*<sup>6</sup>.»

An overview of factors has enabled us to draw up a quite comprehensive list of actors mobilising for the right to Water, and to identify development opportunities for ACF-IN, all of which will be presented in the conclusion to this paper.

It is quite true to say that the innovative approach taken by ACF-IN represents an added value added to its current range of expertise not only in terms of operations but also for advocacy and communications and will enable the Association to take a strong and well-founded stance on this issue.

### **How to use this document**

This wealth of information contained in this document is intended for use by all those working within ACF's International network, both in the field and in the various Head Offices.

It responds to a number of questions on the right to Water raised by many of the network's active members.

It will undoubtedly help everyone working in water, sanitation and hygiene—not just those providing technical services, but also those in advocacy and communication—to develop initiatives in respect of, or directly related to, the right to Water.

5 / Law n° 2006-1772, 30 December 2006 on Water and Aquatic Environments

6 / Garane (A.), La mise en œuvre du droit à l'eau en Afrique de l'Ouest. In/ Guillaume Grisel, La mise en œuvre du droit à l'eau, Actes du XXIX Congrès ordinaire de l'IDEF, Publications of the Swiss Institute of Comparative Law n° 53, Schulthess. (Only in French)

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# LIST OF ACRONYMS

<b>ACF</b>	Action contre la Faim
<b>ACF-IN</b>	Action contre la Faim International Network
<b>ACME</b>	Association pour un Contrat Mondial de l'Eau
<b>AFD</b>	Agence Française de Développement
<b>ALMAE</b>	Maghreb Machrek Alliance for Water
<b>AMECE</b>	Global Assembly of Elective Representatives and citizens for Water
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights
<b>CNCDH</b>	Commission Nationale Consultative des Droits de l'Homme (National Human Rights Consultative Commission, France)
<b>COHRE</b>	Centre on Housing Rights and Evictions
<b>DFID</b>	Department for International Development (UK)
<b>DPS</b>	Delegation of Public Services
<b>DWSS</b>	Drinking Water Supply and Sanitation
<b>ECHO</b>	European Commission Humanitarian Aid department
<b>EU</b>	European Union
<b>EuropeAid</b>	European Union cooperation office
<b>FAO</b>	United Nations Food and Agriculture Organization
<b>FIDH</b>	Fédération Internationale des Droits de l'Homme (International Federation for Human Rights)
<b>GC 15</b>	General Comment n°15
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICRC</b>	International Committee of the Red Cross
<b>IFRC</b>	International Federation of Red Cross
<b>IDWSSD</b>	International Drinking Water Supply and Sanitation Decade
<b>IFAD</b>	International Fund for Agricultural Development
<b>IFI</b>	International Financial Institutions
<b>IGO</b>	Intergovernmental Organisation
<b>ILO</b>	International Labour Organization
<b>IMF</b>	International Monetary Fund
<b>IRC</b>	International Rescue Committee
<b>ICWE</b>	International Conference on Water and Environment
<b>MDGs</b>	Millennium Development Goals
<b>MSF</b>	Médecins sans Frontières
<b>NGO</b>	Non Governmental Organisation
<b>ODA</b>	Official Development Assistance
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>PDA</b>	Public Development Aid



<b>PPP</b>	Public Private Partnership
<b>PRSP</b>	Poverty Reduction Strategy Paper
<b>SAP</b>	Standard Adjustment Plan
<b>SDPRP</b>	Sustainable Development and Poverty Reduction Strategy Program
<b>UN</b>	United Nations
<b>UNCCD</b>	United Nations Convention to Combat Desertification
<b>UNCS</b>	United Nations Commission on Sustainable Development
<b>UNCED</b>	United Nations Convention on Environment and Development
<b>UNDP</b>	United Nations Development Programme
<b>UNEP</b>	United Nations Environment Programme
<b>UNESCO</b>	United Nation Educational Scientific and Cultural Organisation.
<b>UNHCR</b>	Office of the UN High Commissioner for Refugees
<b>UNICEF</b>	United Nations Children's Fund
<b>USAID</b>	United States Agency for International Development
<b>WASH</b>	Water, Sanitation and Hygiene
<b>WB</b>	World Bank
<b>WDM</b>	World Development Movement
<b>WHO</b>	World Health Organisation
<b>WSF</b>	World Social Forum
<b>WTO</b>	World Trade Organisation
<b>WWC</b>	World Water Council
<b>WWF</b>	World Water Forum



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## ACTORS ENCOUNTERED DURING THE PREPARATION OF THIS REPORT

We should like to thank everyone who generously took the time to be interviewed during the preparation of this document.

### Actors interviewed for this study:

- **Académie de l'eau**, M. Henri Smets
- **Fondation France Libertés**, M. André Abreu
- **Aquafed**, M. Gérard Payen
- **Veolia**, M. Nicolas Renard
- **Veolia Water Force**, M. P. Van Develde
- **World Water Council**, Ms. Céline Dubreuil and M. Paul Van Hofwegen
- **Association 4D**, M. Jean Louis Redaud
- **Ps-Eau**, M. Pierre Marie Grondin
- **Green Cross**, M. Bertrand Charrier

### Actors approached:

- **World Development Movement** (UK), Ms. Vicky Cann
- **Blue Planet Project** (Canada), M. Anil Naidoo
- **World Water Contract**, M. Riccardo Petrella

### External meetings and conferences attended during the preparation of this document:

- **“Rencontres Internationales du Droit à l'eau**, organised by Fondation France Libertés, Marseille, 27 and 28 November 2006.
- **“Presentation of the UNDP report”**, organised by the Paris City Council and the UNDP, 10 November 2006.
- **“Water multinationals and southern markets: Why did Suez leave Buenos Aires and La Paz?”**, debate organised by GRET/LATTS, Paris, 13 November 2006.
- **“Bridge Initiatives Meeting”**, Dijon, 16 October 2006.
- **“World Social Forum”**, Nairobi, 20 – 25 January 2007.
- **“Global Assembly of Elected Representatives and Citizens for Water”** (AMECE), 18 – 20 March 2007.

Thanks also to ACF International field teams for collecting statements from beneficiaries that enriched this study, and to staff at ACF International Head Offices, especially the Water, Sanitation and Hygiene (Mr Jean Lapegue) and Advocacy (Ms. Anne Garella) sections at ACF-France Headquarters



# INTRODUCTION AND OBJECTIVES OF THIS DOCUMENT

Water, unquestionably the source of all life, has also become one of the key strategic issues of our time. According to the World Health Organisation (WHO, 2004), one person out of four (or 1.4 billion people) lacks access to safe drinking water, one out of three (or 2.4 billion) has no access to sanitation, and 80% of diseases are water-related. The already-unmet demand is constantly growing, whilst the supply is shrinking due to demographic, industrial and agricultural pressures, rural exodus, and urbanisation. Water, the source of all life, can also be a source of destruction in human lives—it can carry illness and death, and is often exploited as an instrument of armed conflict.

This complex, multidimensional issue that interacts with many other aspects of human life, now has the attention of the international community as a whole. Therefore, the international community has a duty to act to promote development by adopting a strategy that puts human beings at the heart of the debate, and whose goal is the right to water and sanitation for all. This objective is clearly spelled out in the Millennium Development Goals (MDGs), which call for reducing by half the number of people lacking access to safe drinking water and sanitation by 2015. In its 2006 Human Development Report, the United Nations Development Program (UNDP) ticked off a list of ways in which they are already behind schedule. Greater mobilisation of the international community is therefore needed. The establishment and implementation of a universal right to Water could serve as a framework for reaching the MDGs by 2015.

Since the declaration of the International Drinking Water Supply and Sanitation Decade (IDWSSD, 1980-1990) at the Mar del Plata Conference in Argentina, issues and debates around universal access to water have evolved. Moreover, the right to Water is implicitly recognised as an economic and social right by the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), a treaty ratified by 157 nations<sup>7</sup>. In addition, the UN General Assembly recognised it as a fundamental human right in 2002 in General Comment No. 15 (GC 15) on the right to Water. Today, General Comment No. 15 represents the most important international reference on the right to Water, but despite its official nature, it is still largely unknown and rarely applied.

A human rights approach is now beginning to emerge, in which access to water is seen not just a basic need, but as a human right that is a prerequisite to the achievement of many other human rights. This approach puts human beings back at the centre of the debate over water. Indeed, a group of countries have begun a process with the Office of the United Nations High Commissioner for Human Rights (2006) to have the right to Water explicitly recognised as a human right. Furthermore, in both the North and the South, many international bodies and civil society organisations—advocacy groups, cooperation agencies, governments, etc.—are joining forces to promote universal access to water.

This situation requires that Non-Governmental Organisations (NGOs), like ACF-IN, become involved in this issue, so that the voices of the poorest are heard, and to ensure that they are not, yet again, excluded from major decisions and international debate.

ACF-IN -by virtue of its remedial and preventive water, sanitation and hygiene (WASH) efforts (particularly in support of nutrition and health projects) in more than 40 of the poorest countries - has a duty to take a position and act on this issue. ACF-IN made a public commitment to work toward realisation of the MDGs, particularly Goal 7, Target 10, during the 2006 World Water Forum (WWF) in Mexico City. Thus the right to Water - related to implementation of the MDGs and seen as a means of achieving them - is a central issue to be explored in depth.

7 / <http://www.ohchr.org/english/bodies/ratification/3.htm>

This document, therefore, has two main objectives:

- To clarify the notion of the right to Water by analysing official documents in force in 2007 (particularly United Nations General Comment No. 15) and studying the international debate on the subject.
- To study international right-to-Water mobilisation efforts, progress, and prospects.

This study has been drafted to underpin ACF-IN's position paper on the right to Water, which was based on a detailed study of United Nations General Comment No. 15.

Both documents are consistent with the various instruments that ACF-IN uses in its water and sanitation strategy (water policy, technical policy, etc.), and with those of a more general nature like the ACF-IN Charter. Given the interdisciplinary nature of the water issue, it would be surprising if this effort were completely independent of ACF-IN's other spheres of action.

In preparing this document, continual efforts were made to consult the various actors concerned and monitor international right-to-Water efforts. Particular attention was paid to water and sanitation policies of the main institutional donors (ECHO, EU, DFID), to the position of humanitarian organisations working in water and sanitation (Oxfam, MSF, IRC, CARE) and to that of international organisations (UNICEF, ICRC, IFRC), advocacy networks (Council of Canadians, Green Cross International, COHRE, World Water Contract, etc.), and, finally, civil society and WASH programme beneficiaries, without which this document would not have been complete.

This document is intended for internal use. It will be distributed to the ACF International network's technical, operations, communications and advocacy personnel, both at Headquarters and in the field.

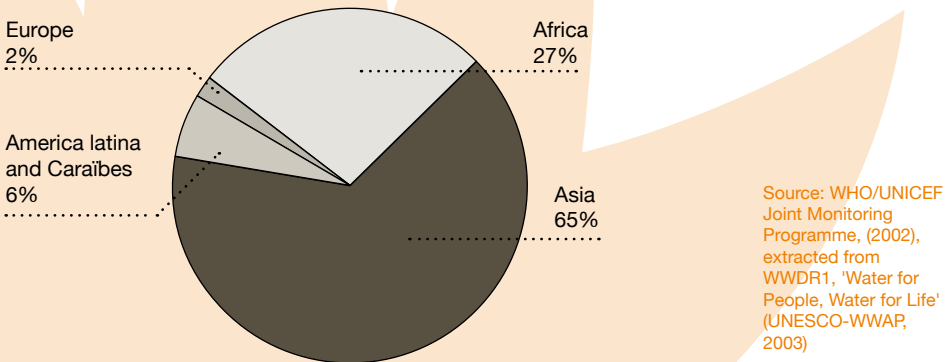
It should be noted that the "Right to Water" discussed throughout the document is a condensed form of the expression "right to universal access to water and sanitation." It does not refer to "water rights."

# WATER AND SANITATION: A GLOBAL ISSUE. WHY DO WE NEED A RIGHT TO WATER?

*"The lack of water or its poor quality kills 10 times more people than all the wars combined."* – World Water Council, 2005

Water is a limited resource that is essential to life. Despite this obvious fact, statistics on access to water and sanitation are alarming: 17% of the world's population lacks access to safe drinking water, and 42% lacks access to basic sanitation<sup>8</sup>. The populations of rural and peri-urban areas and, more generally, the poorest populations<sup>9</sup>, are the hardest hit by this phenomenon: water sources that are unprotected from possible pollutants, extremely high water prices<sup>10</sup>, etc. More than two thirds of those without access to safe water live in Asia, and 58% of the population of Africa lacks access to water<sup>11</sup>. Moreover, it is women and children who do most of water-related chores.

**Figure 1. Safe drinking water, distribution of unserved populations by continent.**



The global water crisis is worsening due to the continually increasing demand for water brought about by demographic growth, industrialisation, rural exodus and urbanisation (the latter having helped create extremely poor sanitation conditions). Under pressure from these same factors, the per capita renewable water supply worldwide has fallen by 58%<sup>12</sup>.

This crisis is a significant obstacle to human progress<sup>13</sup>, due to water's role in the satisfaction of many other basic needs and human rights: health, education, dignity, socio-economic development, etc. According to UNDP's Human Development Report 2006, the water crisis exacerbates North-South

8 / Source: WHO, 2004

9 / According to the UNDP Human Development Report 2006, nearly two out of three people without access to clean water live on less than US\$2 per day, and one out of three on less than US\$1 per day.

10 / For example, the UNDP Human Development Report 2006 states that "People living in the slums of Jakarta, Indonesia, Manila, the Philippines and Nairobi, Kenya, pay 5–10 times more for water per unit than those in high-income areas of their own cities..." In urban settings, poor households without piped water pay, on average, 5 to 25 times more than average households with piped water for the same amount of water, and this represents, on average, 40 to 50% of their monthly budget.

11 / Worldwide, Africa has the poorest coverage.

12 / Postel (S.L.) and Wolf (A.T.), Dehydrating Conflict, Foreign Policy Magazine, Sept/Oct. 2000 <http://www.foreignpolicy.com>

13 / UNDP Human Development Report 2006

inequalities, as well as the inequalities between rich and poor within nations themselves. It thus exposes a significant segment of the population to poverty, vulnerability and insecurity, especially in developing countries.

The issue of access to water and sanitation is also closely related to public health issues. According to the WHO (2004), 1.8 million people - 90% of them children under five years, most of them in developing countries - die annually from diarrhoeal illness (including cholera); 88% of diarrhoeal illness is attributable to poor quality water, inadequate sanitation and poor hygiene. Each year, 1.2 million people - 90% of them children under five years - die from malaria. According to the WHO (2005), diarrhoea is the second deadliest disease in children under five years. In 2001, former Secretary-General of the United Nations Kofi Annan declared, "*We shall not finally defeat AIDS<sup>14</sup>, tuberculosis, malaria, or any of the other infectious diseases that plague the developing world until we have also won the battle for safe drinking water, sanitation and basic health care.*"

Finally, the water sector is particularly vulnerable to corruption. According to estimates made for World Water Week (Sweden, 2007), corruption is believed to be responsible for a 20 to 40% reduction in the efficiency of the water sector, and greatly favours pollution and overexploitation of both ground and surface water. If little is being done at the moment to fight this global scourge, the main reason for its spread seems to be the lack of good governance and the lack of monitoring of water resource use. Furthermore, the 2nd United Nations World Water Development Report<sup>15</sup> (2006) raises the issue of governance crisis and reveals that, although there are no precise figures, corruption costs the water sector millions of dollars annually, and does enormous damage to the water supply, particularly that intended for the world's poorest. The report mentions the results of a study conducted in India, according to which 41% of those surveyed had paid more than one bribe during the previous six months to falsify their water meter readings; 30% had paid to expedite repair work, and 12% had paid to expedite new water connections and the installation of sanitation systems. Finally, Michel Camdessus, coordinator of the Camdessus Report published for the 2003 WWF in Kyoto, wrote there that the water sector "*is probably one of the areas where corruption strikes the most*<sup>16</sup>".

That there is a humanitarian crisis is now universally recognised—there is even a dollar figure on its cost: more than 10 billion dollars a year for 10 years will be needed to ensure acceptable drinking water by 2015.

In 2002, the UN Committee for Economic, Social and Cultural Rights launched an unprecedented effort by adopting General Comment No. 15<sup>17</sup>, which asserts that "***water is fundamental for life and health. The human right to water is indispensable for leading a healthy life in human dignity. It is a pre-requisite to the realization of all other human rights.***" Access to water is no longer seen merely as a need, an isolated aspect of human life, but as a fundamental right and a pre-requisite to the achievement of other fundamental human rights explicitly recognised at the international level<sup>18</sup>.

Prior to adoption of General Comment No. 15, access to water and sanitation - not just an end, but also a means - had already been implicitly recognised as a right through the official recognition of its correlate rights, which can be defined as follows:

14 / An increasing number of studies are looking at the relationship between water quality and AIDS.

15 / This report is published every three years. It offers the most complete assessment to date of the earth's fresh water resources. It's most recent, second edition, entitled, "Water: a shared responsibility," was presented at the 4th World Water Forum (Mexico City, 16-22 March 2006). The report emphasized the importance of governance in managing world water resources and fighting poverty.

16 / Lenglet (R.) and Touly (J.L), L'eau des multinationales: Les vérités inavouables, Fayard (p 159).

17 / General Comment No. 15 on the right to safe drinking water was adopted in November 2002 by the Committee for Economic, Social and Cultural Rights (CESCR), pursuant to implementation of the International Covenant on Economic, Social and Cultural Rights, which the UN General Assembly had adopted in 1966.

18 / That is, rights subject to international pacts or treaties ratified by States parties, and which therefore constitute a legal right.

- **The right to life** is explicitly recognised in the Universal Declaration of Human Rights (1948). No water, no life!
- **The right to adequate food**<sup>19</sup>. Agricultural production accounts for 70 to 80% of all water used by humans, and it is estimated that one third of global food production relies on irrigation. Food security and the prevention of famine thus requires sustainable access to water. In addition, *“Water is an essential element for production of food crops. It is estimated that 40% of the world’s food is produced using irrigated farming systems. In the future, population growth and changing dietary patterns will necessitate increased agricultural production that can only come from better agricultural water use.”*<sup>20</sup>
- **The right to health**<sup>21</sup>. Men and women need clean water for good health. According to the WHO (2004), water is directly or indirectly responsible for the development of deadly diseases such as diarrhoea and malaria. According to the same sources, improving water quality would reduce morbidity attributable to diarrhoeal illness by 6 to 25%, including severe cases; better sanitation would reduce diarrhoea-related morbidity by 32%; and hygiene promotion, including hygiene education and simple hand washing, could reduce by 45% the number of cases of diarrhoeal illness. Thus access to water and sanitation plays a major role in the health of populations.
- **The right to self-determination**<sup>22</sup>. This right, which also includes the right of peoples to exploit and manage their own resources, is inseparable from the right to Water.
- **The right to an adequate standard of living**<sup>23</sup> requires sustainable access to water for socio-economic development and agricultural production. Water is the basis of the production that guarantees livelihood.
- **The right to human dignity**. Human dignity requires clean water and access to sanitation.
- **The right to education**<sup>24</sup>. In developing countries, women and children take care of most water-related chores. These take so long that mothers do not have enough time to educate their children, and, in turn, the children do not have any time to go to school. The 2006 UNDP Human Development Report reveals that 443 million school days are lost, on average, each year. Access to water thus favours school attendance - particularly that of girls<sup>25</sup>.
- **The right to housing** means that every person should be able to have permanent access to natural resources and safe drinking water.
- **The right to take part in cultural life**<sup>26</sup>. Water plays a central role in religious and cultural life in many communities. Destruction, expropriation or pollution of water-related cultural sites is a major obstacle to implementing a plan to protect the cultural identity of many ethnic groups.

19 / The right to food is recognized as a human right in Article 11.2. of the 1966 ICESCR. It is also recognized as a human right by the Office of the United Nations High Commissioner of Human Rights, and was the subject of reports by Jean Ziegler, the Special Rapporteur on the Right to Food for the Sub-Committee on the Protection and Promotion of Human Rights. Please refer to the following address <http://www.ohchr.org/english/issues/food/index.htm>.

20 / Guené (C.), Report on the for a law on international cooperation of local and regional authorities and water agencies in the domain of water supply and sanitation, Senate, No. 347, 16th June 2004, p. 7.

21 / Article 12 of the ICESCR refers to the right to health, and is the subject of General Comment No. 14 (2000), which links the right to health to the right to water.

22 / Article 2 of the ICESCR stipulates that “all peoples may, for their own ends, freely dispose of their natural wealth and resources.”

23 / Article 25 of the Universal Declaration of Human Rights (1948) maintains 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 [...]” The right to an adequate standard of living also appears in Article 11 of the ICESCR.

24 / Article 13 of the ICESCR recognises “the right of everyone to education.” This right is also the subject of General Comment No. 13 (1999).

25 / UNICEF’s report, Progress for Children: A Report Card on Water and Sanitation, Number 5, September 2006, is devoted to the issue of access to water and sanitation. It looks at the results on water and sanitation since the 1990s, and stipulates that much greater efforts will be needed in order to prevent the deaths of more than a million and a half children each year, primarily in the poorest countries. The report also stresses the fact that the lack of access to water and sanitation reduces school performance and attendance, particularly for girls, due to a lack of appropriate, basic sanitation facilities in the schools, or because girls must go fetch water for their families.

26 / ICESCR Article 15 recognises “the right of everyone [...] to take part in cultural life...”



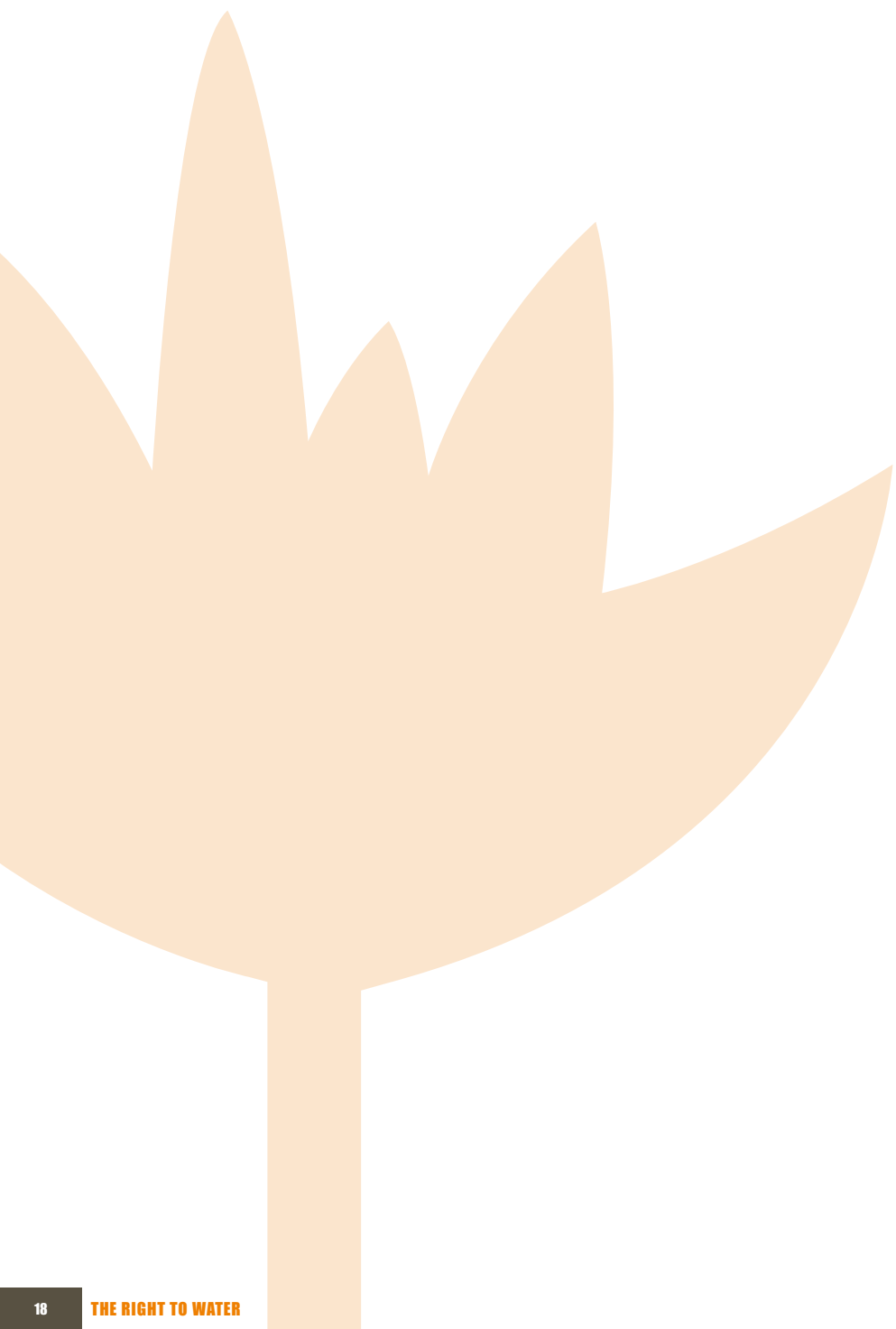
Hence water is undeniably an integral part of all aspects of human and economic development. In this connection, the UNDP Human Development Report 2006 states that *“clean water and sanitation are among the most powerful drivers for human development. They extend opportunity, enhance dignity and help create a virtuous cycle of improving health and rising wealth.”* And whilst access to water is a fight in itself, it is also part of a wider spectrum encompassing the fight against hunger (food security), health, poverty and the socio-economic development of communities.

There is now consensus within the international community: water is not just a need. It is also and above all a **fundamental human right**. Peter Woicke, Executive Vice President of the World Bank until 2005, noted in the International Herald Tribune<sup>27</sup> that *“access to safe water is and should be regarded as a human right.”* A representative of the private sector, Mr G. Mestrallet, Chief Executive Officer of Suez declared in 2001 that *“the universal right to access to water must be recognised”*<sup>28</sup>. The World Water Council believes that *“water is a fundamental human right.”* Former UN Secretary-General Kofi Annan declared in 2001: *“access to water is a basic right, necessary to human dignity.”* WHO considers that *“access to healthy and sufficient water is a human right.”* Many civil society organisations echo this position.

Despite this consensus, the right to Water remains an integral part of other rights without the benefit of explicit recognition at the international level. Only **General Comment No. 15** makes this right official, though it is not binding. Given, on one hand, the ambitious objectives set forth by the MDGs -unshakeable proof of global political commitment - and, on the other, the fact that their achievement is already behind schedule, the international community must do more to promote official recognition of an admittedly cross-cutting, yet existing, right to Water. The right to Water will not, of course, solve the world water crisis. It will, however, put human beings at the centre of the debate, and confer new rights and obligations on governments, populations, and all the actors involved in meeting the MDGs. Such a human-centred approach to water seems crucial, particularly for those who have the least.

27 / In. International Herald Tribune, 17 March 2003 issue.

28 / In. Le Monde, 26 October 2001, “La vraie bataille de l’eau”



# Chapter 1

## THE EMERGENCE OF THE RIGHT TO WATER



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The International Drinking Water Supply and Sanitation Decade (1980/1990), which was declared during the United Nations Conference on Water in Mar del Plata in Argentina<sup>29</sup> (1977), marked the beginning of thirty years of international action on the topic of water.

Since then the debate has moved on and has given rise to international political commitments. Today a stage has been reached where the right to Water is becoming officially recognised as a basic human right.

## A PRE-EXISTING IMPLICIT RIGHT TO WATER

The first question that should be asked is: Does the right to Water already exist? Is it recognised internationally? There are two possible replies.

### ■ AN IMPLICIT EXISTENCE

Yes, the right to Water does exist as it is **implicitly** recognised as a human right in two international conventions in force:

- **The Universal Declaration of Human Rights (1948)**, which states in article 25: *“Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services [...]”*.

The right to Water is implied: water is not mentioned but it is present as an essential element of food and is necessary for achieving an adequate standard of living. P. Gleick<sup>30</sup>, in an analysis of article 25 of the Declaration of Human Rights considered that the term “including” gives a sense of non-exclusiveness. Therefore, the elements needed to ensure “an adequate standard of living” mentioned in the article do not exclude other elements, which are just as essential, such as water.

Thus, according to this analysis, if the right to Water is not actually mentioned, it does not mean that it is totally excluded from the more general corpus of human rights.

- **International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966.)** The ICESCR implicitly deals with the right to Water in articles 11 (right to an adequate standard of living) and 12 (right to health). Details of these two articles can be found in Box 1.

It should be noted that these two articles were also the subject of General Comment No. 15: article 11 was the subject of General Comment No. 7 in respect of the right to adequate housing (1997)<sup>31</sup> ; article 12 was the subject of General Comment No. 14 in respect of the right to the highest attainable standard of health (2000)<sup>32</sup>.

29 / The Mar Del Plata Conference was the first international event to sound the alarm on the global water crisis. The 150 Nations present at this Conference declared 1980-1990, the International Drinking Water Supply and Sanitation Decade. This fixed an ambitious target: to supply accessible drinking water of adequate quantity and quality and set up basic structures to all the world's population by the end of the decade. The present situation clearly shows the very disappointing results: financial needs were underestimated, the economic crisis and demographic pressure complicated the situation. The IDWSSD only managed to keep in check the increasing needs due to demographic growth. It obtained some improvements in rural areas, but could not keep up with the pace of urbanisation, rampant during this period. The main progress of this Decade was that it heightened awareness to the complexity of water resource issues.

30 / See Gleick (P.), The human right to water, Pacific Institute for Studies in Development, Environment and Security, 1999.

31 / See General Comment No. 15; No. 7 at the following address: [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CESCR+Observation+generale+7.Fr?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CESCR+Observation+generale+7.Fr?OpenDocument)

32 / Statement E/C.12/2000/4. See General comment No.15 No.14 and the following address: [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.Fr?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.Fr?OpenDocument)

## Box 1. Articles 11 and 12 of the ICESCR (1966)

### Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to continuous improvement of living conditions. The States parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. [...]

### Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- b) The improvement of all aspects of environmental and industrial hygiene;
- c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; [...]

However, it is obvious that this implicit recognition does not make the right to Water a universal right recognised by States and that this right is therefore not applicable in its current form.

Moreover, these two international instruments are not legally binding. Their application is simply controlled by 'supervisory bodies' (the Human Rights Council and the Committee on Economic, Social and Cultural Rights) who are responsible for analysing national reports outlining headway made by countries in the application of the rights concerned, but they do not have any powers to make legally binding decisions.

## ■ AN EXPLICIT EXISTENCE

Yes, the right to Water does exist as it is **explicitly** recognised in three international conventions in force:

- **The Geneva Convention (1949) and its two additional protocols<sup>33</sup> (1977).** These texts deal explicitly with the right to Water by concentrating on drinking water<sup>34</sup>.
- **The Convention on the Elimination of All Forms of Discrimination against Women (1979)<sup>35</sup>.**
- **The Convention on the Rights of the Child (1989) Article 24<sup>36</sup>**

33 / Additional Protocol 1 on international conflicts and additional protocol 2 on non-international conflicts.

34 / See articles: Geneva III: Articles 20, 26, 29 and 46 ; Geneva IV: Articles 85, 89 and 127 ; Additional protocol I: Articles 54 and 55/ Additional protocol II: Articles 5 and 14

35 / Article 14 of the Convention on the Elimination of All Forms of Discrimination against Women stipulates that: "States Parties take all appropriate measures to eliminate discrimination against women in rural areas so as to ensure, respecting equality between men and women, their participation in rural development and its advantages and, in particular, it assures them the right: to benefit from adequate living conditions, in particular regarding housing, sanitation, the supply of water and electricity, transport and communications."

36 / Article 24 of the Convention on the Rights of the Child stipulates that: States Parties recognize the right of children to the enjoyment of the highest standard of health possible and to have access to medical services and rehabilitation services. They must strive to ensure that no child is deprived of his or her right of access to these services...(2) The States Parties shall pursue full implementation of this above right and, in particular, take appropriate measures to: (c) To combat disease and malnutrition including within the framework of primary health care, through inter alia the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution [...]



The right to Water is clearly stated in the international legal instruments in force, which have been ratified by many States. However, these States do not consider that reference to a right to access to drinking water in these two texts constitutes a universal right. Indeed, the signatory States generally consider that one cannot go from a specific corpus (in this case, women or children) and then deduce that it is part of the universal corpus. The same applies to the recognition of the right to Water during wartime (humanitarian law), which is not a right during peacetime.

## ■ CONCLUSION

If the right to Water is not explicitly included as a human right in the general instruments of positive law, it will continue to be considered by some as implicit and inferred from the right to life, to health and an adequate standard of living (implicit recognition). It is clear however, that this perception comes more from doctrine than law in a purely legal sense of the term. In order to go beyond doctrine, the aim today is to find the legal instruments that will implement this right and ensure that it is applied. This needs to be done, for even if the nature of a human right renders it implicitly inherent and universal its existence should not depend on the States.

Moreover, a number of regional conventions recognise the right to Water (see box 2).

### Box 2. Regional Conventions and the Right to Water

#### Regional Conventions that also recognise the Right to Water:

- **The African Charter on the Rights and Welfare of the Child**, (Addis Ababa, 1990). Article 14<sup>1</sup>.
- **The African Convention on the Conservation of Nature and Natural Resources** (Maputo, July 2003), signed by 33 States, stipulates in article V.1 that “the Contracting Parties ... shall endeavour to guarantee for their populations a sufficient and continuous supply of suitable water”.
- **The London Protocol on Water and Health** concerning the Convention on the Protection and use of Transboundary Watercourses and International Lakes (1992). Article 4, 5 and 6
- **The Senegal River Water Charter** (OMVS, 2002). Article 4.

## THIRTY YEARS OF INTERNATIONAL CONFERENCES. CONCEPTUAL PROGRESS

After the launching of the International Drinking Water Supply and Sanitation Decade (IDWSSD)<sup>37</sup>, during which it was established that: *“All people, whatever their state of development and their economic and social situation, have the right to access to clean drinking water of an adequate quantity and quality for their basic needs”* (see Appendix 5), the international community as a whole has become involved in the issues of water management and the right to Water<sup>38</sup>.

From 1992, the year of the Dublin Conference and the first Earth Summit in Rio de Janeiro, there followed a decade where the main focus was on methods of managing this resource. During this period

37 / The IDWSSD launched and co-ordinated by the United Nations was not a great success as confirmed by the consultation in New Delhi in September 1990, organized by the IDWSSD and UNDP. Results were inadequate in operational terms (number of people connected, continuity of supply, quality of water...), in institutional terms (not enough regulation, lack of national water policy, heavy bureaucracy) and in financial terms (sustainability of projects, paying off equipment, economic viability). Moreover, according to Sylvie Jaglin, writing in the French Revue Tiers Monde, “We are forced to admit that the work has been inadequate, including in towns where real progress has been made in water provision, but has not managed to compensate for demographic growth: in 1990, 244 million city dwellers still did not have ‘access to safe drinking water, that is 30 million more than in 1980.”

38 / The IDWSSD also saw the beginnings of a debate that still continues today: Is water a public good or an economic good?

it was recognised that water had an economic and social value and that the international community had to find the means to efficiently manage the resource, in particular through the privatisation of services (promulgation of the Public-Private Partnerships (PPP) as a management method). Subsequent debates were dominated by the search for the “right stakeholder”: private or public?

In the early 2000s there was another strategic turning point with the promulgation of the MDGs by the United Nations, which put man and his development back at the heart of the debate. The decade’s other landmark was the adoption of the General Comment No. 15.

## ■ INTERNATIONAL CONFERENCES IN BRIEF

During the last thirty years a number of international conferences have marked the significant progress made in the development of water issues and in the promotion of ways to manage the resource.

- **The International Conference on Water and the Environment (ICWE) in Dublin (1992)**, a preparatory conference for the first Earth Summit in Rio, laid down four basic principles:
  - Water is a finite and vulnerable resource which is essential to sustain life;
  - Water development and management should be based on a participatory approach, involving all stakeholders and users;
  - Women play a vital role in the provision, management and safeguarding of water;Water should be seen as an economic good which has an economic value for all its competing users (agriculture, industry). This latter notion seems to have been added in response to the unsustainable and wasteful use of the resource. It has also given rise to the development of market-orientated policies that favour water privatisation. However, this first conference does not deny the fact that water is a social good: “..the basic right of all human beings to have access to clean water and sanitation at an affordable price”
- **The first United Nations Conference on Environment and Development in 1992 (UNCED 1)**<sup>39</sup>, Rio de Janeiro, the second big gathering of the international community after the Stockholm Conference<sup>40</sup>, was marked by the launch of Agenda 21<sup>41</sup>, an programme of action that devotes a whole chapter (chapter 18) to the question of freshwater. It calls for the global management of freshwater and for the integration of sectoral water plans and programmes within the framework of national economic and social policy. For the first time, development and the environment were linked at the heart of the debate, but water still did not figure among the priorities on the international agenda.
- **The World Water Council<sup>42</sup> (WWC)** was created in 1996<sup>43</sup>, at the initiative of international organisations and water specialists with the mission to find solutions to water-related problems worldwide. Steered by the World Commission on Water, the WWC is responsible for organizing World Water Forums (WWF) every three years. These forums are an opportunity for all water stakeholders to meet and debate global water policies.
- **The 1st World Water Forum in Marrakech (1997)** adopted the “World Water Vision” project. Its purpose was to prepare a long-term vision of water, life and the environment through a series

39 / The informal name of this conference is “Earth Summit”.

40 / The Stockholm Conference (1972) was the first United Nations Conference to put the environment at the heart of the debates and which discussed the water issue. The conference also marked the establishment of the United Nations Environment Programme (UNEP).

41 / For more details on this matter, refer to Agenda 21’s web site: <http://www.un.org/french/ga/special/sids/agenda21/>

42 / For more details, refer to the World Water Council ‘s website. <http://www.worldwatercouncil.org/>

43 / In 1994, the World Bank gave financial and political support to setting up a World Water Council whose aim was to establish a “world policy on water” to be promoted by the financial institution. The initial financing from the World Bank is probably the source of numerous criticisms against the World Commission on Water from civil society, which is both committed and militant.

of meetings and conferences. The document was prepared for presentation to the second World Water Forum in The Hague in 2000.

- **The 2nd World Water Forum in The Hague (17 to 22 March 2000)** was an opportunity for the international community to discuss in more depth the question of the economic and social value of water<sup>44</sup>. The idea of solving the world water crisis by private sector investment<sup>45</sup> and cost pricing water (the principle of “full cost recovery”<sup>46</sup> was highlighted during the conference) were at the heart of debates, which gave rise to a number of new global strategies. The World Commission on Water highlighted problems of investments (a lack of infrastructures) as well as problems of management and planning (inefficient aid) from States. Given the levels of investment required, unsustainable behaviour and water wastage, the Commission advocated the privatisation of water and sanitation services. The Hague Forum heralded in more than a decade of advocating the privatisation<sup>47</sup> of the water sector<sup>48</sup>. This change of direction in world water policies coincides with the fact that most developing countries were embarking on Structural Adjustment Plans (SAPs) that push for the privatisation of basic social services for defaulting poorer States. Even if this forum emphasised that attention should be given to the poorest sectors, water was not considered as a right but rather as a need.

- In 2000, the General Assembly of the United Nations recognised that “**access to water is a fundamental right and not a need**”.

- In September 2000, the Heads of State of 189 nations adopted the **Millennium Declaration** marking a clear political commitment and objective on the part of the international community to reduce poverty. Goal 7, target 10 commits the signatories “*to halve the proportion of people without sustainable access to safe drinking water by 2015*”<sup>49</sup>.

- **The European Ministerial Conference in Bonn<sup>50</sup> (2001)** extended Millennium Development Goal No. 7 by proposing to halve the proportion of people without access to sanitation by 2015. This Conference considered that the Second Earth Summit to be held in Johannesburg would be an occasion to officially reinstate the question of access to basic sanitation in the MDG.

- **The Second Earth Summit in Johannesburg, Rio + 10 (28th August to 3rd September 2002)**<sup>51</sup>, was an occasion to disseminate PPPs rather than reflect upon the adoption of concrete action plans to reach the targets set in the Millennium Goals concerning water and sanitation. Sanitation was added to the MDG No. 7 on safe drinking water: “*By 2015, we agree to reduce by*

44 / The report entitled “Making Water Everybody’s Business: Practice and Policy of Water Harvesting” prepared at The Hague Forum indicates a willingness to involve the private sector in water management.

45 / The World Commission on Water wanted to double annual investment from the private sector in the water and sanitation sector, increasing this amount from 80 billion dollars to 180 billion dollars. The Commission considered that was the only way to reduce by 75% the number of people without access to drinking water and sanitation.

46 / The principle of “Full Cost Recovery” means that all the investment costs are covered by users, in other words that all services provided correspond to a market price.

47 / See the interview of Mr Ismail Serageldin, President of the World Commission on Water and Vice President of the World Bank on the H2O’s Internet website: <http://www.h2o.net/magazine>, as well as the interview of Mr. Bill Cosgrove, President of the World Water Vision Unit on the same website.

48 / In 1992, Ismail Serageldin, President of the Commission and Vice President of the World bank considered that: “governments of developing countries are already unable to cope with investment needs today, and they will be even less able to in the future (...). The main alternative is to attract private investment”, he added “governments must pull back from their role as service provider and transfer this responsibility to users and to the private sector. Above all, they will be responsible for creating an environment in which the incentives to investors and innovators will be assured and in which the interests of the public will be safe”.

49 / For more details, refer to the Millennium Declaration, <http://www.un.org>

50 / The Ministerial Conference in Bonn on freshwater (3rd to 7th December 2001) was organised in preparation for the second Earth Summit (Rio+10) which took place in Johannesburg (2002).

51 / See the Johannesburg Declaration



half the proportion of people who do not have access to safe drinking water or have no means to obtain it (as stated in the main points in the Millennium Declaration) and the proportion of people who do not have access to basic sanitation services.” During this Forum, President J. Chirac declared: “Today, almost half of the world’s population have no access to safe drinking water and sanitation. They suffer from diseases which can be fatal and hamper development. The situation may deteriorate further. The freshwater resources available per capita around the world has been decreasing dramatically, and, at the present rate, two thirds of the earth’s population will suffer from water shortages within the next few years. Access to safe drinking water and sanitation is a key development issue. It is an ecological issue, since water resources are rare. It is a solidarity issue, to enable access to the poorest and to disadvantaged areas. It is a public health issue. It is a social issue, since women and children are often the first to suffer from deficient infrastructures. It is an educational issue, since the time that they spend fetching water is time that could be spent studying<sup>52</sup>”.

- In November 2002, the CESCR adopted **General Comment No. 15**<sup>53</sup> on the Human Right to Water interpreting articles 11 and 12 of the ICESCR. This defines the standard-setting content of the Human Right to Water, as well as the obligations of States Parties. With its adoption, General Comment No. 15 has become a powerful tool for inducing debate on the possibility of recognising the right to Water as a human right.

- **The 3rd World Water Forum in Kyoto (2003)**. The Report of the World Panel on Financing Water Infrastructure: Camdessus Panel, known as the “Camdessus Report”, entitled “*Financing Water for All*” proposing a financing plan for attaining Goal 7, Target 10 on water and sanitation was first presented during the Kyoto World Water Forum. The report stated that PPPs “*would make water more attractive in the eyes of investors; they require an adapted regulation and legal framework, transparent contracting procedures, reliable cost recovery systems and public acceptance*”. This report also confirms that “*access to water is a right and a basic necessity*” and that “*water and sanitation must be accessible to all at an affordable price*”. The hundred or so Ministers and Senior Officials present nevertheless refused to recognise the “right to Water” and General Comment No. 15, considering that this specific right already existed, albeit implicitly in other treaty documents, or that additional declarations were of little use or too complicated politically.

Although it has no legal weight, the Kyoto policy statement contains nothing about the right to Water. The absence of any mention in the ministerial statement indicates the “over cautiousness” of participating States to formally recognise the right to Water. Moreover, the States reaffirmed that access to water is a basic necessity and not a right, and that water should be considered above all as an economic good.


During the Kyoto forum, France confirmed its commitment to the right to water, President Jacques Chirac requesting that: “access to water should be recognised as a fundamental right”.

- In 2003, “UN-Water” was set up to monitor progress during the period following UNCED 2 and to establish **World Water Days (WWD)** which would be celebrated on 22 March each year as of 2005. They would provide the occasion for multiple activities on a global scale to focus attention on water and sanitation issues. UNESCO then proclaimed 2003 as International Year of Freshwater<sup>54</sup>. The role of UN-Water was to coordinate all activities of the 23 UN agencies working on water issues, though in fact it had no real power.

52 / Quoted in Guené (C.), Report on the for a law on international cooperation of local and regional authorities and water agencies in the domain of water supply and sanitation, Senate, No. 347, 16th June 2004 p. 5

53 / Adoption of Comment No.15 during the 29th session of the United Nations General Assembly.

54 / Official site <http://www.wateryear2003.org/fr>



• During its 58th General Assembly<sup>55</sup>, of the UN proclaimed **2005/2015 as the International Decade for Action, “Water for Life”** as well as the 22nd of March 2005, as World Water Day. Coordinated by UN-Water, its main purpose was to support and coordinate action towards meeting the MDGs on water and sanitation. The first World Water Day on 22 March 2005 officially launched the Decade for Action. These events concern all civil society, international organisations and governments, who were invited to take action to promote and attain the MDGs.

• **The purpose of the United Nations Commission on Sustainable Development (UNCSD) (11 to 22 April 2005, New York)** was to draw up a policy document proposing a series of concrete measures to tackle the lack of progress in reaching the MDGs concerning access to water and sanitation. Certain misunderstandings of the concept of the right to water by stakeholders resulted in its being excluded from the final text: sometimes wrongly assimilated with exemption from payment for water by the Least Developed Countries, who considered that it would represent too heavy a financial burden at the time of its implementation; some developed countries, the USA and certain members of G77 found the concept to be too restrictive. Civil society and private enterprise, however, called for recognition of the right to water.

• **The 4th World Water Forum in Mexico (March 2006)** was the first world forum to fully debate the issue of the right to Water<sup>56</sup>. These debates made it possible to clarify the definition of the right to Water and clarify some misunderstandings. The Mexico WWF made considerable headway on the right to Water by raising the awareness to what the concept really involves. Discussions were particularly focused thanks to a committed civil society. The Ministerial Declaration still made no mention of the right to Water, even if 4 States (Cuba, Bolivia, Venezuela and Uruguay) and the WWC officially recognised it. These four same States, besides approving the final Ministerial Declaration with a few reservations, adopted two annexed declarations, which clearly mention that the right to Water is a basic human right. During this forum, the French water stakeholders (ministers, public bodies, local authorities, companies, NGOs, scientific and technical organisations, research centres etc.) were represented by the French Coordination for Water<sup>57</sup>, which issued nine statements. The fifth, entitled “*Access to water and sanitation for all*” was directly related to the right to Water and allowed for the development of two key ideas to make the right to water an effective right: first, identify the responsibilities of the local authorities concerned and second, practice solidarity in cost-sharing so that everyone can afford to pay. ACF-IN’s very active presence at the 4th World Water Forum was quite clear proof of its position that priority must be given to supplying water to the most vulnerable people when working towards meeting the MDGs.

• **The Mediterranean Bar Association of Lawyers meeting on “The Right to Water and Water Law” (23 and 24 March 2007, Marrakech).** This conference, which gathered together lawyers, engineers, architects and politicians from Morocco, Tunisia, Algeria, Italy, Spain and France, proposed the drawing up of a Mediterranean Convention that would assert the right to Water for all. In addition to the Convention, there was a proposal to create a website dedicated to the right to Water and water law and it was decided that each member of the Mediterranean Bar would organise a conference on the right to Water in 2008.

55 / Resolution A/RES/58/217

56 / During the Mexico Forum, 3 official sessions were held on the right to water: FT3.35 “Securing the right to water, from the local to the global, civil society perspectives”; FT 3.36 “The right to water: what does it mean and how to implement it”, FT 3.47 “ Human right to water”.

57 / <http://www.water-international-france.fr/>

## ■ CONCLUSION

After thirty years of international conferences, there have been significant developments in the concepts and issues involved that have resulted in the progressive emergence of the notion of the right to Water. As the international community gradually takes this concept on board, it is gaining ground and is increasingly identified as a key issue on the international agenda.

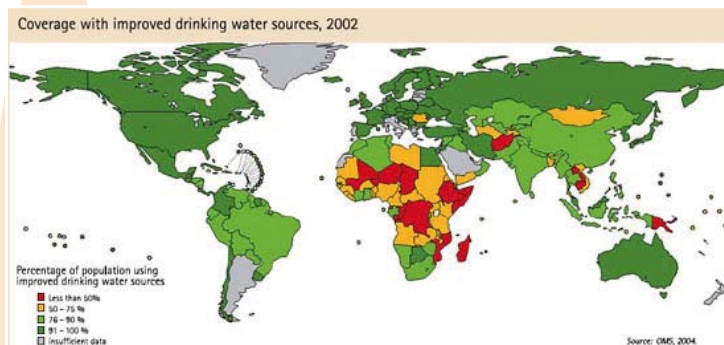
International debates, initially dominated by discussion around the respective roles of the private and public sectors in the management of water resources, neglected the key question of fulfilling basic human needs. These debates, focussed on finding the “right stakeholder”, prevented decision-makers from concentrating on the essential question of the inability of water distribution service providers to remedy the global lack of access to water (as illustrated by figure 2).

Today, a more anthropocentric approach focused on the respect of basic rights has emerged by way of General Comment No.15, which establishes the right to Water as a fundamental right. However, this right remains the “*poor relative*” of international law, as there is still no legislation on it. Nevertheless, the idea of a right to Water being recognised as a human right is gaining ground.

Finally, the WHO and UNICEF published a joint report in 2004<sup>58</sup> which indicates that MDG No. 7 will not be met by 2015. This political commitment, which has been made by the majority of the world’s Nations, will most probably not be achieved by its target date. Could this be in part due to the fact that despite thirty years of global debate focussing on this issue, there is still no international legal tool that has ruled on the right to Water? An international legal instrument “obliging” States already “morally” committed to reaching the MDGs (using MDG No. 7 as its main argument) could definitely take things forward and eventually lead to establishing the right to Water.

58 / Joint Monitoring Programme for Water Supply and Sanitation; Meeting the MDGS drinking water and sanitation target: a mid-term assessment of progress, WHO/UNICEF, 2004

Figure 2. Improved world coverage of sources of safe drinking water, 2002.



Source: Report on world health (WHO, 2004) in the 2nd United Nations World Water Development Report "Water, a shared responsibility" (UNESCO-WWAP, 2006)

## WHERE DO WE STAND TODAY? APPEAL TO THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

As seen in the last chapter, the international community is becoming increasingly pressing in its call for the right to Water to be recognised and applied and has refocused its approach on populations and their basic needs: access to water is primarily a question of survival! For this reason, the Mexico Forum and a number of other reports focussing on water for human use demonstrates the headway that has been made in this domain. The Human Development Report (UNDP, 2006) entitled "*Beyond Scarcity: Power, Poverty and the Global Water Crisis*", which is dedicated to the question of water, is particularly important. It proposes four general recommendations on how to reach the MDGs, including recognition of the right to Water. It is said that one of the linchpins to improving access to water is to "**Make water a human right** – and mean it. All governments should go beyond vague constitutional principles to enshrine the Human Right to Water in enabling legislation. To have real meaning, the human right has to correspond to an entitlement to a secure, accessible and affordable supply of water"<sup>59</sup>.

There is agreement at the international level on initiatives and statements whose purpose is to recognise the right to Water as a human right. Such recognition would not solve all the problems, but it would enable legal bases to be established worldwide and everyone's responsibilities and duties to be defined.

Today, some States have decided to take the recognition of the right to Water as a human right further and give it worldwide visibility. Thus, in October 2006, some countries - Spain and Germany at the forefront, backed by no less than 33 other countries<sup>60</sup> - approached the Office of the United Nations High Commissioner for Human Rights (OHCHR). These countries explicitly requested Ms. Louise

59 / Extract, UNDP Report 2006, Summary, pp 18.

60 / The countries which participated in this project are: Algeria, Germany, Belgium, Bolivia, Burkina Faso, Cameroon, Chile, Cyprus, Costa Rica, Cuba, Ecuador, Spain, Estonia, France, Greece, Guatemala, Ireland, Italy, Luxembourg, Mali, Malta, Morocco, Nicaragua, Nigeria, Panama, Holland, Peru, Portugal, Romania, Slovenia, Switzerland, East Timor, Uruguay. Countries which could oppose this resolution are Australia, China, Egypt, the USA and India.

Arbour, the High Commissioner of Human Rights, to conduct a detailed study on obligations relating to the right to Water, and on the tools available to fulfil them.

This international initiative led to a decision on human rights and access to water being taken on 21 November 2006 (A/HRC/2/L.3/Rev.2). This decision was adopted without a vote by the UN Human Rights Council and requested "(...) the Office of the United Nations High Commissioner for Human Rights, 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"<sup>61</sup>.

The report has been submitted to the 6th session of the Council<sup>62</sup>. The main recommendations and conclusions are set out in the box below.

### Box 3. Extract of the Right to water Council Report on the scope and content of the Human Right To Water (A/HRC/6/3)

#### 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, 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.

61 / Extract from Decision 2/104. dated 21 November 2006

62 / To support this, OHCHR has launched a consultation process among various stakeholders. Over 90 responses have been received from States, intergovernmental organisations (IGOs), local governments, National Human Rights Institutions, Non-governmental Organizations, the business sector, universities and individuals. OHCHR also held a consultation on 11 May 2007 on human rights and equitable access to safe-drinking water and sanitation, which focuses on the scope and content of human rights obligations to provide access to safe-drinking water and sanitation.



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, intergovernmental 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.

These steps aim to formally include the question of water in the agenda of the Human Rights Council<sup>63</sup>. This could also constitute a first step towards a UN convention on the subject.

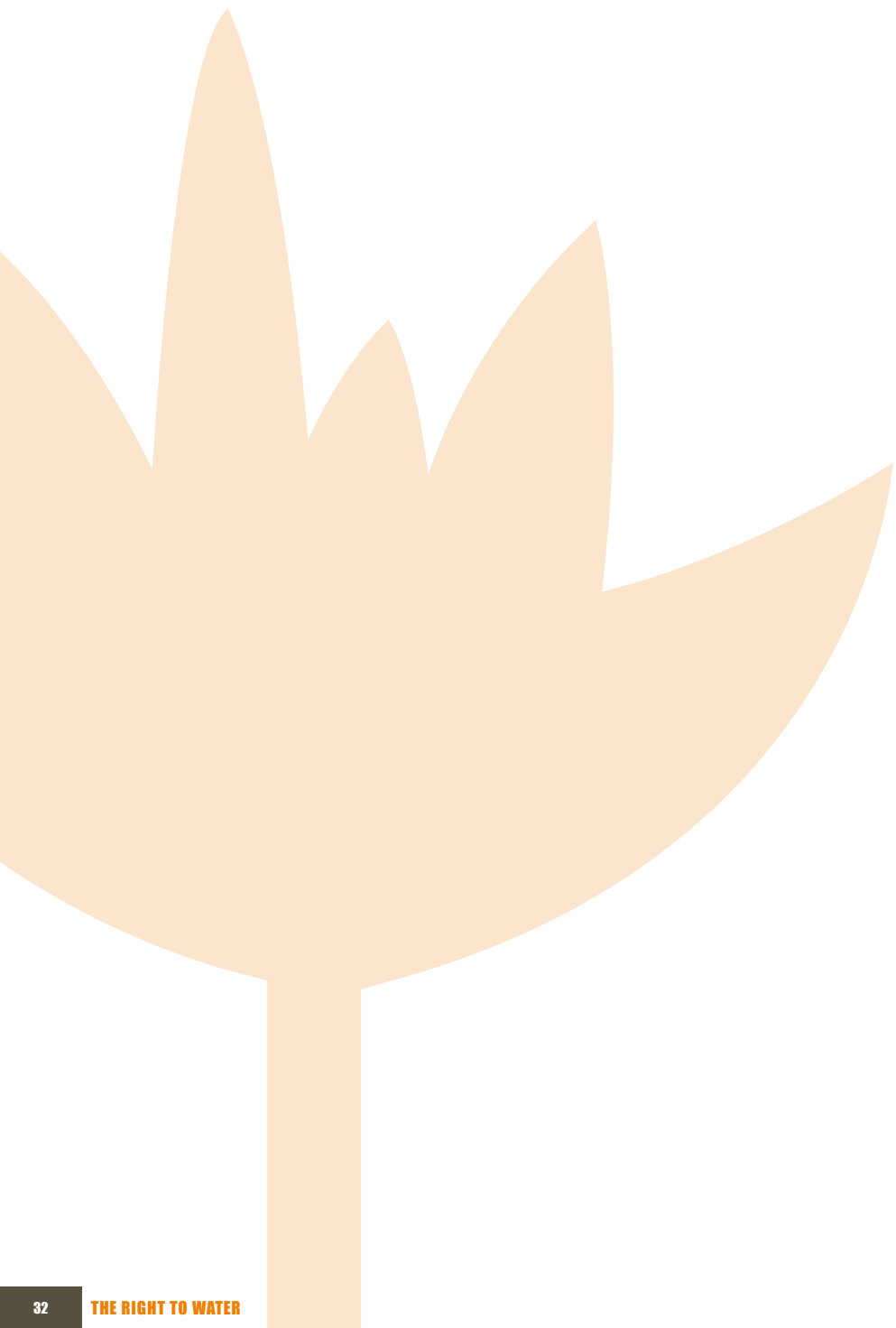
A number of civil society organisations are beginning to take action and are following and supporting these debates. For instance, several such Organisations, meeting to discuss the Declaration of Rome, (dated 10 December 2003), have declared that: *“leaving out water – 55 years ago – as an explicitly stated right in the Universal Declaration of Human Rights has prevented citizens from putting effective pressure on governments. In an international context marked by a growing neoliberal economism, it has favoured the affirmation, in national legislation and political practices, of approaches and management methods based on water being an ‘economic good’”*.

In the same vein, during the International Forum on the right to Water (November 2006, Marseille), Kathryn Deuss, President of the Swiss branch of ACME, publicly asked for: *a seat to be granted on the Council of Human Rights. Given the importance of water, we ask for increased participation and would like to obtain an observer seat on the International Council on Human Rights so that our proposal, concerning the right to Water, is heard and anchored in an international instrument of law”*.

Finally, the French National Consultative Commission on Human Rights (CNCDDH), as part of its draft opinion on the right to water (June 2007), issued an opinion which advocated recognition of the right to Water as a human right. *“The CNCDDH requests that the Human Rights Council adopt a resolution by which access to safe drinking water and sanitation would be recognised as a basic right. It should benefit, on the international level, from the same protection as other rights which are necessary to implement the “right to an adequate standard of living” (art. 25 of the Universal Declaration of Human Rights).*

63 / Water was part of the report on the Right to Food presented to the Human Rights Council by Mr Jean Ziegler, Special Rapporteur on the right to food.

In conclusion, numerous initiatives from organisations and international institutions, from civil society movements and from States are moving towards the recognition of the right to Water as a human right. The Human Rights Council offered a preliminary response in September 2007.





# Chapter 2

## GENERAL COMMENT No. 15: THE RIGHT TO WATER, A HUMAN RIGHT



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## INTRODUCTION

The International Covenant of Economic, Social and Cultural Rights (ICESCR), currently ratified by 115 countries, was adopted by the United Nations General Assembly in December 1966<sup>64</sup>. It establishes a set of human rights that are necessary for humankind to live in freedom and in dignity.

One of the milestones of the International Year of Freshwater (2003)<sup>65</sup> was the work of the Committee on Economic, Social and Cultural Rights (CESCR) that is entrusted with implementing the ICESCR and which resulted in the publication of **General Comment No. 15** (November 2002) on the right to water.

This General Comment (GC 15) makes a number of recommendations to assist States parties to put this right into practice, by virtue of two articles in the Covenant: Article 11 on the “*right to an adequate standard of living*”<sup>66</sup> and Article 12 on the “*right to the highest attainable standard of mental and physical health*”<sup>67</sup> both of which refer implicitly to the right to Water. GC 15 includes access to water and sanitation, thereby taking into account the MDGs and the 2002 Johannesburg Declaration on sustainable development.

**This document is the first official United Nations text to define the right to Water in detail.** GC 15 therefore ends a period of uncertainty and establishes the right to Water as a right in the same way as the right to health or the right to food. Moreover this document is a major step forward in the history of international human rights since it clearly shows that the right to Water is first of all a human right that is a prerequisite to the achievement of a great many other human rights that are recognised as such.

## GENERAL COMMENT NO. 15 IN DETAIL

The expression “right to water” is the abridged version of “**the right to access water and sanitation for all**”.

### Box 4. Definition of the right to Water as set out in GC 15

GC 15 defines the right to Water as the right for everyone to “**sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.**”<sup>68</sup> It advocates a human-centred approach, focussing on the satisfaction of needs and basic human rights.

However, the definition of the right to Water does not concern water in general, but only stipulates access to a **limited quantity of water** to satisfy basic needs to live in dignity and have access to sanitation. Therefore, the right to water for domestic and personal use concerns only a very small quantity of water, because globally:

- 69% of all available freshwater is used for agriculture.
- 23% for the industrial and energy sectors
- and only 8% for domestic use<sup>69</sup>.

64 / The covenant came into effect in 1976.

65 / See website <http://www.wateryear2003.org>

66 / Article 11 refers to “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing”, and recognizes “the fundamental right of everyone to be free from hunger”.

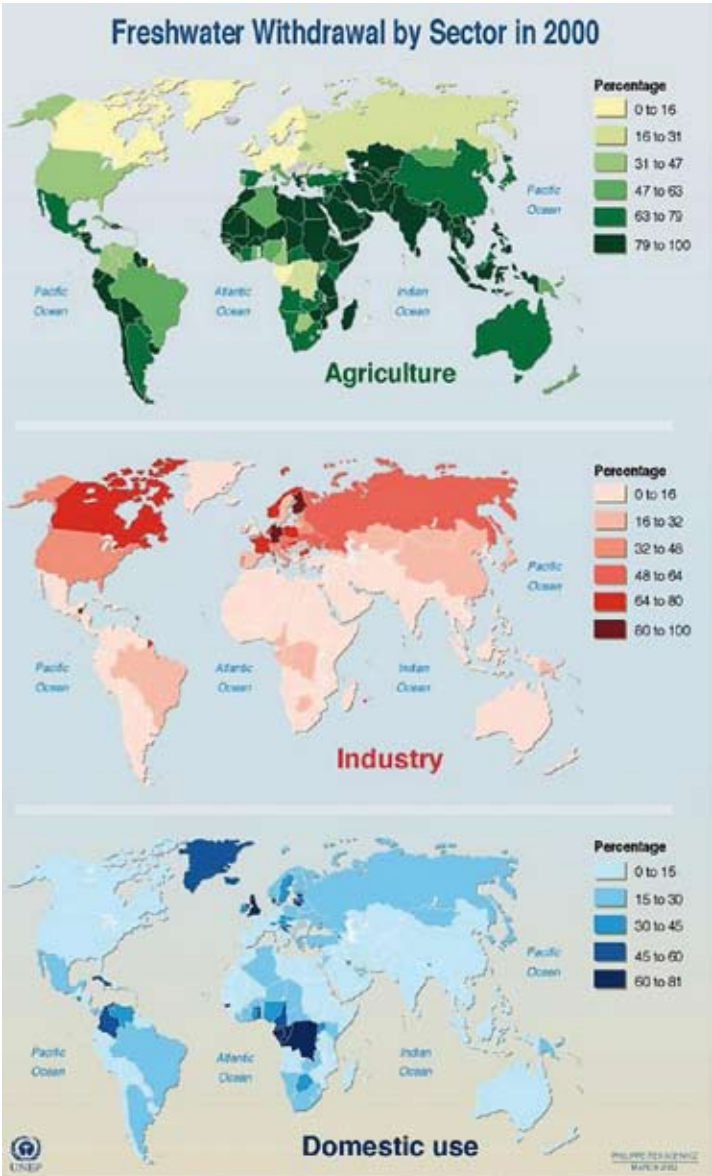
67 / Article 12 recognises “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” and stresses the reduction of infant mortality and the need to prevent and treat endemic and epidemic disease.

68 / The definition in Article 2 of GC 15 is now recognised as the definition of the right to water. It was discussed at length during the World Forum in Mexico in March 2006.

69 / Refer to International Year of Freshwater statistics.

The maps in Figure 3 illustrate the main uses of water by continent and clearly indicate that water for domestic and personal use is lowest in the hierarchy of water consumption according to use. And yet, water for domestic and personal use is vital, whence the necessity to recognise the right to water.

**Figure 3. Use of water by sector in 2000**



Source: World Resources 2000-2001, *People and Ecosystems: The Fraying Web of Life*, World Resources Institute (WRI), Washington DC, 2000.



In view of the importance of GC 15 in defining the right to Water, we believe that it is vital to analyse this reference text in detail and shall do so by following the original text, namely Introduction, Normative Content, States Parties' Obligations, Violations, and Implementation at the National Level.

## ■ INTRODUCTION TO GENERAL COMMENT NO. 15

**The right to Water is recognised as being a prerequisite for the realisation of other human rights<sup>70</sup>, and especially the right to life and human dignity.** The explicit reference to the 1948 Universal Declaration of Human Rights<sup>71</sup> prepares the ground for the human rights approach to accessing water and sanitation. Links between the right to water, the right to food, the right to cultural life, and the right to health are clearly mentioned, and in this way place the right to Water as the centre of all other rights and as a prerequisite to their achievement. The right to water is not only a right in itself, but a fundamental requirement for human beings to live in dignity. Kofi Annan reminds us that *“Respecting the human right to clean water is an end in itself and is a way of reinforcing the broader rights laid down in the Universal Declaration of Human Rights.”*<sup>72</sup>

Moreover, **“Water should be treated as a social and cultural good and not primarily as an economic good”**<sup>73</sup>. It has also been recognised that lack of water is one of the direct causes exacerbating existing poverty<sup>74</sup>. The UNDP's 23006 Human Development Report recognises this hypothesis mentioning the *“heavy price to pay”* if *“we measure the lack of water and sanitation in terms of human suffering, economic loss, of extreme poverty that it generates”*<sup>75</sup>.

GC15 pays particular attention to **water for subsistence agriculture** that underpins Article 1 Paragraph 2 of the ICESCR that states: *“In no case may a people yet be deprived of its means of subsistence and stipulates that “States parties should ensure that there sustainable access to water resources for subsistence agriculture and for securing the livelihoods of indigenous peoples.”*<sup>76</sup> However, this reference to water for subsistence agriculture is practically the only one in Comment No. 15; furthermore, it is not taken into account in the normative content of the right to Water, despite the fact that water is fundamental to the survival of the human race..

It therefore appears that the right to Water does not concern water resources in general, but rather **a limited quantity of water** (excluding water for agriculture or industry for example) required for personal and domestic use, which is understood as **water necessary for preparing food, personal hygiene, washing clothes, cleaning the home, basic sanitation and drinking water.**

## ■ NORMATIVE CONTENT OF THE RIGHT TO WATER

The definition of the right to Water as laid down in GC 15 reflects three basic factors linked to its application, namely: availability, quality and accessibility<sup>77</sup>. What do these three aspects cover?

### Availability

Water must be available in sufficient quantity for personal and domestic use. GC 15 refers to WHO guidelines, which specify a minimum of 20 litres of water per person per day. However, standards differ and the SPHERE Standards (2004)<sup>78</sup> set the minimum amount at 15 litres/person/day in emer-

70 / Articles 1, 3 and 6 of General Comment n 15

71 / Ibid., Article 3

72 / Source : UNDP

73 / Article 11 of GC 15

74 / Article 11 of GC 15

75 / Ibid., Article 1

76 / UNDP, 2006 Human Development Report, p 18.

77 / Article 7 of GC 15

78 / Ibid., Paragraph 2 “Normative Content of the Right to Water” For more information on SPHERE standards used in emergency situations, see Chapter 2, “Minimum Standards in Water, Sanitation and Hygiene Promotion” In “The Sphere Project”, revised version, 2004.

gency situations, whereas the American expert, Dr. Peter H. Gleick<sup>79</sup>, considers that a minimum of 50 litres/person/day is required<sup>80</sup>.

It is in fact very difficult to estimate or generalise water minima because this depends to such a great extent on available sanitation equipment (wells, hydrants, drinking fountains, piped connections to the home, etc.), as well as lifestyles.

Water must also be available in **sufficient quantities and constantly**. Whilst it is difficult to fix a minimum threshold, GC 15 has opted for the WHO standard of 20 litres/person/day.

### Quality

Water must be clean, free from micro-organisms and chemical substances and therefore safe for domestic and personal consumption. Furthermore, the concept of **acceptability** is important since it stipulates that water must have an acceptable colour, odour and taste for each personal or domestic use. WHO standards are again the benchmark in terms of water quality.<sup>81</sup>

### Box 5. Titikar Walet Mohamed, 40-year old woman from Djeboc in Mali

“We go to fetch water twice a day from the traditional well a few meters away from the pump station. We go twice, morning and evening, and sometime three times when it is very hot. Before the project we had poor quality water and none at all during the dry season. People often fell ill from diarrhea or suffered from skin problems because the well was not protected. The project provided us with safe water and the daily quantity per family increased because we don't have to wait for such a long time to draw water.”

### Accessibility

Two parameters define accessibility: those of a **physical** and those of **an economic nature**.

Water sources must be available within safe physical reach for everyone, without discrimination. Water sources must be available in the vicinity of each household, workplace and educational institution and respect traditions, culture, privacy and gender requirements of populations concerned.

The issue of physical accessibility is particularly important in the poorest or the developing countries. Usually women<sup>82</sup> and children, especially young girls, have the daily task of fetching water. Water is traditionally the women's responsibility<sup>83</sup>, and water-related tasks are often carried out to the detriment of other activities such as the children's education, or the women's own education and economic activities.

However, there is no standard definition of the extremely vague concept of “immediate vicinity” when implementing the right to Water in accordance with GC 15. Usually 400 metres is considered as a standard distance, but SPHERE Standards (2004) stipulates a maximum of 500 metres in emergency situations<sup>84</sup>.

79 / Peter H. Gleick is President of the “Pacific Institute for Studies in Development, Environment and Security”, Oakland, CA, USA.

80 / Gleick (P).. The right to water, water policy, 1999.

81 / SPHERE standards (2004) also provide valuable indicators about water quality in emergency situations.

82 / According to UNESCO (2003), in Africa, 90% of water-fetching activities are carried out by women.

83 / There is abundant literature on the links between gender and water because of the level of women's' involvement in water-related tasks.

84 / SPHERE (2004) standards stress the fact that the maximum amount of time that should be allowed to reach a water source is fifteen minutes.

### Box 6. Akbar Anwari, 25 year-old carpet weaver from Afghanistan

“I have to walk between two and three hours a day to get water, which is about 1.5 to 2 km away. Usually we take carts to fetch the water and it’s the men who are responsible because it’s so far away”

Water must also be **economically** accessible: everyone must be able to afford it and the cost must not be so high as to compromise or threaten the application of other Covenant rights.

Whilst GC 15 does not fix a price for water it stresses the principles of **equity** and **financial accessibility**: everyone, even the poorest, should be able to have access to water and sanitation.

GC 15 considers a number of issues concerning **non-discrimination and equality**<sup>85</sup> that must be guaranteed in terms of the right to Water: equality between men and women, non-discrimination on the grounds of race on race, colour, language, religion, political opinion etc. States parties have an obligation to respect these principles in their national water and sanitation strategies and must set in place policies and services that are accessible to all. Moreover, States must pay special attention to the most vulnerable population groups: women and children, those living in rural areas or poverty-stricken urban zones, indigenous peoples, migrant workers, refugees, prisoners and detainees, and the disabled.

### Box 7. Zeyad Bzoor, 46-year old Professor from Tubas in Palestine

“There is considerable discrimination between Israelis and Palestinians: they occupy the country, take the water and don’t leave us very much. Israel controls water resources here. All Palestinians are in the same situation, so I don’t think that I’m persecuted, no... because where water is concerned it’s the same for all of us.”

## ■ OBLIGATIONS OF STATES PARTIES

GC 15 emphasises the obligations and duties of States parties (understood to be the ICESCR signatories at the origin of GC 15) and the their key role in implementing the right to Water.

Constraints due to limited available resources are taken into account and the States are not obliged to implement their policies immediately, but can set them in place progressively (however, they must act on and respect the principles of non-discrimination).

As with all treaties, the States parties must comply with three basic principles in implementing the right to Water:

### Respect<sup>86</sup>

States parties must not interfere directly or indirectly with the enjoyment of the right to Water and must not engage in any practice or activity that denies or limits access to water, for instance by developing water-polluting industries.

85 / Special topics of broad application, Articles 13 to 16 of GC 15: non-discrimination and equality.

86 / Articles 21 and 22 of GC 15

Crisis situations are also covered by GC 15, which stipulates that in the event of armed conflict, emergency situations and natural disasters, the States parties are bound under international humanitarian law.

#### Protect<sup>87</sup>

States parties should adopt all necessary legislative and other measures that will prevent third parties (corporations and individuals) from interfering in any way with the enjoyment of the right to Water.

#### Fulfil<sup>88</sup>

States parties must fully apply the right to Water. In other words, facilitate (take positive measures to assist individuals and communities to enjoy the right to water), promote (disseminate information about the right to water), and ensure the application of this right.

To comply with all of the above, States parties must set appropriate **legislative measures<sup>89</sup> and a national plan of action<sup>90</sup> in place** that respect the principles of non-discrimination and participation by taking into account the needs of the poorest populations and choosing the most appropriate management methods to implement the right to Water. States parties must identify clear indicators<sup>91</sup> to help them monitor the implementation of water and sanitation rights and create and/or incorporate legislative bodies to provide access to effective judicial remedies and promote activities of all those defending human rights<sup>92</sup>.

### Box 8. Angélique Dorange, 47-year old teacher in Saint-Louis du Nord, Haiti

“There is no official governmental policy to provide access to water to the poorest sectors of the population. I don’t think there is enough money to provide basic social services to these population groups and the State is not shouldering its responsibilities. It is not giving any priority to services for the most vulnerable, but for the richer minority instead. Guaranteeing the right of access to water for all is the responsibility of the Government, but in reality, it’s the opposite that is taking place.”

GC 15 **does not propose any predefined management models** (no priority for either a public or private management model, for instance, or indications of price). What it does do is to place the fulfilment of the right to Water for all at the heart of States’ concerns. States parties must monitor the water services and choose the most suitable management method, be it public, private or semi-private.

GC 15 stresses the close link between developing water systems, sanitation and **sustainable development** to ensure the protection of resources<sup>93</sup> by setting up measures to preserve the quality and quantity of water, by increasing the efficient use of water by end-users and reducing water wastage, and by putting in place long term strategies and programmes managed by qualified institutions.

GC 15 emphasises that States parties must take steps to **prevent their own citizens and companies from violating the right to water of individuals and communities in other countries<sup>94</sup>**. This

87 / Articles 23 and 24 of GC 15

88 / Articles 25 to 29 of General Comment n 15

89 / Ibid., Article 45 and 46

90 / Ibid., Article 47 and 48

91 / Ibid., Article 53 and 54

92 / Ibid., Article 55 and 59

93 / Ibid., Article 28

94 / Ibid., Article 33

issue may be viewed in the context of current debate about the major French water companies<sup>95</sup> whose quality of service is undeniable given their technical expertise, but begs the question of the price of water and economic accessibility<sup>96</sup>. This is a central issue since it questions the prescriptive aspect of the right to Water as laid down in GC 15.

Article 36 invites States parties that are members of **International Finance Institutions (IFI) such as the International Monetary Fund (IMF) and the World Bank (WB)**, as well as regional development banks (e.g. African Development Bank, etc.) to ensure that the right to Water is taken into account in their lending policies. Indeed, scant attention is paid to matters of water and sanitation in the WB's Sustainable Development and Poverty Reduction Strategy Program (SDPRP), which is the real condition for aid to countries. If the WB does not include the right to Water in its overall policy, State beneficiaries will encounter numerous obstacles in putting in place their own national policies. Here too, GC 15 is an invitation to monitor international initiatives that may prevent the effective implementation of the right to Water.

In conclusion, GC 15 sets out **9 core obligations** that States parties must respect to ensure satisfaction of the right to Water<sup>97</sup>. These are contained in the following table:

#### **AT THE NATIONAL LEVEL**

- 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;
- Monitor the extent of the realization, or the non-realization, of the right to water;
- Adopt relatively low-cost targeted water programmes to protect vulnerable and marginalized groups.

#### **AT THE COMMUNITY LEVEL**

- Ensure the right of access to water and water facilities and services on a non-discriminatory basis, especially for disadvantaged or marginalized groups;
- 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;
- Ensure equitable distribution of all available water facilities and services.

#### **AT THE INDIVIDUAL LEVEL**

- Ensure access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease;
- Ensure personal security is not threatened when having to physically access to water;
- Take measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation.

Source: M. Woodhouse, *Realizing the Right to Water*, vol. 23, n°1, July 2004, pp. 22-23

95 / With particular reference to recent cases in South America (Buenos Aires in Argentina, for instance) and in Niger.

96 / Economic accessibility, (see Article 12 of GC 15), is understood to be one of the cornerstones of the right to water

97 / Article 37 of General Comment 15.



## ■ FAILURE TO MEET OBLIGATIONS

States parties who breach any of the above-mentioned nine core obligations will be in **violation of the law**<sup>98</sup>. Nevertheless it is important to distinguish between the inability of a States party to comply with its obligations governing the right to water and unwillingness<sup>99</sup> or violation by acts of commission or omission<sup>100</sup>.

In this respect, Article 44 specifies a certain number of situations in which the right to Water may be deemed to have been violated. The box below lists the various types of violation identified by CESCR when GC 15 was drawn up.

### Box 9. Article 44, General Comment No. 15 Violations

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. 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; (iii) failure to protect water distribution systems (e.g., piped networks and wells) from interference, damage and destruction; and

(c) Violations of the obligation to fulfill 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.

98 / Ibid., Article 40. Does this in fact represent a violation of obligations, given that GC 15 has no restrictive value?

99 / Ibid., Article 41

100 / Ibid., Article 42 and 43



## ■ OBLIGATIONS OF ACTORS OTHER THAN STATES

GC 15 suggests that new **international agreements be drawn up**<sup>101</sup> to promote the right to Water and urges States Parties to be more wary of ancillary international agreements such as free trade agreements - is this a clear reference to the World Trade Organisation (WTO)? - that could clash with the implementation of the right to Water. Thus GC 15 raises the issue of its own shortcomings: it is neither a treaty nor a pact and has no legal weight faced with giants such as WTO which are much more interested in global trade than in basic human rights. Concrete measures are therefore required to counterbalance the trade giants. Current petitions by some States to the UN Human Rights Council and the current mobilisation of the international community on the right to water would seem to indicate that awareness is gaining ground.

Actors other than States parties<sup>102</sup> also have a number of obligations. **UN agencies**<sup>103</sup>, and **international organisations such as the World Trade Organisation (WTO)** are urged to cooperate and place their competence and expertise at the disposition of Member States to assist them to implement the right to Water. For instance, the major international financial institutions, notably the International Monetary Fund and the World Bank, are systematically urged to take the right to Water into account in their lending policies and structural adjustment programmes.

Finally, GC 15 recalls the key role played by **NGOs and international institutions**<sup>104</sup> in times of emergency and the priority that must be given to the poorest communities. GC 15 appeals to NGOs and international organisations to place their technical expertise at the service of States, convinced that a very visible presence in the field that is also reflected in their policy strategies could have a positive impact on the emergence of an effective right to water, as GC 15 would seem to indicate on several occasions. Fully aware of its own limitations, GC 15 is calling for the preparation of new international instruments.

The role of actors other than States parties is reduced to a summary mention in the last Article. Yet the involvement of these actors as vectors of international mobilisation, in the propagation of water rights and in the dissemination of information to local communities, is potentially vast. Indeed, there are many States with little or no knowledge of GC 15 and its implications, as well as many States with other priorities than access to water.

In conclusion, it is of paramount importance to understand that GC15 perceives the Human Right to Water in a number of different ways:

- A basic human right.
- As an individual and collective right that depends largely on States' responsibilities and duties, and consequently is the responsibility of governments.
- A right that requires the commitment of the international community to achieve a common objective to which it is already committed (MDG).

## PRINCIPAL LIMITATIONS OF GENERAL COMMENT NO. 15: A NON-RESTRICTIVE TEXT

GC 15's main limitation lies in its status. The purpose of the General Comments of the UN's Economic and Social Council was to clarify the content of the rights stipulated in CESCR and to prevent

101 / Article 35 of GC 15

102 / Ibid., Article 60

103 / WHO, FAO, UNICEF, UNEP, UN-Habitat, ILO, UNDP, IFAD

104 / UNHCR, WHO, UNICEF, International Red Cross and Red Crescent

any violations of these rights by suggesting advice to States parties on how to carry out their obligations under existing treaties. Consequently GC 15 is merely an instrument of interpretation and has no legal force in itself<sup>105</sup>.

GC 15 is therefore not a right in the legal sense, but does however constitute an excellent international basis with which to clarify these issues and through which to channel international action to implement the right to water.

Despite its official status therefore, GC 15 is little known and rarely quoted or used. Moreover, whilst GC 15 concerns all the signatories of the 1966 Pact (151 States at present), it does not concern any of the others. The US, for instance, is not a signatory.

In view of its non-binding nature, a number of civil society organizations are now demanding recognition of the right to water by means of a new United Nations convention.

## REPORT OF THE SPECIAL RAPPORTEUR, EL HADJI GUISSÉ, “REALISATION OF THE RIGHT TO DRINKING WATER AND SANITATION” (2005)

In July 2005, at the request of the Sub-Commission on the Promotion and Protection of Human Rights, Special Rapporteur El Hadji Guissé submitted a report on the realisation of the right to drinking water and sanitation<sup>106</sup>. This report puts forward a set of technical guidelines based on General Comment No. 15 in order to assist governments, international agencies and civil society to implement the right to drinking water and sanitation. This report analyses and finalises General Comment No. 15. The document reaffirms that “*the right to drinking water and sanitation is a human right*” and confirms the normative content of the right to Water as set out in General Comment No. 15. The report also goes a step further in certain respects.

The obligations and responsibilities of States parties are extended to **local authorities**<sup>107</sup> for the implementation of the right to Water. States are responsible for ensuring that decentralised authorities have the technical and financial capacities to discharge their responsibilities. The spectrum is thus broadened to include local authorities; this evolution would seem to herald the future declarations of the 4th World Water Forum in Mexico in 2006: “*Local actions for a global challenge.*”

105 / General Comments are drafted by the Committee on Economic, Social and Cultural Rights (CESCR), which has two main functions: to review the periodic reports, that States parties are required to submit to it in respect of implementation of the ICESCR; and to draft General Comments clarifying the meaning and implications of the Covenant’s provisions. These documents are an essential source to better understand the legal content of ESCRs, the means to render these rights effective, the nature and extent of States’ obligations, criteria for assessing violations, etc. They usually take a very progressive view of human rights and the fight against poverty and inequality. Though written in legalese, these texts can be understood by people who are not members of the legal profession, and are a valuable resource for mobilizing and persuading political leaders to act.

106 / In 1997, the UN Commission on Human Rights entrusted Mr. El-Hadji Guissé, expert in this field, with the task of drafting a working paper on the promotion of the realisation of the right of access of everyone to drinking water supply and sanitation services (UN Doc: E/CN.4/Sub.2/1998/7). In its decision 2002/105 of 22 April 2002, the Commission approved the appointment of Mr. El-Hadji Guissé as Special Rapporteur to conduct a detailed study 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. Mr. El-Hadji Guissé submitted a preliminary report in 2002 (E/CN.4/Sub.2/2002/10).

107 / Guissé (E.H), Realisation of the right to drinking water and sanitation, Report, 2005; Article 2.1 and 2.2



The report pushes for formal and legal recognition of the right to Water through its inclusion in **national legislation**<sup>108</sup> and by the setting up and adoption of **national plans of action**<sup>109</sup> which establish specific targets and **indicators** and by identifying all resources needed, whether they be of national or international origin.

States parties have a major **regulatory role** to play, in particular through the establishment of a system to regulate private and public water and sanitation service providers that requires the latter to respect the normative content<sup>110</sup> of the right to water in the provision of water and sanitation services. No preference is given to any particular management method and no assumptions are made as to the performance of public or private sector, only the regulatory role of the State being emphasized.

The importance of access to water for **subsistence agriculture** and the satisfaction of basic needs is an important development compared with General Comment No. 15 that focussed on the right to Water for domestic and personal use. Taking the right to Water for agriculture into account is of paramount importance because the very survival of the human race depends on it.

The establishment of low-**cost services accessible to the maximum number** of people would allow affordable access to water for all. States must therefore set in place flexible payment schemes and subsidies for populations on low incomes. It is stipulated that subsidies should primarily be used to install basic infrastructures: connection to distribution networks and drilling, etc. The price of water should as far as possible be covered by users, but with special and flexible payment plans for low-income households. Cutting off water for reasons of non-payment should be prohibited. The ability to pay must be taken into account so as to be consistent with the normative content of the right to water that requires that everyone has access to a minimum quantity of water.

WHO is the point of reference for **water quality issues**; nevertheless, each State must be able to establish its own standards, taking WHO technical guidelines into account and giving priority to the monitoring and elimination of pollutants.

Everyone has the right to full and transparent information that will enable them to participate in decision-making processes that affect their right to water and sanitation services and how the latter are managed.

Particular attention should be paid to vulnerable and marginalized sections of the population, especially women.

Developed countries must pledge to allocate a portion of their Public Development Aid (PDA) to water and sanitation in order to contribute to reaching the United Nations Millennium Development Goals. Bilateral and multilateral assistance should similarly concentrate on the access to water and sanitation

108 / Ibid., Article 2.3 c)

109 / Ibid., Article 2.2.b)

110 / See section on the normative content of the right to water in General Comment No. 15.

## SUMMARY: KEY FACTORS IN THE RIGHT TO WATER

The following table suggests concise answers to 13 key questions about the right to Water. This summary is intended to help clarify any misunderstandings and highlights factors that might hinder recognition of the human right to water

**Table 1. Summary. The end of misunderstandings about the right to Water: Thirteen points for discussion.**

### Is the right to Water recognised at the international level?

**Yes** The right to Water is explicitly recognised in several international texts. General Comment No. 15 offers the most comprehensive focus on this right and can clear up a certain number of uncertainties and misunderstandings. But, considering the non-binding character of the text, and of the current global situation in terms of access to water and sanitation, it is clear that the right to water merits better recognition to make water access for all a reality.

### Do standards in respect of quantity / quality / proximity exist?

**Yes** WHO quality and quantity standards make it possible to appreciate the extent to which the Human Right to Water is respected. In emergency situations, SPHERE standards also constitute a major frame of reference. Moreover, States are encouraged to develop national norms and standards better adapted to local contexts.

### Does the right to Water include the right to sanitation?

**Yes** According to General Comment No. 15, access to basic sanitary installations is fundamental to the right to Water and, in this respect, the text specifies that "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". Furthermore, in accordance with the right to health (General Comment No. 4, 1991) and the right to adequate housing (General Comment No. 14, 2000), States parties have the obligation to gradually provide reliable sanitation services, in particular in the rural and poverty-stricken urban zones, and taking particular account of the needs of women and children.

### Is the water referred to for personal and domestic use only?

**Yes** The right to Water only rules on water for personal use, and does not attempt to define the right to water for other uses (agriculture, industry, etc.). It thus concerns only a fraction of the water used. This is a necessary distinction because an amalgam of alluses could result in non-recognition of the right to Water as a human right.


### Is priority given to marginalised populations?

**Yes** It is clearly stipulated that non discrimination and equality<sup>111</sup> are to be guaranteed where access to water is concerned and that special attention must be paid to disadvantaged groups.

### Is priority given to rural and peri-urban areas?

**Yes** The right to Water particularly concerns rural and peri-urban areas and the most vulnerable people in developing countries. It is evident that the situation is not the

111/ Special themes of general scope. Articles 13 to 16 of General Comment 15 : non-discrimination and equality



same in developed countries where the current level of infrastructures is already high nor in those developing countries where a large percentage of the population living in rural areas has no access to water services, nor in the peri-urban areas where land ownership problems affect the quality of service.

### Does the right to Water signify individual connection for each person?

**No** The right to Water does not mean that each household or each habitation must be connected individually. Moreover, there is a difference between the right to Water in the urban areas and in rural settings. In urban areas, the right to Water concerns provision of water and sanitation in respect of used water and thus the right for each person to be connected to distribution and sanitation networks in his or her neighbourhood<sup>112</sup>. In a rural environment, it means that each person has access to drinking water in the vicinity of his or her dwelling, which does not mean that each rural dwelling must be connected to a distribution network.

### Does the right to Water mean water for free?

**No** The right to Water does not mean exemption from payment for water. On the contrary, as a consequence of water having been defined as an economic good, it is clear that water now has an economic value (the resources does not have a price, but services do). So, the right to Water means the right for each human being to have access to water according to the normative contents (quantity, quality, physical and economic availability) set out in General Comment No. 15. But it also means covering part of the costs necessary to install infrastructures, and maintenance costs, etc.

### Does the right to Water mean public management of water?

**No** The right to Water does not mean a return to public management of water and sanitation services. It means that public authorities must exercise a regulatory role and effectively monitor water services. Moreover, this does not mean freed trade in the water sector will be tampered with, it simply means that the obligations of public water services will require clear definition and have to be respected in order to guarantee the right to Water for all.

### Are the States responsible?

**Yes** The States are the key actors involved in the implementation of the right to Water. General Comment No. 15 defines above all the States' obligations. As highlighted by the UNDP in its last report, the difference will depend solely upon the political will.

### Does the international community have a role to play?

**Yes** General Comment No. 15 suggests on one hand the establishment of new international<sup>113</sup> agreements to promote the right to Water and, on the other, it calls for a caution as regards the International Financial Institutions. Finally it appeals for a significant financial mobilisation of public development aid.

### Will recognising the right to Water give rise to numerous lawsuits?

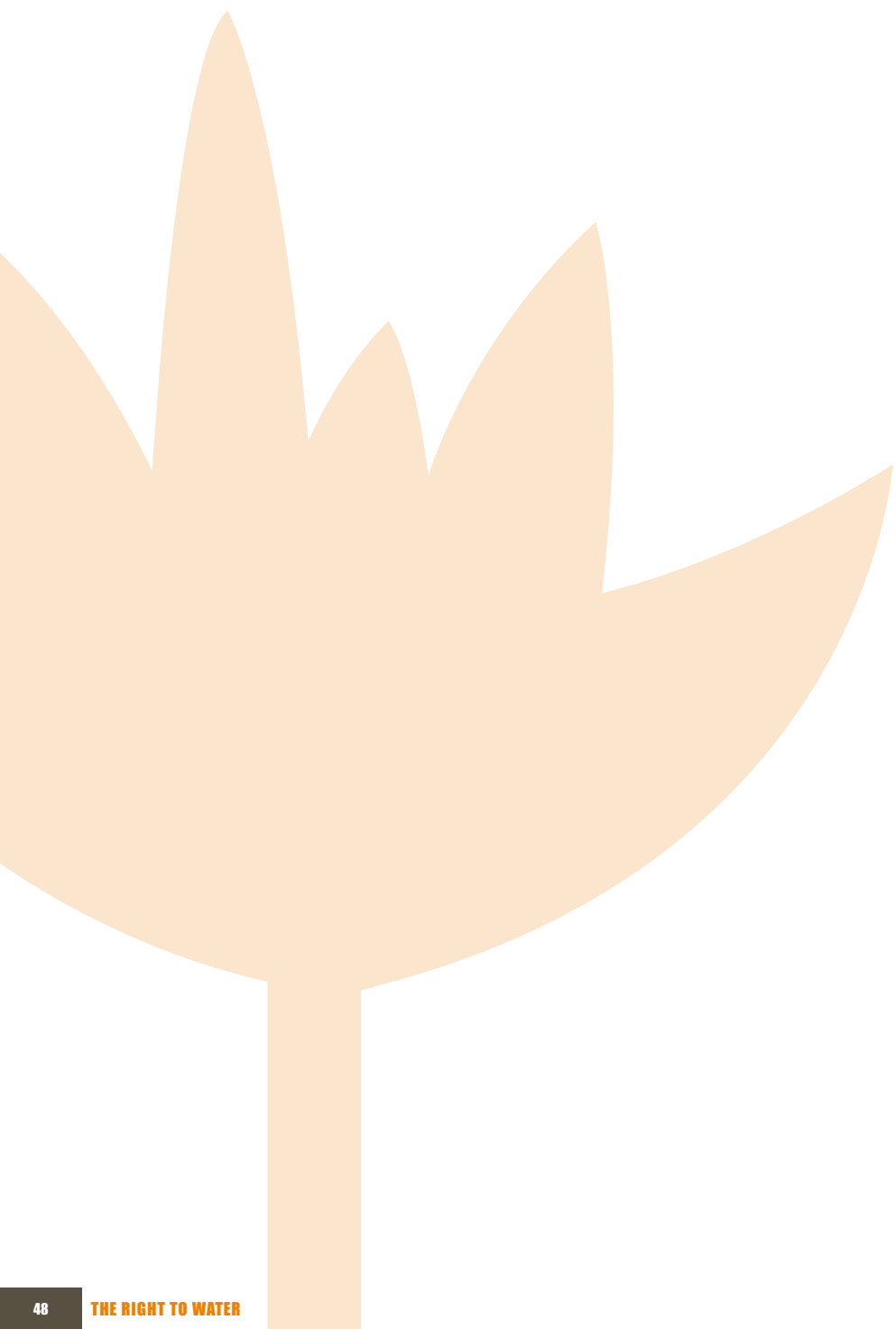
**No** No, recognising the right to Water does not mean that access to water and to sanitation will be subject to a plethora of lawsuits. It simply means that current legislation in matters of health, environment, urbanism, etc. will be better implemented. To recognise the right to Water is nevertheless to apply the principles of information and of participation of populations who will then be more capable of claiming their rights.

112 / Smets (H.), *Le droit à l'eau*, Académie de l'Eau, p4  
113 / GC 15, Article 35

### Does the right to Water call into question State sovereignty?

**No**

The right to Water, as defined by General Comment No. 15, does not mean that States will lose any of their sovereign rights over their water resources. In fact, in accordance with the principles of international law set out in Principle 21 of the Stockholm Declaration (1972) “States have the sovereign right to utilise their own resources pursuant to their own environmental and development policies.” In the end, the right to Water means that, subject to its international engagements, each State may authorise or not export of drinking water and consent or not to supplying water to neighbouring populations.





# Chapter 3

## RIGHT TO WATER: RELATED DEBATES



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## THE PRIVATISATION OF WATER SERVICES IN QUESTION.

*"Water is life, and not a good just like any other!"* This principle can legitimately be agreed upon. Water is not classic commodity, and thus cannot be subjected to market rules of supply and demand, whatever the scale. However, even if the right to Water is recognised as a fundamental human right by means of General Comment No. 15, it can be agreed that, in practice: *"Two diametrically opposed concepts confront each other: water is seen as commodity by some, as a right by others [...] From the first concept flows a very lucrative financial approach anxious to rapidly garner dividends. From the second, a social approach founded on awareness of the vital importance of water as a waning limited resource"<sup>114</sup>* Thus, recognition of the right to Water as a fundamental right would be blocked by the development of the private sector. Moreover, Riccardo Petrella<sup>115</sup> explains that: *"Within a purely market logic, the diverse basic considerations linked to the utility and scarcity of water in vast regions of the world must make it a commodity, in the strictly economic sense of the term, which potentially represents for private capital one of the best sources of medium- and long-term profit."<sup>116</sup>*

A number of States have also declared the privatisation of water services to be illegal; this is notably the case of Uruguay (see box 12) and the Netherlands. The Dutch parliament voted unanimously (except for one right wing party) a law prohibiting any private enterprise from running a public drinking water distribution network. This legislative text stipulates moreover that drinking water distribution services can only be operated by public bodies or controlled 100% by public authorities.<sup>117</sup>

Armed with these facts, it seemed to us essential delve deeper into the issue of privatisation of water services in this report. Indeed, as seen in General Comment No. 15, the right to Water is a concept underpinned by those of economic accessibility and affordability. What happens to issues of economic affordability when the water multinationals begin to make forays into the developing countries? Why these lively, animated debates over private management of water?

### ■ DEBATING THE RIGHT TO WATER DOES NOT MEAN DEBATING THE PRIVATISATION OF WATER

First of all, debating the right to Water does not simply mean debating the privatisation of water, but nor does it mean adopting a diametrically opposed stance on this issue. Why?

- Because today more than 90% of water services are operated by the State. On the other hand, the statistics used throughout this report clearly indicate that the global situation is quite alarming. The private sector cannot be held responsible for all the evils, a fact that remains true even if certain failures eloquently demonstrate the inability of that sector to respond to the needs of developing countries. It is of course very convenient to place all the blame on the private sector as S. Jaglin reminds us when she speaks of focusing the debate on "privatization" alone being counter-productive and that whilst delegation is undoubtedly adapted to a number of cases it is unlikely to prove to be a universal solution
- Because often in the most destitute districts in the developing countries, the private sector managed water and sanitation services before the arrival of the multinationals (see box 1). In fact, some basic water distribution services are quite often operated by private companies or individuals, for example street fountains, water delivery carts, etc. As a result, the inhabitants of these quarters sometimes pay ten times more for water than people who are connected to the network. We must, then, be very careful not to put everything into the "private management." basket.

114 / Lenglet (R.), Touly (J.L.), L'eau des multinationales : Les vérités inavouables, Fayard. p 194

116 / Riccardo Petrella is a professor at the University of Louvain in Belgium. He also founded the Lisbon Group in 1991 and collaborates with several European socio-economic institutions. He has published several works, among them « Le Bien Commun: éloge de la solidarité » (1996) and « La Guerre économique: l'heure de la résistance » (1997). He also initiated the drafting of the Global Water Contract (GWC) and the forming of the Global Assembly of Elected Representatives. and Citizens for Water (AMECE, March 2007). Belgium.-

116 / Petrella (R.) (ed.), L'eau. Res publica ou marchandise?; Editions « La Dispute », 2003, p. 68.

117 / Hall (D), Lobina (E.),. Water as a Public Service. Public Services International Research Unit (PSIRU). 2007.

This being said, discussing the right to Water also means understanding why the privatisation of water services gets such bad press and getting to the heart of the very spirited debates around this subject. So, it would seem worthwhile at this point to revisit the origins of water privatisation services in the developing countries, and to look at a few examples of the bitterest failures of the water multinationals.

### **Box 10. Interview carried out in Commune V of the District of Bamako, Mali. Water in poverty-stricken quarters costs ten times more than in the rich neighbourhoods!**

Family members of a household in Commune V of Bamako District in Mali participated in this interview, and discussed the economic accessibility and the price of water in this deprived area.

The head of the family: "The street fountain is not far from the house, you see... it is just there... in front of our house... which means we don't have to pay for transport... we are lucky... because obviously the price of the bucket goes up with transport, and instead of 15 FCFA, it can cost 35 to 50 FCFA... can you imagine?" ... "For the number of containers, no, I don't know, wait..." He calls one of the women of the household who joins the group.

One of the women of the household: "We buy about 18 buckets a day... for 15 FCFA per bucket... for the whole family... So I invest about 450 FCFA per day for water... that represents a huge part of the daily budget... what's more, I'm a dyer... you see all the buckets here... all these are the tools of my trade... and dying, that's an activity that uses a lot of water!"

The head of the family: "We would like to get connected to the network, but that costs a lot, so we have to wait... It's much more advantageous cost-wise to be connected to the network, but to begin with the investment is high... and often when you apply to "Energie du Mali" (EDM.), you have to wait a long time before they come..."

One of the woman of the household: "To get connected to the network you apply to EDM, then you pay for the connection, and each month when the bill arrives, it's the owner who pays it... he also pays a manager who is responsible for maintaining the pump in good working order... but you see in fact management of the street fountain here is private, it's a small business in fact... very lucrative... but for us, as consumers, that costs a lot!"

### **■ PRIVATISATION – WHY AND HOW? THE PUBLIC-PRIVATE PARTNERSHIPS (PPPs)**

The privatisation of water and sanitation services has been strongly encouraged since the 1990s by International Financial Institutions (primarily World Bank and IMF). This period also corresponds to the establishment of structural adjustment programmes (SAPs) in most developing countries by these same IFI. These institutions encourage privatisation and reduction of public services. These reforms affect the water sector.

In this way, the WB encourages the creation of Public-Private Partnerships (PPPs). In urban areas in developing countries, the PPPs are deemed to be a privileged means of attracting the investments needed to construct or extend the water distribution networks.

It is worth noting that the establishment of PPPs does not imply total privatisation of services, which would mean that the enterprise both manages the services and owns the networks. On the contrary, putting a PPP into place means that the management of services is delegated to a private operator but that the State remains the owner of the infrastructures, or in other words, the delegation of public



services (DPS). DPS is regulated by a contract between the State and the private company, either in the form inter alia of a franchise, leasing agreement or management contract

- In the case of a **concession**, the company provides the finance, installs the equipment and operates the service.
- In the case of a **leasing agreement** (the most usual form of delegation), the public authority finances the cost of equipment but delegates operation to a private company, which receives direct payment from the users; part of the income from water bills is paid back to the authorities to cover investment costs.
- In the case of a **management contract**, the public authority finances the cost of equipment, but sub-contracts it to a company that will act under instructions from it and on its behalf.

These trends were confirmed at the Kyoto Forum (2003), where it was again established that *“Water is one, if not the major problem of development in the world and it is urgently necessary to mobilize considerable financial means to tackle it.”*

Despite the initial encouraging reports that lead to the promotion of the PPP, in many cases successes turned out to be less apparent. In fact, PPP have produced extremely disappointing results in recent years in Asia, Africa and Latin America

### ■ PRIVATISATION'S FAILURES

The following examples have been chosen from many others to illustrate that privatisation and the PPP advocated by the IFI are not necessarily the best remedy to the shortcomings of public water services in developing countries. On the contrary, there are numerous examples of increases in the price of water, failure to extend networks, corruption, lack of transparency, neglect of poverty-stricken neighbourhoods, disconnection from the network for reasons of non-payment, all of which are situations that, instead of improving access to water for all, neglect the most vulnerable people, who are however the ones in most urgent need of attention.

Even if all the following cases are clearly worthy of more in-depth study of the parameters at stake, and even if this list is not exhaustive, this short report does however go some way to shedding light onto the fact that it is not unusual for the private sector to encounter difficulties in providing quality services in deprived areas and, consequently in implementing the right to Water.

#### In Africa:

- **SUEZ, Soweto township, <sup>118</sup> South Africa.** SUEZ requested that public fountains in Soweto be disconnected because of unfair competition. This led to disastrous consequences for the slum dwellers, who were obliged to drink river water, and suffer the consequences of propagation of diseases due to their use of unsanitary and unclean water, etc.
- **SAUR Mali.** A twenty-year franchise contract was concluded in 2000 between the Government of Mali and SAUR, a subsidiary of the French multinational company Bouygues. The Government of Mali rescinded this contract in 2005 following the breach of two important clauses: the extension of urban networks and the lowering of tariffs. The contract was cancelled “amicably” and no lawsuit was put in hand.

#### In Asia:

- **SUEZ, Manila, Philippines.** The SUEZ Group concluded a 25 years old franchise contract in 1997 with the Government of the Philippines for the distribution of safe drinking water in Manila, the country's capital city. In 7 years, prices increased by 400 to 700 % and several clauses in the contract were not respected (notably poor water quality, which caused 6 deaths and sickness in 725 people, and extension of urban networks). A legal battle was launched by Suez to reduce the contractual obligations. Finally, in the middle of this crisis, Suez announced that they were pulling out of Manila and demanded more than 800 million dollars in damages and repayment of

loans. The matter is currently under arbitration at the International Chamber of Commerce. In the meantime, Filipinos pay a very high price for their water and no longer have the use of traditional wells, which they were asked to fill in as they were no longer of any use.

#### In Latin America:

- **SUEZ, Argentina.**<sup>119</sup> In 1993, the SUEZ group secured a franchise with the Argentinian government through its subsidiary Agua Argentinas to distribute drinking water in Buenos Aires. In 2004, government made know following several months of negotiations with SUEZ, the Government announced its desire to rescind the contract, claiming that the subsidiary of the French group had not respected its provisos, notably in terms of investments and drinking water quality. Argentina's President, Nestor Kirchner, severely criticized the SUEZ group declaring in a speech that: *"Water is a public good, but in Argentina, the service has been abominable. They (Suez) have been in Argentina for fifteen years, they have made hundreds of millions and a lot of people do not even have a drop of water."*<sup>120</sup> The SUEZ group then brought charges before the ICSID (International Centre for Settlement of Investment Disputes), an arbitration tribunal empowered to settle differences in respect of foreign investments, rejecting the assertions of the Government of Argentina and claiming to have done "exemplary work" by providing access to drinking water for more than two million people since 1993 through investments amounting to some 1.7 billion dollars. The Government of Argentina and the SUEZ group are still pursuing this matter in court.
- **The "Cochabamba Water War."**<sup>121</sup> In 1999 in Bolivia, Hugo Banzer's neo-liberal government supported the privatisation of water distribution services in Cochabamba, which he justified by reason of the lack of capital needed to construct a dam in Misicuni. The rural, peri-urban and urban populations, who until then had consistently disagreed about the regional management of water, united to demand the cancellation of the franchise granted to the international consortium "International Waters" (IW) and modification of property rights and water management legislation. Demonstrations in support of these claims were at first suppressed by the Army, but then the Government accepted to re-nationalize water management services and amend the law.

All of these failures, some of which received extensive media coverage, for instance the Buenos Aires affair, resulted in a campaign of mobilization against privatization of water being launched in 2005. This campaign, entitled "STOP SUEZ," went on simultaneously in several towns and cities: Buenos Aires, Atlanta, Nelspruit, Cochabamba, Jakarta, Paris, Manila and Santiago in Chile. The Paris Declaration<sup>122</sup> clearly sets out the motivations of groups of a committed global civil society that defends the fact that: *"Water is a natural resource essential for life. Access to drinking water and to sanitation is a basic human right. SUEZ has established itself at the international level to transform water into a profit-generating commodity and in so doing, violates these fundamental principles."*<sup>123</sup> This global initiative is indicative of the level of organization amongst the different organisations.

## ■ CONCLUSION

This debate, that may at times appear to be somewhat dogmatic (social militancy versus capitalist ideology) raises questions about the capacity of the big water multinationals (the three largest of which are collectively known as "the French sisters": SAUR, SUEZ et VEOLIA) to provide a qualitative service to poor, marginalized populations in developing countries.

119 / Botton (S.), *Privatisation des services urbains et desserte des quartiers défavorisés. Une responsabilité sociale en partage. Le cas des services d'eau et d'assainissement, d'électricité, et de télécommunication dans les quartiers "caden-ciados" de l'agglomération de Buenos Aires (Argentine) de 1991 à 2004*, Doctoral thesis, under the direction of S. Jaglin et Y. Lichtenberg, December 2005.

120 / See the article on line : [http://www.elcorreo.eu.org/articulo.php3?id\\_articulo=3043](http://www.elcorreo.eu.org/articulo.php3?id_articulo=3043)

121 / Mélaçon's (S.), *Masters thesis in Geography, La guerre de l'eau de Cochabamba, un problème géopolitique et de territorialité*, 2005, University of Laval. Under the direction of F. Lassere

122 / See The Paris Declaration at the following URL: <http://eau.apinc.org/spip.php?breve86>

123 / Extract from the Paris Declaration



The struggle against the privatization of water services in fact reflects the fight between two diametrically opposed ideas. Some consider that water should be treated as a common good, as the common heritage of humanity. This is the case for militant groups participating in The Global Water Contract, whose President, M. Riccardo Petrella, has declared that water is life, water is at the origin of life, it is essential, without substitute in life. For this reason, it must be considered a common good, more precisely a global public good. Others on the contrary believe that water is a good that must be considered as a market commodity, and thus be subject to the rules of supply and demand.

But if we relativize dogmatism to refocus the debate within a more pragmatic approach, then this debate in respect of the incursion of private enterprises into water management would seem to raise questions about preserving a public service of quality.

We have witnessed a very rapid change of panorama with the onset in the 1990s of what can only be termed certain euphoria where privatization of water management was concerned. Today, we have to admit that some perspective has been gained and are now seeing the withdrawal of the massive private water sector that had become implanted in the developing countries (in Africa for example, the PPP are in great difficulty: of the twenty listed, ten have been cancelled or not renewed), and a major crisis in international institutions. In other words, we are witnessing a reversal of the doctrine promoted by international institutions since the 1990s. The result is a sometimes “simplistic”, or at the least a very ideological debate, focussed on the stakeholders: must water management come under the auspices of the public or the private sector? For more than twenty years, reforms have modified the relations between water services and urban space as explained by S. Jaglin when she discusses the ... number of changes that are nevertheless masked or deformed by debates centred on “privatizations” that ignores the considerable stakes involved in providing services in developing cities (Budds, McGranahan, 2003). *The liberal convention, as influential as it may be, has in fact only a limited explanatory power of the recompositions at work.* <sup>124</sup>

In reality, is it truly a matter of a failure of the private sector to provide quality services or that of the public sector (in this case the State) to regulate and negotiate contracts delegating public services to private enterprises? What could be more convenient than to blame the private sector, whereas it is very certainly the lack of a common vision that inhibits effective collaboration of public and private sectors? The rather bipolar debates on this question reveal that the “good actor” is still being sought, whereas this would seem to be somewhat obsolete today: twenty years ago, water services in the public domain in the developing countries did not, for the most part, succeed in laying down the preconditions to meet the water and sanitation needs of their populations. Today, the private sector is coming up against new problems. What then will be tomorrow’s water services?

Furthermore, in the 1990s, water was depoliticized. Water management moved into the private mercantile, non-political domain. As of 2000, as can be seen from the debates now being held at summit conferences as well as recent declarations, notably that of UNDP, on the central role of political will in setting in place competitive water and sanitation services, water has once again become a central and global political issue (debates on the emergence of international management tools). This is proof of a clear change in perspective over the past decade.

Henceforth, if certain scientific studies have pointed to the shortcomings of private enterprise, it would now seem judicious to further develop the debate, going beyond ideology and thinking about alternative solutions given that both public and private sectors have each proved to be deficient in their own way. Experience has shown that what routes a country chooses to follow over the years determines water management policy and that, as a consequence, no preconceived model exists. Coherent solutions are therefore needed to match current realities and given the choice offered to society to ensure provision of a more effective service, bearing in mind however that any course of action, whatever

124 / Jaglin, (S.), op cit.

management model is chosen, must not divest the State of its responsibility for public services and the definition of sectoral policies. Equally, it is the duty of all governments to draw up their own national water management strategies and to place water at the top of their national agenda.

So, there are several questions all stakeholders must now attempt to answer jointly, bearing in mind the lessons learned from past experience: Preference should be given to what scale of management? Does current legislation on water offer any real leverage? And, in more general terms, what public services will be needed to guarantee the right to water for the most vulnerable populations over the coming years?

## A UNITED NATIONS CONVENTION: BY WHOM? AND WHY?

### ■ WHY A UNITED NATIONS CONVENTION?

There is growing demand for a UN convention that would reaffirm the crucial role of governments with regard to the provision of water and that could serve as a model for all these countries.

From General Comment No. 15, which states in article 35 that: *“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,”* to claims voiced by lobbying groups (The Council of Canadians, The Blue Planet Project for instance) and civil society, there is growing consensus on today’s need for a UN convention.

Some lobby groups consider that a UN convention would help counter the power of multinational water companies which are seen both as a threat to the most vulnerable people and to the conservation and equitable sharing of this natural resource. On this point, Maude Barlow<sup>125</sup>, President of the Council of Canadians declared at the International Forum on the right to Water (held in Marseille, November 2006): *“If we do not have an international instrument for the protection of the resource and for its just distribution, we will not have a safe and just world to manage drinking water. (...) Indeed, we need an international UN convention to counter the growing power of private water companies. The fact that the right to water is not an acknowledged human right has allowed decision-making over water policy to shift from the United Nations and governments to institutions that favour the privatization and commodification of water.”*

For others, the main goal is to confer the status of common good on water in order to respect and give credence to its fundamental nature. For Riccardo Petrella, this can only happen by establishing international, legal norms: *“The responsibility lies with parliaments, the main representative organs in “western” societies or with comparable institutions in other cultural contexts, to modify existing laws according to the principles and rules as set out above. Defining a new legal framework for water, not only on a local or national level but also on a world level (an “international water law”) constitutes an essential task, given the present legal vacuum in this area. The priority is to base a “World Water Contract” on the principle of water as a vital good common to all humankind. This “treaty” would exclude water from any commercial international convention (within the framework of the World Trade Organization), as already occurs for cultural matters<sup>126</sup>.”*

125 / Maude Barlow is the National Chairperson of the Council of Canadians, Canada’s largest public advocacy organization, and the founder of the Blue Planet Project working internationally for the right to water. She serves on the board of the International Forum on Globalization a research and education institution in San Francisco that is opposed to economic globalisation.

126 / In the “Water Manifesto: Arguments for a World Water Contract”



Hence, the general consensus and the global will, whatever the leanings of individual groups, to put in place a UN convention stems from the awareness that water is the top humanitarian priority for the 21st century and also from *“the idea that common heritage or public goods cannot be managed by each state for its sole use is in itself a notion that is making slow progress”*<sup>127</sup>. But it is also evident that: *“International discussions have yet to produce management modes that highlight and take into account the general interest of humanity as a whole.”* That is the challenge that has to be taken up when negotiating to create an international instrument of this nature.

Two main ideas arising from these discussions need to be studied in further depth:

- Water is increasingly considered as a common good.
- Water is a vital natural resource that is coming under increasing pressure that could, in time, represent a threat to human life.

### **Water, a common good**

First of all, it can be stated that when it comes to both use and utility, water is not only a vital common good, but a universal one as well. Insofar as air and water “ignore and defy the existence of frontiers”<sup>128</sup>, it makes undeniable sense that environmental issues, such as air and water quality, should be managed at an international level. Paradoxically, while water is a universal resource particularly under threat today, because of its vital nature it is regarded in law and economics as a “common possession” (*res communis*) or a “collective good” and for that very reason receives little protection. A few definitions are called for: what is a common possession And how is it different from a common good?

Goods are those things which can be appropriated for private ownership because they are useful in some way. However, goods should not be confused with the principle of *res communis*: some things cannot be appropriated and therefore are not goods. This is the case of common possessions such as air, light or drinking water<sup>129</sup>. On such a basis, water may be considered a common possession (and not a good, as it is offered to all to use). This makes the legal protection of water a complex issue today.

As can be seen, a certain number of legal problems arise from the original and obvious status of water as a “common possession”. It explains the ambiguities surrounding this issue and moreover the campaigns to reach a worldwide agreement.

### **Water, a source of development**

The importance of water in every essential aspect of life puts this natural resource in a category apart, which deserves special consideration. Indeed, the issue of water straddles a grey area of connected issues:

- Water as a potential source of conflict or potential geopolitical weapon. In the words of Ismail

127 / This is expressed in France in the Environment Charter, which was inserted into the country’s constitution by constitutional law n. 2005-205 (1st March 2005) and which refers back to the Preamble of the French Constitution (4th October 1958). Hence the preamble to the Charter reads: “That the earth’s resources and natural balances were prerequisites to the emergence of humankind; that the future and very existence of humankind are inseparable from the natural environment; that the environment is the common heritage of human beings.”

128 / Morand-Devilleur (J.), *Le droit de l’environnement*, PUF, Collection “Que sais-je”, n.2334, 6e éd, 2004, p.28

129 / However, drinking water and air are extremely useful to man but are not meant for private but collective appropriation. At present, their quality is monitored by public organizations (such as the Environment Agency for air) as well as their management in some cases (state authorities are often legally in charge of ensuring safe water and distribution, which they may manage directly or indirectly by delegation of public services (See: Launay, J., *Moderniser la gestion de l’eau*, Rapport d’information, AN, n.1170, November 3, 2003, p.20).



Serageldin, a former Vice President of the World Bank, “*Water will be at the heart of wars in the next century.*”

- Water as a limited and non-renewable resource, subject to increasing pressures (urbanization, pollution, over exploitation, etc)
- Water as a guarantee of secure world food supplies, etc.

In developing countries, water is becoming the main focus of development. According to André Santini: “(...) *Water is not only a form of manna unequally distributed around the globe: it is also a resource, the management of which determines its possible usages. The existence of safe water supplies and sanitary systems is a necessary condition for satisfactory human, sanitary and economic development*<sup>130</sup>.” It is therefore high time to optimize the use of water sources<sup>131</sup>. Even if it covers three quarters of the planet, water is not inexhaustible<sup>132</sup>. This is all the more the case as drought linked to global warming is spreading. Recent discussions at the United Nations Convention to Combat Desertification (UNCCD) take this line. Its September 2007 conference in Madrid was devoted in the main to discussions of the links between drought and climate change, and what initiatives could be taken to contain these two connected problems.

Ultimately, access to water appears to be a basic objective to be attained for the future of humanity, and it will only be achievable through the establishment of a “world fresh water public service,” which in future could be underwritten by the United Nations through a framework convention

Contrary to these positive stands on an international convention, Professor Amidou Garane<sup>133</sup> from the University of Ouagadougou thinks that “*international instruments, notably an international convention on the right to water, however detailed, are not a sufficient guarantee for an effective implementation of this right by individual states. Any such agreed instrument would mean at the very most a constant and firm commitment of the international community to achieving the right to water*<sup>134</sup>.”

Despite this reservation, the very fact that the international community would commit to this crucial goal seems in itself an important step, not least of all in promoting the issue of water in the political arena. Moreover, the complexity of such an instrument stems from the wide-ranging implications inherent to the subject itself. If such a project were underway, it would take dozens of years to ratify.

## ■ WHAT CONTENT FOR AN INTERNATIONAL CONVENTION?

The aim in establishing such an international legal instrument, whatever the political leanings of individual groups, is to put water at the heart of things and highlight its fundamental role for human life. Seen in this way, a UN convention would serve as a catalyst to recognizing, respecting and implementing the right to water for all.

This convention would also provide a framework for a whole range of questions: to whom does or should this resource belong? Is water a good as any other good? Should it have a special status?

130 / Santini (A.), Proposition de loi sur la coopération internationale des collectivités territoriales et des agences de l'eau dans les domaines de l'alimentation en eau et de l'assainissement, AN, Rapport n.2041, January 26, 2005, p.5.

131 / On this issue, see : Trouilly (P.), Le principe de la gestion équilibrée de la ressource en eau est-il devenu inutile?, Environnement, juillet 2004, p. 7-9.

132 / Papon (P.), Mieux gérer l'océan mondial, Futuribles, février-mars 1999, n.239-240, p.23-35.

133 / Director of Research at the Institute for Diplomacy and International Relations (IDRI), Ouagadougou, Burkina Faso.

134 / Garane (A.), op.cit., pp.20



How can distribution be managed fairly? How can inequalities be reduced? How can citizens participate in its management?

These initiatives show acute awareness of the need to act and set clear management guidelines.

As Maude Barlow declared at the International Forum on Water Rights, Marseille, November 2006: *“Would an international convention on water solve the world’s water crisis? Of course not. But it would frame water as a vital element, not an economic commodity. It would also establish the indispensable legal groundwork for a just system of distribution. An international convention on the right to water would serve as a common, coherent body of rules for all nations and clarify the role of the state as a provider of clean, affordable water to all its citizens. Such a convention would also safeguard already accepted human rights and environmental principles.”*

On this point, General Comment No. 15 states in article 36 that *“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.”*

Green Cross has come up with a proposal for what such an international legal instrument might contain<sup>135</sup> (May 2005). The proposed framework would reaffirm a certain number of fundamental principles such as: *“Water is tantamount to life, as it is required for a variety of uses and fulfils multiple functions for humankind and aquatic ecosystems; water has social, economic and ecological values and is a key to sustainable development; water is not a mere product or simple commodity; water is a public good; water is part of the common heritage of humanity”*<sup>136</sup>.

## ■ WHO WOULD CHAMPION THE PROJECT?

If the United Nations were to hold discussions tomorrow on a water treaty, we could ask ourselves what action would be needed to support it and ensure its adoption. As already mentioned, a certain number of campaign groups would back it actively, but which countries would commit to such a convention? Civil society groups may well promote awareness and campaigns, but it is up to the different nation states to adopt a treaty framework. If few countries support such a treaty, it could end up as a stillborn project. On this point, H. Smets declared in an interview: *“Of course, a United Nations convention would be a catalyst for the process, but which countries would carry the motion and which would block it? Would the United States, which refuses anything to do with economic, cultural and social rights, back this project? Would those developing countries which have not yet grasped what makes up the right to water and sometimes wrongly equate it with free water support the process?”* It would seem that awareness of the issue still has a long way to go.

135 / The proposed framework can be viewed at: <http://www.watertreaty.org/convention.php>

136 / Extract from the treaty framework proposed by Green Cross.

# Chapter 4

## AN EVALUATION OF THE COHERENCE OF CURRENT POLICY APPROACHES TO THE RIGHT TO WATER



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## STATE COHERENCE: EXAMPLES OF HOW THE RIGHT TO WATER IS ENTERING INTO CONSTITUTIONAL LAW

### ■ INTRODUCTION

Raising questions about the impact of the human right to Water as an individual right only has any real meaning in the context of public authorities' obligations to honour that right.

It should be noted that the question of the right to Water, and more generally access to water and sanitation, differs greatly according to whether developing or developed countries are being considered. The issues at stake are not the same in each case: the number of persons affected is considerably smaller in developed countries, where public authorities are also more capable of implementing institutional and legal reforms. In developing countries, the situation is the reverse: the number of persons deprived of access is considerable and their financial capacity is weak. Public authorities experience major operational problems (such as lack of resources and technical skill, etc) that hamper reform implementation.

In this discussion, we shall be considering only the incorporation of the right to Water into internal legislation in developing countries.

### ■ INCORPORATING THE RIGHT TO WATER INTO LEGISLATION

The right to Water can be expressed in internal legislation in a number of different ways. There are three possibilities: the right to Water can derive from a basic right recognised in the constitution, it can result from a law or it can be explicitly recognised in the constitution.

#### 1) Deriving from a basic right recognised in the constitution

The right to Water may be derived from another basic right recognised in the constitution:

- In India, the right to Water is derived from the right to life. Article 21 of the constitution (1997) stipulates that *"the right of access to drinking water is fundamental to life and it is a responsibility of the State, by virtue of Article 21, to supply drinking water to its citizens."*
- In Niger, the right to water is derived from the right to a healthy environment. The constitution, in Article 27, stipulates that *"each person has the right to a healthy environment. The State shall be responsible for protecting the environment. Each person shall be required to contribute to the safeguard and improvement of the environment in which he or she lives."*

#### 2) Resulting from a law

The right to Water may also result from one or more laws that refer to the access to water as a basic right:

- In Algeria, the Water Code (2005) recognises *"the right to access to water and to sanitation to satisfy basic needs."*
- In Mauritania, the Water Code (Article 2) recognises that *"water is part of the Nation's heritage. Water usage constitutes a universally recognised right, in the context of existing laws and regulations."*
- In Cameroon, Law No. 98/005 of 14 April 1998 establishing a water scheme states that *"water is a common good and part of the national heritage; the State shall ensure its protection and management and shall facilitate access to it by all persons."*

Other laws make access to drinking water for domestic and personal use a priority. Thus, while water's nature as a basic element is not explicitly recognised, water usage is made subject to a hierarchy, with domestic and personal use made a priority.

#### 3) Explicit recognition at the constitutional level

Finally, the right to Water may be explicitly recognised as a basic right in a country's constitution. Some States have indeed inscribed the right to Water in their constitutions, acknowledging and ma-

king it a basic right without waiting for the outcome of debates on this subject and/or the adoption of United Nations General Comment No. 15. Ultimately, implementation is the responsibility and duty of the State that, on the one hand needs to encourage the adoption of adequate legislation defining the ways in which constitutional principles will be applied, and on the other to promote the development of basic public services.

Table 2 shows, by continent (Africa, Asia and Latin America), those developing countries that have included the right to Water in their constitutions, indicating the country, the year of adoption of the constitution and the articles referring to the right to Water.

Box 10 shows how the right to water is recognised in the Belgian constitution.

### Box 11: Belgium recognises the right to Water in its constitution

On 19 April 2005 the Belgian Government adopted a “resolution on water” in which it recognises access to drinking water as a human right that should be included in the Belgian constitution<sup>137</sup>.

This resolution recommends a significant increase in development assistance for drinking water and sanitation, taking into account the fact that access to water and its distribution remain in the hands of the public and that financial or commercial institutions should not exert pressure on developing countries to liberalise or privatise their water markets. The other elements of this resolution underline user participation (especially women), integrated water resource management, strengthening of central and local government capacity, progressive water price setting so as to protect the poor and the establishment of a Court to be known as “the International Water Court,” under United Nations auspices

As can be seen, many countries have incorporated the right to Water in their constitutions. In some cases, such as Uruguay in Latin America, these reforms are recent and are part of a broader picture characterised by an active struggle in civil society against the privatisation of water services.

Box 12 enables a better understanding of the current situation in Uruguay, and of the perceptions and mobilisation of local civil society.

137 / According to an article in Sources Nouvelles (21 March 2005), adoption of the water resolution is the result of a campaign launched in 2003 by 11.11.11, the Flemish Coalition for the North/South movement in Belgium, which represents about 465 NGOs, unions movements and solidarity groupings. The Coalition was also a leader of the consortium of groups from civil society that, at the 2005 World Water Day, invited the European Union (EU) to stop encouraging the expansion of the private sector in developing countries, and rather to support “feasible public options for the distribution of water”.

**Table 2. The right to water as a constitutional right: review of some constitutions**

**AFRICA**

Democratic Republic of Congo	(2005) Art.48: The right to decent housing and the right of access to drinkingwater and to electrical power are guaranteed.
Ethiopia	(1998) Art.90 (1): To the extent that national resources allow, policies should aim to provide all Ethiopians with access ... to clean water.
Gambia	(1996) Art.216 (4): The State shall attempt to facilitate access to clean and healthy water.
Kenya	Draft Constitution (2005), Art. 65: Each person shall have the right to haveaccess to drinking water, of satisfactory quality and in sufficient quantity. Art. 66: Each person shall have the right to basic sanitary facilities.
South Africa	(1996), Section 27: (1) (a) Everyone has the right to have access to health care services, including in health care [Sic. However, the Constitution actually reads "including reproductive health care." Translator's note.]; (b) sufficient food and water. (2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
Zambia	(1995) Art. 14: The State shall make every effort to realise the fundamental rights of all Ugandans to social justice and economic development and shall notably guarantee that ... all Ugandans enjoy rights and opportunities as well as access to education, health services, clean and healthy water, decent shelter, adequate clothing, food, security and pension and retirement benefits.  (1996) Art. 112: The State shall make every effort to provide clean and healthy water.

**LATIN AMERICA**

Colombia	(1991) The State shall intervene specially to ensure that each person, particularly the most underprivileged, has effective access to basic goods and services. Article 366: the fundamental goal of its activity shall be to find solutions to essential unsatisfied needs in terms of ... sanitation, the environment and drinking water.
Uruguay	(1998) Art. 23: Without prejudice to rights established in this constitution and in applicable international law, the State shall recognise and guarantee to individuals the following rights: ... 20. The right to a quality of life that ensures health, food and nutrition, the supply of drinking water, improvement of the environment; education, work, leisure, housing, clothing and other necessary social services.  (2004) Art. 47: Access to drinking water and sanitation are basic human rights.

**ASIA**

Philippines	(1987), section 11: The State should adopt an integrated and comprehensive approach to health development and do everything possible to make access to essential goods, health and other social services available to all at an affordable cost.
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## Box 12: Uruguay: recent reforms against the background of “no to privatisation”

On the day of the presidential election in Uruguay, 31 December 2004, Uruguayan citizens were asked to vote in a referendum on a text proposing a constitutional reform aimed at incorporating in the Constitution a provision that “water is a natural resource that is essential for life,” and that access to water and to sanitation services is a “basic human right.” This reform was adopted by the Uruguayan people, with the support of 60% of the electorate. It results from a popular initiative launched by the National Commission for the Defence of Water and Life, made up of trade unions representing State-owned water and sanitation companies, and of various groups in civil society.

The initiative “established an historical precedent in the defence of water as a result of being enshrined in the constitution of a country by means of a direct democratic vote,” as pointed out by 127 organisations from 36 countries that sent a letter of support to the Commission behind the movement.

This innovative reform took place against a backdrop of rejection of the concept of privatising water, following several highly publicised failures by private companies: Agua de la Costa (a subsidiary of the Lyonnaise des Eaux, which had been established in Uruguay since 1992), which oversaw a significant price increase during its holding of the concession; and Uragua (owned by the Spanish companies Cartera Uno, Iberdrola and Aguas de Bilbao), for pollution of water destined for human consumption.

Thus, the reform stipulates that in future “in Uruguay, public services for supplying water for human consumption will be provided exclusively and directly by State legal entities.” This presents some concerns for the foreign companies - notably Spanish - that currently manage water services: will this measure be retroactive? Will current private sector concessions be cancelled? These questions are currently being debated.

The Parliament must legislate to define the mechanisms for applying this unprecedented constitutional reform.

### **What does local civil society say about all of this?**

During the Nairobi World Social Forum, a member of the National Commission for the Defence of Water and Life was interviewed. He explained that “the national federation was created in 2002 to fight against the privatisation of water, in reaction to problems encountered with private French and Spanish companies present in Uruguay.” He also explained how, in 2004, the right to water was included in the Uruguayan constitution and how the constitution officially precludes any privatisation of the water sector. He explained that “the popular revolt in Bolivia (Cochabamba, 2000) and the victories of the “water war” were a source of inspiration, a ray of hope and a strong political message for the whole of Latin America.” He recalled the importance of international solidarity and of pressure groups which have an important role to play in supporting the people in their struggles. He also explained that “victory is not yet assured in Uruguay; the real struggle is just beginning because now the law has to be applied!”

In addition, Guillermo Duchinin, a lawyer and rapporteur of the law establishing the constitutional reform on the right to water in Uruguay declared at the International Meeting for Access to Drinking water (November 2006, Marseille), that: “In Uruguay, water was never spoken about, and yet one day we decided to include water in the constitution. That seemed impossible, and yet... This initiative was supported by 64% of the population.”

## ■ WHAT IMPACT DO CONSTITUTIONAL REFORMS HAVE?

One may legitimately question the impact of such constitutional reforms in these countries. Does official state recognition of the basic nature of this right have any impact on national situations regarding access to water and sanitation?

As a partial response, we can look at rates of access to drinking water. A comparison between what the constitution says and what the results actually are will enable us to draw some initial conclusions regarding the effectiveness of this right. Does the legal backing serve as any form of leverage?

The following data are derived from the common UNICEF/WHO<sup>138</sup> program, which carried out monitoring between 1990 and 2004 in 75 developing countries on the question of achieving MDG No. 7 on water and sanitation. Country evaluations were made possible by defining four categories: on track, not on track, inadequate effort and inadequate data to reach MDG No. 7 by 2015.

**Table 3: Evaluation of progress towards achieving MDG No. 7: Countries that have recognised the Right to Water in their constitutions**

Country	Evaluation of progress towards achieving MDG No. 7	% coverage in urban areas	% coverage in urban areas	Total	MDG to reach
<b>AFRICA</b>					
<b>Democratic Republic of Congo</b>	Not on track. The DRC will need to do half as much again if it is to reach the MDG. And this is in a situation where the DRC has 25% of Africa's water reserves. <sup>139</sup>	82	29	46	72
<b>Ethiopia</b>	Not on track.	81	11	22	62
<b>Gambia</b>	Insufficient data to evaluate	95	77	82	90
<b>South Africa</b>	On track.	99	70	88	92
<b>Uganda</b>	On track.	87	56	60	72
<b>Zambia</b>	Insufficient progress	90	40	58	75
<b>LATIN AMERICA</b>					
<b>Colombia</b>	On track.	99	71	93	96
<b>Ecuador</b>	On track.	97	89	94	87
<b>Uruguay</b>	On track.	100	100	100	100
<b>ASIA</b>					
<b>Philippines</b>	Not on track. The two-thirds increase in the urban population between 1990 and 2004 has not been controlled.	87	82	85	94

138 / See the website at the following address [http://www.unicef.org/french/progressforchildren/2006n5/map/water/map\\_fr\\_water.swf](http://www.unicef.org/french/progressforchildren/2006n5/map/water/map_fr_water.swf)

139 / UNEP, 2002.



The diversity of situations indicates that the law is not the ultimate guarantor of an effective right to water for all. If the law were indeed the sole factor, countries with constitutions enshrining the right to water should all be well placed, and this is clearly not so. Thus, in itself the law does not necessarily guarantee that essential drinking water services will in fact be provided. In practice, the respect, protection and implementation of the right to water require the establishment of public services that are capable of meeting the objective - that is, they require the adoption of public policies giving practical expression to the right. The right is not, in itself, necessarily a reflection of public policies, or the means by which public policies can be improved, or a guarantee of results - but it does nevertheless demonstrate the State's recognition of the priority of that right.

It is thus essential to study why existing legal regimes that, in principle, encourage the achievement and respect of this right, are not effective in practice. Is it a lack of political will? Or a financial problem? Or a problem related to governance? Or a lack of adequate corresponding legislation? What factors are causing the blockage?

As an initial response, Professor Abdoulaye Diarra has noted that *"the effectiveness of a country's legal system is not unconnected to the state of its economic development and the level of its citizens' awareness and education."* It seems that these elements (economic development and level of citizens' education and awareness) are indeed crucial factors in ensuring the respect of basic rights. These factors suggest two parallel and complementary series of questions - one related to citizens and one concerning the State.

It seems important to acknowledge that people's practices and culture are also important elements needing to be taken into account. Thus, on the citizens' side:

- What ill-informed and poorly educated citizen can know what his/her basic rights are?
  - Even if he or she is well-informed, what citizen with only very limited economic means can seek to pursue a legal case against the State in order to claim a right and have it acknowledged?
  - Do the citizens have any association or agency that could support them in their defence of basic rights?
  - Is it part of these peoples' culture to stand up for their rights?
  - Do they live in systems that are "democratic" enough to allow them to stand up for their rights?
- Etc.


As for the State:

- Is the State in a position to implement basic rights (such as the right to health, the right to water, etc)? Because these rights do not depend solely on the practice of democracy (as might be the case, for example, with the right to free expression, or other rights whose achievement does not depend overwhelmingly on financial mobilisation and heavy investment), but on significant financial mobilisation to create basic investments, etc. To what extent does the level of development impinge on the implementation of basic and constitutional rights?

These questions are helpful in enabling us to understand the gap that can exist between the recognition of the right to water and the application of that right.

Finally, according to Professor Rivero<sup>140</sup>, *"Another difficulty relates to the definition of certain social and economic rights. To define a right is to identify the person to whom this right is attached, to state its objective, to identify those persons from whom the right can be claimed, and finally to identify a sanction by means of which its respect can be guaranteed."* Thus, to recognise a right as a basic right is only the beginning of the process of having it implemented. Beyond recognising rights, States must define which public entity is responsible for safeguarding them and must identify its competence and responsibilities, they must define citizens' rights in regard to these responsibilities and the ways in

140 / Jean Rivero (1910 – 2001), Professor of Law, Paris.



which citizens can have those rights upheld. Consequently, recognising a right is not an end in itself but seems to be the commencement of defining an objective, which needs to be given practical application by the establishment of public policies, with or without the help of technical and financial partners for weak States, in order to guarantee that the right can be exercised.

To enshrine the right to water in a constitution or a law is not an end in itself if those texts are not applied. Nevertheless, it seems important to support such processes by which basic rights are recognised. On the one hand, because this shows the State's willingness to encourage access to water, and on the other hand because it provides a strong foundation on which civil society can claim its rights.

In this context, Henri Smets has noted during an interview that: *"The constitution, legislation, and more generally the law all need to express and support a need, a requirement. The imposition of a legal norm is not enough. In order to have a real impact, the law is and must be the expression of a political will; if the opposite occurs, the process risks having no impact. In summary, the right to water will not change anything; on the other hand, the current international focus is a strong political expression, which could have an impact."*

## THE RIGHT TO WATER: WHAT IS THE OPINION OF CIVIL SOCIETY IN AFRICA?

Three representatives from civil society in Africa have spoken about the right to water in their countries. What is their opinion on current discussions on the right to water? Is the right to water recognised internationally or does it deserve greater recognition in official circles? What do they think of the implementation of this right in the laws of their own countries? What do they think of public and private water management? Should water be free? These are just some of the many questions for these committed representatives of civil society in Africa.

These interviews shed some light on how important the right to water is at this moment in time. While they may not prove anything they nonetheless reflect the daily ongoing struggle to ensure that everyone in the Cameroon, in Mali, and in South Africa has a right to water.

### ■ CAMEROON. SAMUEL ESSOUNGOU<sup>141</sup>, PRESIDENT OF THE CAMEROON CONSUMER PROTECTION ASSOCIATION (CCPA).

Do you think that the Right to Water is recognised internationally?

*"Certainly, But you have to distinguish between recognition and application. Now, a lot needs to be done to ensure that this recognition becomes action !"*

Do you think that General Comment No. 15 is an effective instrument in this respect?

*"Yes, General Comment No. 15 is a tool that is indispensable from a political point of view and has a 'slight' legal impact (General Comment No. 15 is not binding on the States that are signatories to the ICESCR in relation to the recognition of the right to water throughout the world. By way of this document the countries that so wish may be able now to feel 'morally' obliged to apply the right of all to water. At least, they may feel like reviewing the policy they have drawn up to resolve problems relating to access to water."*

General Comment No. 15 stipulates that "Water should be treated as a social and cultural good, and not primarily as an economic good".

What do you think of this approach?

*"This is basically our what we think!"*

<sup>141</sup> / Samuel Essoungou is also a member of the "African Water Network" (AWN) that was set up at the time of the World Social Forum in Nairobi (WSF, January 2007) Cameroon.

As far as you are concerned, should the right to water be included in a United Nations Convention?  
*“That is in our opinion what the next stage should be. General Comment No. 15 demands almost automatically that the right to water be put into concrete terms by means of a specific Convention. In any case, a Convention like this would put an end to the pressure to privatise water and would help in the fight against the trend towards privatisation.”*

Do you think that a legal approach could have a positive impact in developing countries?  
*“Definitely! Any State that is a signatory to an international convention undertakes to observe it! We think that these days, most countries that are attempting to privatise water are being put under pressure to do it from their financial backers and multinational water companies. A barrage of legal instruments would certainly help these countries considerably, if they really wanted to take up this challenge”.*

Do you think that the inclusion of the right to water in the national constitutions would have any effect?  
*“Yes. The inclusion of the right to water in the constitution of our countries would be an important legal instrument. Weaker States could fall back on this to help them reject the ‘diktats’ of the International Financial Institutions (IMF and World Bank.). And of course the issue of the public management of water must be added.”*

Do you think that privatisation represents a threat to access by the poorest people to water?  
*“There is complete divergence between the concept of privatisation of water services and that of access to a sufficient supply of drinking water for all. In developed countries, a number of social measures can be taken to mitigate the drawbacks linked to privatisation of water services. In our countries these measures would cost too much. Also privatisation has always failed in poor countries, simply because of the time factor -private sector companies cannot provide water to people who are unable to pay for it. These private companies are only interested in making a profit, so who is going to make up the loss of earnings? “*

What type of provision do you recommend?  
*“This is an issue that is difficult to address (voluntarily?! Theoretically and technically, the distribution grid system is the most efficient as it provides a large quantity of treated, safe water at the lowest cost. This system is appropriate in large built up urban areas. However, in our countries where populations are widely scattered, individual arrangements or small group arrangements should be considered. But clearly this would cost more.”*

In your opinion, should water be available to everyone?  
*“If possible, YES! But let’s be realistic: social solidarity has to come into play so that those for whom the supply of water would impose greater demands are not penalised.”*

What do you think has not so far been taken into consideration in respect of the right to water?  
*“Political will of course! Without it, nothing will happen!”*

This point of view highlights the importance of establishing an international agreement on water management, the political will that necessarily underpins this, and the support that such measures might receive from civil society.

The MDG clearly indicate that a strong common political will does exist, but we need to go further than this and not just set objectives; we must acquire the tools and an effective set of global regulations if the right of everyone to have access to water is to become a reality.

■ **MALI. BOUBACAR MACINA**<sup>142</sup>, **COORDINATOR OF THE 2DWSS RESEARCH UNIT**<sup>143</sup>

Do you think that the right to access to water is already recognised internationally?

*“Yes, in a way, since the right to access to water is one of the MDG (MDG no.7 aims to promote access to water) that most developing countries have included in their poverty eradication strategies.”*

General Comment No. 15 stipulates that water should be regarded as a social and cultural good and not purely as an economic one. What is your opinion on this?

*“Water considered overall (waterfalls, lakes, rivers) is a resource just as for example our forests. In this light, therefore, water could be considered to be a social and cultural good. But, as soon anything is done to make it accessible to users it becomes an economic good, because then a service has been provided.”*

Should the right to access water be recognised within a United Nations Convention?

*“This would, in fact it be a good thing, just as with all the other basic human rights, the right to access to water should be recognised in a United Nations Convention.”*

Do you think that the rights-based approach could help in developing countries?

*“Yes insofar as such an approach implies that governments are responsible for making water available to the population!”*

Do you think that the inclusion of the right to water in the national constitutions or national legislation will have a positive impact?

*“As the constitution is the basic legal instrument, all the rights written into this instrument are basic rights. Including in this the right to access to water places an obligation on governments to find solutions to provide their populations with access to water.”*

Do you think that privatisation poses a threat to access to water and to water purification systems for the poorest populations?

*“Water is under public sector management in several countries where the population does not have access to water; water has been privatised and often there is a mixture of private sector and public sector management in other countries, and the end result is the same. The problem is not whether water is under public sector or private sector management or a mix of the two, but is about national policies, in particular the priorities they set, the issue should not be confused! In this respect I suggest that there is no ideal type of provision and you just have to take into account the interests of users in national and international policies.”*

Do you think that water should be free of charge for everyone?

*“In Mali, we consider that water is a gift from God. It is free of charge and nobody pays for it; however, water services are paid for.”*

What are the main obstacles to using a rights-based approach that would facilitate access to water and water purification treatment in your country?

*“In my opinion the main obstacle is the practical implementation of this right in developing countries. If access to water is a right, non-satisfaction of this right has to be penalised by the law, in other words, those populations that do not have “the right of access to water” can take legal action against the competent States or services. But in developing countries which are generally speaking countries “without proper democracies”, populations that are in the main rural will think twice before taking*

<sup>142</sup> / Boubacar Macina is Coordinator of the 2DWSS research unit. He has been especially involved in a workshop on the right of access to water organised by Bridge Initiative (Dijon, November 2007). Mali

<sup>143</sup> / The research unit 2DWSS (DWSS is the acronym of “Drinking Water Supply and Sanitation” is located in Kayes in Mali. It is very much involved in implementing water policy in Mali.

*such a step. In other countries, as these countries are marked by their lack of resources anyway, people will say that this right is violated!"*

This point of view highlights the importance of including the right to water in national legislation, but above all stresses practical issues; it also raises three key questions. The right to water is certainly a useful tool but what instruments can be used to practical effect? Is there sufficient political will to put this right to access to water into effect? Finally, what possibilities exist for a given population to assert these rights? To analyse this last point, in greater depth, let us recapitulate the suggestions made by H. Tazi Sadeq<sup>144</sup> who clearly illustrates the thrust of this question by stating that "the right to water seems to be an individual right, but that, in our society, the right can only be claimed and defended with some difficulty on an individual basis. Establishing the right to water and defending the right has to be done on a collective basis. However our legislation does not allow this. Action is always carried out on an individual basis. The NGOs do not have the capacity to do what they could do. This is also an area that has to be given serious consideration. There may be means to seek legal remedy but who has these means? I do not see an ordinary citizen from a shanty town attempting to assert his right to water when the procedure is bound to be expensive. Let us be realistic. I think that some thought has to be given to this issue, "What is the right to water these days? What would add the greatest value to the daily lives of these people?<sup>145</sup> "

### ■ SOUTH AFRICA. PATRICK SINDANE<sup>146</sup>, ACTIVE MEMBER OF THE "COALITION AGAINST WATER PRIVATISATION"

Are you familiar with General Comment No. 15 of the United Nations?

*"Yes, I am familiar with this text, but I don't find it very useful because it makes no reference to economic rules and regulations. It simply states that water should not be seen only as an economic good. Is this really enough?"*

Do you think then that the right to water be included in a United Nations Convention?

*"Yes! The United Nations has to try to control and maintain the peace of the world! It would be even better if the United Nations could also deal with the economic regulation of water services, and especially regulate the activities of the multinational water companies, with the aim of making them realise that water is a basic human right and not an economic asset!"*

Do you think that a rights-based approach can be of benefit to the developing countries?

*"Yes, certainly! But for example, one of the most progressive constitutions in the world, that in South Africa, includes the right to water, but at the same time, this right is enforced through the privatisation of services. So, the access that we have to water is determined by our constitution but it is enforced in practice through the multinationals that privatise the water! Is this approach of real benefit under these circumstances?"*

Do you think that privatisation represents a threat to access to water and to water purification systems by the poorest?

*"Yes! Certainly it is a threat because our access is restricted and in South Africa we cannot negotiate any change in the 'prepaid water meter' scheme. This system grants the right to have 6000 litres of water free of charge per month and per household; this is not always enough and over that amount the*

144 / M. Houria Tazi Sadeq is Président of the Maghreb Machrek Alliance for water (ALMAE) and current governor of the World Water Council (WWC), Morocco.

145 / In *Le droit à l'eau en Europe et en Afrique*, Académie de l'Eau, 2001, pp 26.

146 / Patrick Sindane is also a members of the "African Water Network" (AWN) set up at the time of the World Social Forum in Nairobi (WSF, January 2007), South Africa.

*costs are very high. Furthermore, this makes you forget that in reality our access to water is restricted! In my view this is a Western approach to meeting the problems of the South!"*

Do you think that water should be free?

*"Yes, drinking water should be free to essential users, but not for those who use water resources in order to make a profit!"*

In your opinion, are some factors not taken into account by the right to water?

*"Yes, and in fact, some important factors should be given greater consideration, for example, water is a right, water should be free, water should be accessible financially speaking and finally a water purification system is a guarantee of dignity!"*

### Box 13: What is a "prepaid water meter" scheme? An example from South Africa

What follows is an example of action taken by society against the "prepaid water meter" scheme. A description of the situation of the residents in the Phili district in Soweto, in South Africa, where this interview was conducted should help provide a better understanding of the situation..

In March 2004, the residents of this district had to decide whether to have their water cut off (their water was supplied by the private company Johannesburg Water (Pty) Ltd) or to accept a pre-payment system, the only alternative to being disconnected from the grid. The main purpose of this system of prepaid water meters is to put an end to unpaid bills. In reality the end result is that the inhabitants have to have money to obtain running water. This scheme is supported by the World Bank which indicated in the "World Development Report 1994: Infrastructure and development that pre-paid water meters 'make it possible to cover costs and help to speed up the involvement of the private sector in the supply of water services'.

In an effort to fight against this situation, the residents of Phili formed the 'Coalition Against Water Privatisation in South Africa' and lodged a complaint with the Johannesburg Supreme Court. The Court stated that the use of pre-paid meters runs against the constitution, which guarantees the right to everyone to have access to a sufficient quantity of water. Moreover,

South African law guarantees 6000 litres of free water per month per household. The Coalition then requested the Supreme Court to order the company to supply a minimum of 50 litres per person/per day and to order the abolition of the pre-payment system, as it seriously hindered access to water and was harmful to the health of the community. The association now fears that water will become a luxury in Soweto where approximately one resident in two is unemployed".

### ■ CONCLUSION. CIVIL SOCIETY IN AFRICA AND THE RIGHT TO WATER. WHAT PROSPECTS?

These descriptions of three African situations highlight a number of issues raised by the question of the right to water

The most significant seems to be the role that local civil society can play, on the one hand, in decision making in water management issues, and on the other, its capacity to claim its right to water, when such is recognised (as in South Africa).

Furthermore, political will – which UNDP continually highlights in its 2006 Human Development Report– has been shown to be an extremely important factor. The question of access to water is certain-

ly a technical issue and an economic challenge, but it is also a very political and politicised issue.

This position offsets the rather verbose speeches on the need to draw up and set in place a UN Convention on the right to water. In reality any international legal instrument will only have a positive impact on the populations that suffer from lack of any access to water and sanitation systems unless there is sufficient political will at the national level and it is this that will be the real agent for change in tomorrow's world.

## THE MAIN DONORS

The three main ACF-IN donors providing finance in the domains of Water, Sanitation and Hygiene (WASH): DFID (Department for International Development U.K.), ECHO (European Commission Humanitarian Aid Department) and the European Union (EU) (via EuropeAid) were requested to talk about their official position on the right to Water, as well as to share with us any observations they might have on United Nations General Comment No.15. DFID would appear to be the most committed donor and the only one to hold an official position on this issue. DFID is also the donor most willing to review its strategies and policies so as to better incorporate the right to Water. This section also provides a few insights into the French Development Agency's (AFD) water strategy for 2006 given the on-going negotiations between ACF-France and AFD on the adoption of a pro forma contract.

### ■ DFID

DFID has adopted an official position on the right to Water (see Appendix 3) considering it to be a tool to be used to improve access to water and sanitation in developing countries, as well as to fight poverty. DFID also believes that the right to water is enshrined in the right to live in dignity as set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR). More generally speaking, DFID perceives the implementation of human rights as a powerful force towards good governance and compliance with the rule of law. DFID encourages the development of programmes anchored in a "rights-based approach". Accordingly, DFID is presently re-examining its strategies in order to incorporate the right to Water and promote the application of basic human rights. The document should be ready by the end of 2007.

This approach is in keeping with that of the U.K. Government that recognized the right to water in 2006. (See Box 14).

Of the three organizations surveyed, DFID is the one that attaches most importance to the right to water and its access, as well as the respect and protection of basic human rights.

### Box 14. Extract from a UK press release on the recognition of the right to water, November 9, 2006.

UK recognises the right to water as Hilary Benn launches call for Global Action Plan to solve water crisis

The UK has decided to recognise the human right to water, International Development Secretary Hilary Benn has announced. Responding to the UN Human Development Report on water and sanitation published today, Mr Benn has called for a Global Action Plan on water and sanitation.

Mr Benn said: "Today's announcement adds Britain's voice to the call for every human being to have access to sufficient, affordable and safe water supply."

“In many developing countries, water companies supply the rich with subsidised water but often don’t reach poor people at all. Recognising the right to water will help change this and allow all citizens to demand more of their governments.”

In a speech for the launch of the UN’s Human Development Report, Mr Benn added: “With around 5,000 children dying every day because they drink dirty water, we must do more. We must act now to help the one billion people in developing countries who do not have safe water and the two and a half billion people who are without proper sanitation. There are too many international agencies working on water and sanitation, and not enough action; too many meetings and working groups and not enough pipes and taps. That’s why I’m arguing for major reform of the international system to bring about change.”

Mr Benn’s proposals for a Global Action Plan call for:

- More funding and more effective spending of it
- One annual global report setting out progress towards achieving the water and sanitation Millennium Development Goal targets.
- One high level annual global meeting to bring donors and developing countries together, monitor progress, spot the gaps and decide on action.

## ■ ECHO

The mandate<sup>147</sup> conferred on ECHO by the European Union consists in providing assistance and emergency aid to victims of natural disasters or to those caught up in conflicts outside the European Union. This aid is sent directly to populations in distress, regardless of race, religion or political affiliation.

In fulfilling its mandate, ECHO considers the right to water to be a fundamental right but believes that the right to water as defined by United Nations General Comment No.15 (2002) goes far beyond its own objectives and is more of a development issue germane to other organizations within the European Commission, such as EUROPEAID.

## ■ EUROPEAN UNION (EUROPEAID)

The European Union recognizes that the right to water is a basic human right and that access to water and sanitation are essential if the MDGs (Millennium Development Goals) are to be reached. The ‘EU Water Initiative’<sup>148</sup> launched by the European Union in 2002, underscores that position by fostering dialogue and cooperation among the various stakeholders and actors, in order to enhance the development of supportive political structures and national strategies.

On the other hand, the European Union does not hold any official position in respect of the possible implementation of an international legal instrument specific to the right to water (see the European Union response in Appendix 2). Nevertheless, the EU is actively engaged in protecting and promoting economic, social and cultural rights, particularly through implementation of the ICESCR. In addition, the EU plans to promote a human rights-based approach within all programmes in the developing countries.

## ■ AFD

In its 2006 strategic plan on water and sanitation, AFD (French Development Agency) highlights the importance of recognizing the right to water. The strategy states that *“Water” is a major theme on the world agenda (...). The issue is both one of “public good”, generally at regional level, and one of a “fundamental right” to have access to basic services*, and thus reaffirms the essential nature of water.

147 / See ECHO’s humanitarian mandate at <http://eur-lex.europa.eu/>

148 / For further information, visit their web site at <http://www.euwi.net>. Also, refer to the Facilité Eau ACP-UE launched in 2004. Additional information can be obtained at [http://ec.europa.eu/europeaid/projects/water/index\\_fr.htm](http://ec.europa.eu/europeaid/projects/water/index_fr.htm)



In addition, AFD emphasizes the importance of making the right to water effective and equally stresses that good governance is needed to comply with that right. It declares that *“The right to water and sanitation must be made “an effective right” for all people, through cost-sharing by local communities and multi-partnerships, as well as through collaborative management. Improvement in the provision of services is a priority.”* Also, *“Many countries are going through a governance crisis, rather than a water crisis. Investment programmes should require (as much as possible) the ongoing improvement of administration and management personnel. We will advocate for collaborative and sound management of resources, and ensure that everyone has the effective right to access.”*

ACF-Franc’s major EAH financial backers have all adopted this overarching theme.

Nevertheless, most remain conservative in their thinking (with the exception of DFID) and continue to provide access to water and sanitation in the field, an approach they feel will guarantee that the right of water will eventually be achieved.

## WHAT ARE NGOS AND INTERNATIONAL ORGANISATIONS DOING?

### ■ IN FRANCE

Recent initiatives in France indicate that the context is increasingly receptive to the idea of the right to water as can be seen for example in the recognition of the right to water in national legislation adopted in December 2006, the presence of PFE and many other French organizations at the WWF in Mexico, and the adoption of the Oudin Santini Law (See Box 3).

A number of actors have also become very concerned with this issue: World Water Council (Conseil Mondial de l’Eau), Water Academy (Academie de l’Eau), Green Cross, Fondation France Libertés, FIDH, Commission Nationale Consultative des Droits de l’Homme (CNCDH), and the newly formed Water Coalition. All these organizations campaign for the recognition and application of the right to water for all in France and abroad.


Some of these organizations and their programmes are examined in more detail below.

### Box 15. The Oudin Santini Law, proof of France’s commitment to improving access to water and sanitation in the countries of the South.

The “Oudin-Santini” law initially drawn up by Jacques Oudin, founder and President of the “Cercle Français de l’eau” and published on 10 February 2005 in the French “Journal Officiel” was voted into law on 27 January, 2005.

This law authorizes local French municipalities (communes), public inter-communal authorities and water and/or sanitation authorities (federations of municipalities, suburban communities, urban communities, joint authorities and municipal associations), and other public unions in charge of water and sanitation groups to allocate 1% of their budget to public water and sanitation services, decentralized cooperative actions, and emergency assistance or actions of solidarity in the domain of water and sanitation.

This law is innovative compared to the more classical decentralized cooperation, which as defined by the 1992 law, only authorizes local French collectives to finance cooperative activities out of their regular budget. This made it impossible for them to use funds out of an ancillary budget only intended for specific water and sanitation projects.



The Oudin law not only offers that opportunity, but also promotes devolution of services to permit decentralized organizations with expertise in water and sanitation to mobilize funds. It allows surplus funds to be diverted to water and sanitation programmes (the “Ps-Eau” association considers that this law could enable 100 million Euros to be put to use if all stakeholders become involved) and highlights the value to be placed on local level action.

• **World Water Council**

The World Water Council (WWC) drew up a programme for the 4th World Water Forum (Mexico 2006) called *“The Right to Water: From Concept to Implementation”*<sup>149</sup>. This very detailed report and the organisation of sessions on the right to water helped advance the concept of this right.

In addition, WWC is planning to develop a second programme on how to put the right to water in practice with the aim of producing a report on this topic before the 5th World Water Forum (Istanbul 2009). The WWC has taken no official stance on the right to water, but part of its mission is to facilitate and promote dialogue on this matter.

• **Water Academy**

Henri Smets has produced a number of reports on the definition and scope of the right to water. (See bibliography). Through its publications, and publicity about its work, the Water Academy is moving the debate on the right to water forward both in France and abroad. (In France, the Water Academy has facilitated debates at government level.)

• **Green Cross**

Green Cross France is calling upon French parliamentarians to apply the right to water in France and appealing to governments worldwide to adopt a Framework Convention on the Right to Water. Green Cross has proposed the text of an international Framework Convention on the Right to Water which can be found on its website.

Bertrand Charrier, President of Green Cross France and Vice-president of Green Cross International declared during an international meeting on the right to access in Marseille in November 2006, *“We must work to create an international legal framework on the right to water”*.

Green Cross International is also conducting an advocacy campaign to promote the recognition of the right to water, entitled *“Access to water is not a privilege, it is a right!”*

149 / (C.) Dubreuil, *The Right to Water: from concept to implementation*. World Water Council, 2006

**Box 16. Green Cross France and “Coalition Eau” appeal to the High Commissioner for Human Rights to actively promote the Right to Water.**

Within the framework of its campaign for the Right to Water and its global implementation, Green Cross France supports the appeal launched by a large number of NGOs worldwide and particularly those of the French Coalition Eau

9 May, 2007

Madam High Commissioner,

“Coalition Eau” comprises a group of French NGOs actively involved in the issue of water at both national and international levels, in particular those working to improve access to water in the developing countries. As an organization representing more than 50 associations concerned by problems in the water sector, we wish to make known our position on the questions raised by the Human Rights Council.

NGOs forming the “Coalition Eau” consider that the right to water and sanitation is a fundamental right, and a human right that should be spelled out in policies of access to this vital resource. These NGOs would like to draw attention to the international agreements by States that promote access to water for all people and express regret that despite positions pronounced by State representatives, many have not yet enshrined this right in their national legislations. Nor have they made the necessary financial and human resources available to implement this universal right. They consider that this right needs to become effective through legislation and policies developed by citizens in keeping with their own needs and what they can afford.

This essential public service must be accessible to all, including the poor, the marginalized and all those who cannot afford to pay for water services. Access to water must also be rapidly made available to people in situations of emergency or conflict.

It is the hope of the NGOs making up the “Coalition Eau” that the Human Rights Council will promote a human rights approach to the water sector. They also hope that the High Commissioner’s report will help clarify the concrete implications of the right to water and will encourage international institutions active in the water sector to respect this fundamental right in all their projects.

Coalition Eau fully supports the position taken by the 176 organizations having signed the petition to Madam Louise Arbour (P.J.). They wish to emphasize that its members contributed to the French plan to adopt the right to water in their own country within the framework of the Law of 30 December, 2006, but which has yet to be implemented.

Sincerely,  
Laurent Chabert d’Hieres, Coordinator, Coalition Eau.



- FIDH<sup>150</sup>

In 2002, FIDH published a report entitled “Droit à l’eau potable au Niger. Enfants de Tibiri: quand l’eau se transforme en poison” (“The Right to Drinking Water in Niger. Children of Tibiri: When Water Becomes Poison”) which contains the conclusions of an international study of children in Tibiri who for more than 15 years were poisoned by the water from a 1983 drilling site. The level of fluoride, well above the level recommended by the WHO, caused discoloration of dental enamel and bone malformations in a whole generation of children aged between fifteen months and fifteen years. The report also studies the impact of privatization of water distribution in Niger.

- Fondation France Libertés

Since its creation, the Fondation France Libertés has been actively working for the recognition of the right to water. In 2005, it launched a campaign entitled “Le droit de l’eau: libre, potable et gratuite” (“The right to water: accessible, drinkable and free”).

Within this campaign, the position of Fondation France Libertés and its proposals in respect of the right to water are as follows:

- Enshrine the right to access drinking water in all constitutions and, a fortiori, in the European constitution.
- The distribution of water and sanitation services is essential for daily life. These services should be funded and managed in the interest of society.
- 1% of the current total world expenditure for arms over a period of 15 years should be re-allocated to programmes making access to drinking water possible in areas lacking adequate infrastructure.
- Every human being should have access to 40 litres of drinkable water a day free of charge.

The Foundation was also responsible for organizing the “Rencontres Internationales du Droit à l’eau” in Marseille (France) on November 27 and 28, 2006.

- Commission Nationale Consultative des Droits de l’Homme (CNCDH)

The French CNCDH (National Consultative Commission on Human Rights) actively supports the right to water.

In its draft opinion on the right to water dated June 2007 (See Appendix 6), the CNCDH declared that *“to be completely effective, the right to water must be implemented through precise domestic law provisions, which cover various aspects, such as access to water and sanitation for persons in need or for rural areas that may be without”,* and it is their hope that *“the Human Rights Council will adopt a resolution which would recognize that access to drinking water and sanitation is a fundamental right, entitled to the same protection that other inalienable rights have at the international level and which are implemented as “a right to acceptable level of life”,* and concluded by requesting that *“French diplomacy be mobilized with all its partners, especially those in the European Union and the OIF to take the necessary steps to make this happen”<sup>151</sup>.*

- Coalition Eau

In early 2007, a group of French NGOs<sup>152</sup> decided to create the Coalition Eau (Water Coalition), assigning to it the following two missions:

- To allow equal and sustainable access to the vital resource of water (This right to water is

150 / <http://www.fidh.org/>

151 / Extract from the June 2007 Draft Opinion

152 / Coalition members: CCFD, Frances Libertés, Amis de la Terre, GRET, WWF France, ACAD, Réseau Foi et Justice, Green Cross France, Helen Keller International, Secours Catholiques-Caritas France, ADEDE, Eau Vive, Hydraulique sans frontières, AVSF, Triangle, ECTI, 4D, CRID, Toilettes du Monde, Ingénieurs sans frontières, Acme France, Solidarité Eau Europe

described in this section under the title of “The Time has Come to Clearly Recognize the Right to Water”)

- To support the construction of public water services and the participation of local actors.

The goal of the coalition is to ensure that the voice of France is heard. The group has its own budget, co-financed by AFD (French Development Agency) and MEDD (Ministry of Ecology and Sustainable Development).

### Box 17. Extract taken from a text written by the founder of Coalition Eau.

#### Unequivocal Recognition of the Right to Water

U.N. Member States have recognized the right to drinkable water and sanitation as a fundamental human right. In spite of that, many of them have neither enacted this right through their national legislations, nor have they mobilized the necessary funds and human resources to implement it fully. The reluctance of European Union States to take on a rights-based approach shows that there is a lack of will to implement this right in the policies of access to this vital resource.

The Coalition Eau NGOs demand that the right to water become effective through legislation and policies developed with citizens in keeping with their own needs and what they can afford. This essential public service must be accessible to everyone, including the homes of the poor, the marginalized and anyone who cannot afford to pay for water services. Access to water must also be made available rapidly for people in situations of emergency or conflict.

France and the European Union must promote the rights-based approach while clarifying its concrete implications, and do all it can to make this fundamental right effective and respected by international institutions involved in the water sector.

In France, many organizations are beginning to actively work for the recognition of the right to water (Academie de l'Eau, Conseil Mondial de L'eau, CNCDH) as well as for the full application of this right (Coalition Eau, Fondation France Libertés.) France is a model of how this issue can be addressed in a dynamic and complementary way, through action and advocacy. It is clear that the recognition of the right to water at the national level is helpful in this regard.

## INTERNATIONAL ADVOCACY NETWORKS

There are a number of advocacy groups that are actively demanding:

- The recognition of the right to water
- whilst at the same time opposing privatization, which they believe threatens access to water for the poor.

The following list is not an exhaustive one, but it represents groups which are very active on the international scene and well represented at international meetings such as the Global Assembly of Elective Representatives and citizens for Water (AMECE), the World Social Forum (WSF), etc.

### • World Development Movement (UK)<sup>153</sup>

“WDM. Justice for the World’s Poor” is a network of British campaigners who actively promote the recognition of the right to water and are opposed to Public Private Partnerships (PPP) as proposed by the British government. Its main water and sanitation campaign is called “Dirty Aid, Dirty Water”

153 / <http://www.wdm.org.uk/campaigns/water/news.htm>



and a number of their publications are available online

• **Water Aid (UK)**<sup>154</sup>

WaterAid is conducting an international campaign called “End Water Poverty” to mobilise people to take action on the current water and sanitation crisis.

WaterAid’s position and what the campaign is calling for are:

- A global action plan for water and sanitation to be monitored by a global task force
- 70% of aide money to be targeted to the poorest countries
- Water resources to be protected and shared equitably.

• **Blue Planet Project/ The Council of Canadians (Canada)**<sup>155</sup>

These two groups jointly created a network called “Friends of the Right to Water” which works with organizations and activists for the establishment of the right to water.

Its three main goals are to ensure that:

- the right to water is recognized as a basic human right
- access to water be locally, publicly and democratically controlled in a transparent manner
- governments, private water industry, and international financial institutions respect this right.

Blue Planet and the Council of Canadians are very active on the international scene, and especially in the creation of the African Water Network at the World Social Forum held in Nairobi in January 2007.

• **International World Water Contract**<sup>156</sup>

The World Water Contract is a global network created in 1998 following the release of “*The Water Manifesto: Arguments for a World Water Contract*”<sup>157</sup> which calls for “a world water contract to enshrine fresh water as an essential good to which all people have a right, and that therefore “this precious resource... should not be treated like a marketable commodity.” The Manifesto consists of two main proposals: the guarantee of individual and collective rights to access water for all members of the human community, and its ownership and management to be participatory and sustainable. Since the Manifesto, many groups have formed around the globe to advocate for a world contract for water such as in Belgium, Italy, France, Mali, etc.

The president of the World Water Contract, Riccardo Petrella explains that, “As a fundamental and irreplaceable “life source” of the earth’s ecosystem, water is a basic good which belongs collectively to the inhabitants of this earth. No one, individually or in groups, should have the right to own it privately. Water is the common heritage of all humanity. Collective and individual health depends on it. Agriculture, industry and home life are all interrelated. The richness of the earth cannot be developed without water. Everyone acknowledges that water is not like any other resource, in that it is neither an exchangeable nor a marketable commodity. Its unique characteristic is such that all of humanity, and each individual, has the right to access water, particularly water that is drinkable and of sufficient quality and quantity to satisfy basic human needs and economic activity.”<sup>158</sup>

The World Water Contract group organised the Global Assembly of Elective Representatives and citizens for Water (Brussels, March 18 to 20, 2007) which brought together legislators, elected officials, unions, associations NGOs, activist groups, and citizens, to discuss four main themes:

- Making access to drinkable water and sanitation services a basic human right for all

154 / [http:// www.wateraid.org/uk](http://www.wateraid.org/uk)

156 / <http://www.acme-eau.org/>

155 / <http://www.blueplanetproject.net>

157 / Petrella (R.), *The Water Manifesto: Arguments for a World Water Contract* (Global Issues Series). London, Zed Books; 2001.

158 / Excerpt from *The Water Manifesto: Arguments for a World Water Contract* op.cit.

- Promote water and its use as a common good, and as humanity's common heritage
- Publicly financing activities and services related to water in order to sustain human life and a secure existence for all.
- Establishing democratic structures that will participate in the public governance of water.

The goal of the meeting was to “encourage elected officials and people in authority to become involved publicly about the issue of the right to water and to take political action in a bid to send a clear signal to the population, economic leaders and decision makers at the national and international levels.”<sup>159</sup>

ACF-IN was present at this meeting and made a presentation on its position on the right to water.

#### • Alliance Sud (Switzerland)<sup>160</sup>

Alliance Sud, a Swiss Alliance of coalition of six Swiss development organizations<sup>161</sup>, launched an appeal on the occasion of World Water Day (March 22, 2007) demanding the adoption of an international treaty on water to make access to water a reality for all. The coordinator of this group of NGOs states that “We are convinced that water needs to be protected by an international law, such as the ones already existing for climate and biodiversity.” According to them, an international treaty would empower “populations who demand the right to access drinkable water at the national and local levels. It would also permit them to participate in the democratic decision-making process around the politics of water.”<sup>162</sup>

The international organizations that have become mobilized on the issue of the right to water have done so around two related themes: opposing privatization and protection of general interest in the face of business culture, and promoting the public control of water. Most of these actors are social activists, or even “alterglobalists”<sup>163</sup>.

## ■ HUMANITARIAN NGOS

A number of NGOs working in the field<sup>164</sup> and international organizations, mainly members of WASH (Water, Sanitation and Hygiene) coordination<sup>165</sup>, were also asked to take part in this study in order to ascertain their position on the right to water.

The results indicate that none of them has delved deeply into the topic of the right to water and no official positions have been taken in this regard. The NGOs that were surveyed appear to be focused for the time being on their operations on the ground. However, these NGOs say that they put the right to water into practice on a daily basis in their EAH programmes, such as supplying drinkable water, establishing quality control methods, following the WHS or SPHERE Standards for quality and quantity, etc. They see themselves as hands-on practitioners rather than activists who mobilize people around the issue of the right to water.

All the NGOs interviewed say they are familiar with the concept of the right to water, even though it is not a major part of their field work.

159 / Excerpt from AEMCE Brussels Assembly Presentation Brochure.

160 / <http://www.alliancesud.ch/>

161 / The six member organisations of Alliance Sud are: Arbeitsgemeinschaft, Swissaid, Fastenopfer, Brot für alle, Helvetas, Caritas, Heks.

162 / Extract from the 22 March 2007 Swiss Info Journal article “Un traité international pour garantir le droit à l'eau »

163 / Here we will support Samir Amin's position which holds that “alterglobalism (which refers to the plan of building “another possible world”) comes in a variety of forms”. In the January 2007 issue of Le Monde “Quel Altermondialisme?”.

164 / MSF, UNICEF, OXFAM, Save the Children, CARE, IRC, ICRC, Red R, Concern

165 / Water, Sanitation and Hygiene.



On the other hand, some organizations are planning to revise their policies and strategies to incorporate the concept of the right to water. Some monitoring of the activities-of these groups will therefore be needed over the next few months.

It was not considered necessary to go into great detail about the NGOs surveyed. Since most do not hold any official position on the right to water, the discussion would have focussed on their activities in the field, which is not the goal of this study. It was considered, however, that it would be useful to look at a few exceptions.

OXFAM, in its latest report entitled “*In the Public Interest; health, education and water and sanitation for all*”, and co-written with WaterAid, acknowledges that the right to water, the right to education and the right to health are basic human rights. Although OXFAM accepts the concept of the right to water it has not conducted any campaigns on this matter, but is currently working with WaterAid<sup>166</sup> on this issue.

ICRC (International Committee of the Red Cross) has not taken any official position on the right to water and is not currently developing any related programmes. The ICRC quite rightly considers that the right to water is already recognized in the Geneva Conventions.

The UNHCR (United Nations High Commissioner for Refugees) has not taken any official stance on the right to water, but has published a document entitled “*The Human Right to Water and Protecting Refugees*”. This goes to show that NGOs and international organizations are beginning to pay attention to the concept of the right to water.

The same can be said for humanitarian organizations where the beginning of a movement can now be perceived. As with organizations like ECHO, their position relates to the fact that their daily focus is on handling emergencies. For now, the right to water is more likely to be addressed in the context of post-emergencies, and/or development, that is, when the State can again promote its implementation.

166 / This topic is discussed at <http://www.wateraid.org.uk>, and the right to water is discussed in depth at <http://www.righttowater.org.uk>.



## CONCLUSION

*“Asserting the right to water does not mean writing it down on a piece of paper and ignoring it the next day. Asserting the right to water means to take measures, to set budgets and priorities.”*  
Jean FABRE, Director of UNDP Geneva, in a statement made during the International Forum on the Right to Water (November 2006, Marseille)

Despite the number of campaigns listed in this report, over 1.5 billion people still do not have access to safe drinking water and 2.4 billion do not have access to sanitation. Access to water and sanitation goes hand in hand with developmental, health and environmental issues and poses one of the greatest challenges of this century, particularly in developing countries.

Awareness of the situation's urgency has been increasing since the adoption of the MDGs by 198 nations (2000); at the same time, a debate on the right to water is emerging on the international stage. The concept is gaining in legitimacy and recognition, and is fiercely defended by a number of organizations (NGOs, international organizations, etc.) The Committee on Economic, Social and Cultural Rights' adoption of General Comment No. 15 in 2002<sup>167</sup> brought added dimension to the concept. This Comment recognizes, for the first time, the right to water as a fundamental human right. Consequently, the 145 nations which ratified the International Covenant on Economic, Social and Cultural Rights (1966)<sup>168</sup> are now responsible for ensuring everyone access to “sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.”<sup>169</sup>

Although it is clear that the respect for the right to water will become official at the international level (Commission on Human Rights, UN Convention, etc.), the ultimate guarantee of its implementation will come from the political will and ability of nations (UNDP, HDR 2006) to institute public policies conducive to the improvement of access to water and sanitation. Indeed, rather than being a technical problem, water is primarily a social, political, economical and environmental issue (P.A. Roche, 2003).

The legal approach is relatively recent but is already showing increasing success. This report demonstrates that numerous state, civil society, etc. initiatives are moving in this direction. H. Tazi Sadeq states that *“Civil society rallies around the topic of water and its main contribution is its refusal to reduce the complex reality of this key resource for development to only one type of variable. The importance of the stakes and the intrinsically social nature of the solutions mean that the decision-making no longer rests solely with scientific and technical initiators of development.”*

On the strength of these initial findings, this study addresses a far-reaching subject: the right to water in vulnerable countries. This is a complex problem, especially in countries suffering from a lack of governance, financial resources and/or political stability, etc. Nonetheless, it is in these very countries that the situation is the most alarming. In fact, the 2006 UNDP Human Development Report refers to a “fracture” effect between rich and poor, between North and South in the access to water and sanitation.

Accordingly, this report deals with an infinite number of related issues associated with the right to water, all of which deserve further individual study: How can one speak of the right to water without discussing privatization and the controversial privatization of services in the Southern Hemisphere?

167 / Adoption of General Comment No. 15 by the CESCR on November 26, 2002, which is an interpretation of the International Covenant on Economic, Social and Cultural Rights of 1966. It refers in particular to articles 11 and 12 which refer to the right to water in an implicit manner as pointed out by the Committee.

168 / The implementation of the International Covenant on Economic, Social and Cultural Rights dates back to 1976.

169 / Definition given by General Comment No. 15



How can one speak of the right to water without discussing implementation tools on the national as well as international level? Nonetheless, this report is a good introduction to this vast subject and covers the overall range of the current debates. Its goal is to introduce the right to water to the entire membership of the ACF-IN network, in the head offices as well as in the field. It will certainly have a strong impact in raising the consciousness and comprehension levels by explaining what the right to water is, how this concept has arisen, what the current development perspectives are, what the related issues are, etc.

What are this report's major conclusions and what are ACF-IN's concrete development opportunities with regard to the right to water?

### ■ **WATER: A COMMON GOOD. WHAT MOBILIZATIONS ARE NEEDED FOR ITS PROTECTION?**

This report also demonstrates that water is becoming more widely recognized as a universal "common good." Water is vital to life and therefore the establishment, and especially the application, of the right of access are legal advances that are crucial for the future of the world's populations, particularly the most vulnerable.

Access to water is proving to be a fundamental objective that must be attained to ensure the future of mankind, as is the establishment of a "global public freshwater service."

There has been some confusion in activist milieus between the struggle against the privatization of water services and campaigns for the implementation of the right to water. In light of the contents of this report, we feel it is important that a field NGO take a pragmatic approach and not embroil itself in dogmatic debates.

ACF-IN, because of its position and its knowledge of the potential hardships caused by the privatization of water services for the most vulnerable populations, must remain in a permanent state of vigilance over the water multinationals. However, the crux of the issue is not opposing privatization but rather maintaining a position of strength in the organization's objectives. The goal is to promote an attitude that is firm yet conducive to dialogue with all parties concerned in order to contribute to the achievement of this fundamental right.

### ■ **RECOGNITION OF THE RIGHT TO WATER AT NATIONAL LEVEL: IMPACT AND PROGRESS**

The official recognition of the right to water in national legislation should promote more equitable water policies, improved financing, and an end to a number of forms of discrimination.

The adoption of a law in support of access to water requires definition of the extent of state commitment and greater attention to investments in water and sanitation in governmental policies.

The right to water as a legal principle is a means of promoting a reduction in waterborne diseases as well as access to better quality water and sanitation for all.

Law empowers people to defend their legitimate interests. Citizens will become involved in the management of water services; they will be informed and consulted. They will be entitled to recourse to courts of law. The improvement of legal provisions will enable the interests of the community to prevail over those of special interest groups in matters pertaining to water.

The documentation exists; the operators (private, public, civil society) and stakeholders are in place. The technology is simple, tailor-made and well known. Yet the question remains of how to reach the goal of accessibility for all. It is essential to consider the problem from this perspective if it is to be solved and everyone is to be ready to work together to this end. But, the reality is that there are problems in terms of installation and access to facilities and, therefore, the crux of the matter is primarily an issue of the right to access to water.

## ■ AN INNOVATIVE APPROACH, REAL VALUE ADDED

As can be seen from this report there is now general and - progressive heightened awareness of the existence of the right to water. Activists, NGOs, UN agencies and governments are all of them getting involved.

NGOs working in the field cooperating with ACF-IN, particularly through the WASH network, have not yet taken any official position, but all have expressed interest in the concept and most of them plan to incorporate it in their strategies.

ACF-IN has taken an innovative step in working on this concept and in taking a positive stance on the right to water. This position, very clearly defined after an in-depth analysis of General Comment No. 15, is an additional asset for the NGO, which, in this way, is constructively merging the different operational, advocacy and research approaches.

This innovative approach represents a real value added to the Association and perfectly complements the development of ACF-France's research service, which has set itself the goal of developing operational research.

## ■ A FAVOURABLE FRENCH CLIMATE, AN OPPORTUNITY FOR DEVELOPMENT

In France, conditions are currently extremely conducive to the recognition of the right to water and its promotion at both national and international levels. The French government's recognition of the right to water in December 2006 has gradually led to an increasingly wider mobilization of civil society, the most significant being the creation of an alliance of NGOs, the Water Coalition, one of whose goals is to strive for the recognition of the right to water by developing a strong and united message from French non-profit making associations.

The same dynamic is taking root in Great Britain with the UK government's recognition of the right to water and mobilization of DFID in its efforts towards recognition of this right.

The right to water is a concept reaching maturity. Bertrand Charrier, Green Cross France's Secretary-General, implied as much during the international forum on the right to water (November 2006, Marseille) stating that: *"The right to water has become a universal idea, we need a basic movement to implement it (...) We must work toward the creation of an international legal framework for the right to access to water."*

## ■ DEVELOPMENT OPPORTUNITIES FOR ACF-IN?

Finally, the writing of this report has facilitated the identification of a number of prospects for ACF-IN's future action with regard to the right to water:

- Becoming involved in the Water Coalition in order to share and to capitalize upon work towards achieving the right to water with other committed French associations and individuals. This first step is clearly in line with research conducted between November 2006 and June 2007 on the right to water.
- Becoming involved, together with the World Water Council, in the right to water programme 2009 to be developed for the World Water Forum in Istanbul (March 2009.) This will heighten ACF-IN's visibility at the international level on this topic with solid scientific proposals on how to implement the right to water in the most vulnerable countries.
- Developing advocacy campaigns in favour of the right to water, supported by in-depth research, of which this report is a first step.
- Making known ACF-IN's position on the right to water, particularly within the CNCDH which campaigns for the recognition of the right to water to be incorporated into the Universal Declaration of the Human Rights. The same position can be highlighted in the agreement under discussion with the AFD, which, as has been seen pleads in favour of the application of the right to water. The same applies to DFID, which is clearly the WASH funding agency that has gone

furthest on the question of the right to water.

- Developing operational research on how to implement the right to water in the field, and in this way continuing to build upon the value added by the development of this topic. This will also facilitate participation in the public debate and in the evolution of thinking by capitalizing upon and researching into the long experience of practitioners. It will also facilitate participation in the production and dissemination of well-founded information on development issues. Moreover, developing these types of activities fits perfectly with ACF-France's research sector development strategy. IAMM could be a valuable partner, particularly for research in the countries surrounding the Mediterranean Basin.

Access to water is an important question and a transverse issue for women, the environment, health, rural development, economic development and education. The right to water and its application are not simply legal or legislative issues. Above all, they involve a movement to bring about concrete action for all and by all. It is now the responsibility of ACF-IN to find the best methods of contributing to the recognition of the right to water.

### ■ WHAT FUTURE RESEARCH FOR ACF-IN ON THE RIGHT TO WATER?

In a future study, ACF-IN could work on expanding on the hypothesis formulated by Marc Gentilini<sup>170</sup> according to which *"Making the right to water a matter of law should help to eliminate some disgraceful situations that are affronts to human dignity"* and also attempt answer Henri Smets' question *"Does a basic need, even if essential, imply a right? And what would be the extent of this right?"<sup>171</sup>*

To what extent does Mr. Gentilini's hypothesis appear to be justified? Is access to water a question of law and can the law contribute in a significant manner? Do, on one hand the local perception of this resource, and on the other the relationship of the people to the state allow for a legal approach? These questions will need clarification in light of the practices of States and citizens.

It would seem expedient to study these questions in countries having already formally recognized the right to water within their national laws (constitution or legislative apparatus) and to study how these countries are implementing the right to water. Have they taken judicial, institutional, or financial steps to ensure the effectiveness of the right to water? Do they have the necessary control in case the public water services are privatized? How can the international community cooperate for the advancement of the right to water?

Therefore, we feel that it is crucial to clarify the link between legal reforms – advances in the implementation of legislative and regulatory dispositions – and the implementation of standards. In general, we feel it is advisable to question the effectiveness of standard-setting instruments and of laws from the perspective of the achievement of this essential right. As A. Garane worded it *"The greatest concern in this matter is the putting into operation and implementation of this right which depends upon the will of the States and the interest they feel with regard to the right to water at the national level"<sup>172</sup>.*

Moreover, we feel that particular attention must now be paid to the relationship between the effectiveness of a fundamental right and the education and information levels of the population. We see these factors as critical to ensuring the respect of this right. According to Professor Abdoulaye Diarra: *"The effectiveness of a country's legal system is not without correlation to the country's state of economic development, and to the education and information levels of its citizens."*

170 / Ibid., p13.

171 / Ibid., pp19.

172/ Garane (A.) op.cit.

# APPENDIX

## Appendix 1. General Comment No 15

**UNITED  
NATIONS**

**E**

**Economic and Social  
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COMMITTEE ON ECONOMIC, SOCIAL  
AND CULTURAL RIGHTS  
Twenty-ninth session  
Geneva, 11-29 November 2002  
Agenda item 3

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

**CG N°15 (2002)**

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

### **I. INTRODUCTION**

1. Water is a limited natural resource and a public good fundamental for life and health. The HRTW 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 HRTW 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>173</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 HRTW, as set out in this general comment.

<sup>173</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.

## ■ THE LEGAL BASES OF THE HRTW

2. The HRTW 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.

3. 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 HRTW 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>174</sup> The HRTW is also inextricably related to the right to the highest attainable standard of health (art. 12, para. 1)<sup>175</sup> and the rights to adequate housing and adequate food (art. 11, para. 1).<sup>176</sup> The right should also 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.

4. The HRTW has been recognized in a wide range of international documents, including treaties, declarations and other standards.<sup>177</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”.

5. The HRTW 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

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

175 / 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.

176 / 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 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.

177 / 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.

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.

6. 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 part in cultural life). Nevertheless, priority in the allocation of water must be given to the HRTW 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>178</sup>

## ■ WATER AND COVENANT RIGHTS

7. 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>179</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>180</sup>

8. 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>181</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>182</sup>

9. With a view to assisting States parties' implementation of the Covenant and the fulfillment of their reporting obligations, this General Comment focuses in Part II on the normative content of the HRTW 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 HRTW

10. The HRTW contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the HRTW, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By

178 / See also World Summit on Sustainable Development, Plan of Implementation 2002, paragraph 25 (c).

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

180 / 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”..

181 / See also para. 15, General Comment No. 14.

182 / 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.

contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the HRTW.

11. The elements of the HRTW 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 HRTW must also be sustainable, ensuring that the right can be realized for present and future generations.<sup>183</sup>

12. While the adequacy of water required for the HRTW 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>184</sup> These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.<sup>185</sup> The quantity of water available for each person should correspond to World Health Organization (WHO) guidelines.<sup>186</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>187</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>188</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,

183 / 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.

"Continuous" means that the regularity of the water supply is sufficient for personal and domestic uses.

184 / 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.

185 / 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.

186 / 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."

187 / 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

188 / 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.



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

(iv) Information accessibility: accessibility includes the right to seek, receive and impart information concerning water issues.<sup>189</sup>

## ■ SPECIAL TOPICS OF BROAD APPLICATION

### Non-discrimination and equality

13. The obligation of States parties to guarantee that the HRTW 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 HRTW. 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.

14. 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 HRTW. 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 favor 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.

15. With respect to the HRTW, 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.


16. Whereas the HRTW 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:

(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

189 / See para. 48 of this General Comment.



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 HRTW 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 HRTW 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>190</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.

### III. STATES PARTIES' OBLIGATIONS

#### ■ GENERAL LEGAL OBLIGATIONS

17. 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 HRTW, 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 HRTW.

18. 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 HRTW. 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.

19. There is a strong presumption that retrogressive measures taken in relation to the HRTW are prohibited under the Covenant.<sup>191</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.

<sup>190</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).

<sup>191</sup> / See General Comment No. 3 (1990), para. 9.

## ■ SPECIFIC LEGAL OBLIGATIONS

20. The HRTW, like any human right, imposes three types of obligations on States parties: obligations to respect, obligations to protect and obligations to fulfill.

### (a) Obligations to respect

21. The obligation to respect requires that States parties refrain from interfering directly or indirectly with the enjoyment of the HRTW. 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 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.

22. The Committee notes that during armed conflicts, emergency situations and natural disasters, the HRTW embraces those obligations by which States parties are bound under international humanitarian law.<sup>192</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>193</sup>

### (b) Obligations to protect

23. The obligation to protect requires State parties to prevent third parties from interfering in any way with the enjoyment of the HRTW. 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.


24. 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 fulfill

25. The obligation to fulfill 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 fulfill (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.

192 / 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.

193 / 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.



26. The obligation to fulfill requires States parties to adopt the necessary measures directed towards the full realization of the HRTW. 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.

27. 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.

28. 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>194</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 biodiversity;<sup>195</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.

29. 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>196</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

30. 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 HRTW.

31. To comply with their international obligations in relation to the HRTW, States parties have to respect the enjoyment of the right in other countries. International cooperation requires States parties

194 / 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.

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

196 / 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.”

to refrain from actions that interfere, directly or indirectly, with the enjoyment of the HRTW in other countries. Any activities undertaken within the State party's jurisdiction should not deprive another country of the ability to realize the HRTW for persons in its jurisdiction.<sup>197</sup>

32. 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>198</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.

33. Steps should be taken by States parties to prevent their own citizens and companies from violating the HRTW 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.

34. Depending on the availability of resources, States should facilitate realization of the HRTW 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.

35. States parties should ensure that the HRTW 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 HRTW. Agreements concerning trade liberalization should not curtail or inhibit a country's capacity to ensure the full realization of the HRTW.

36. States parties should ensure that their actions as members of international organizations take due account of the HRTW. 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 HRTW is taken into account in their lending policies, credit agreements and other international measures.


## ■ CORE OBLIGATIONS

37. 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 HRTW 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;

197 / 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.

198 / 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.



(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 HRTW 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 HRTW ;

(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;

38. 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 fulfill their core obligations indicated in paragraph 37 above.

## IV. VIOLATIONS

39. When the normative content of the HRTW (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 HRTW. The following paragraphs provide illustrations of violations of the HRTW.

40. 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 HRTW. 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.

41. In determining which actions or omissions amount to a violation of the HRTW, it is important to distinguish the inability from the unwillingness of a State party to comply with its obligations in relation to the HRTW. 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 HRTW 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.

42. Violations of the HRTW 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 HRTW, or the adoption of legislation or policies which are manifestly incompatible with pre-existing domestic or international legal obligations in relation to the HRTW.

43. Violations through acts of omission include the failure to take appropriate steps towards the full realization of everyone's HRTW, the failure to have a national policy on water, and the failure to enforce relevant laws.

44. 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 HRTW. 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 HRTW by third parties.<sup>199</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 fulfill occur through the failure of States parties to take all necessary steps to ensure the realization of the HRTW. Examples includes, *inter alia*: (i) failure to adopt or implement a national water policy designed to ensure the HRTW for everyone; (ii) insufficient expenditure or misallocation of public resources which results in the non-enjoyment of the HRTW by individuals or groups, particularly the vulnerable or marginalized; (iii) failure to monitor the realization of the HRTW 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 HRTW when entering into agreements with other States or with international organizations.

## V. IMPLEMENTATION AT THE NATIONAL LEVEL

45. 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 im-

199 / See para. 23 for a definition of "third parties".



ses a duty on each State party to take whatever steps are necessary to ensure that everyone enjoys the HRTW, as soon as possible. Any national measures designed to realize the HRTW should not interfere with the enjoyment of other human rights.

### ■ LEGISLATION, STRATEGIES AND POLICIES

46. Existing legislation, strategies and policies should be reviewed to ensure that they are compatible with obligations arising from the HRTW, and should be repealed, amended or changed if inconsistent with Covenant requirements.

47. The duty to take steps clearly imposes on States parties an obligation to adopt a national strategy or plan of action to realize the HRTW. The strategy must: (a) be based upon human rights law and principles; (b) cover all aspects of the HRTW 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 HRTW national strategies, States parties should avail themselves of technical assistance and cooperation of the United Nations specialized agencies (see Part VI below).

48. 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.

49. 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 HRTW. In order to create a favorable 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 HRTW in pursuing their activities.

50. States parties may find it advantageous to adopt framework legislation to operationalize their HRTW 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.

51. 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 HRTW 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.

52. States parties are obliged to monitor effectively the realization of the HRTW. In monitoring progress towards the realization of the HRTW, States parties should identify the factors and difficulties affecting implementation of their obligations.



## ■ INDICATORS AND BENCHMARKS

53. To assist the monitoring process, HRTW 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 Labor 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.

54. Having identified appropriate HRTW indicators, States parties are invited to set appropriate national benchmarks in relation to each indicator.<sup>200</sup> 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 HRTW. 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 desegregation.

## ■ REMEDIES AND ACCOUNTABILITY

55. 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>201</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 HRTW 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.

56. 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 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.

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

201 / 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".



57. The incorporation in the domestic legal order of international instruments recognizing the HRTW 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 HRTW, or at least the core obligations, by direct reference to the Covenant.

58. Judges, adjudicators and members of the legal profession should be encouraged by States parties to pay greater attention to violations of the HRTW in the exercise of their functions.

59. 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 HRTW.

## **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 HRTW at the national level. The international financial institutions, notably the International Monetary Fund and the World Bank, should take into account the HRTW 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 HRTW is promoted. When examining the reports of States parties and their ability to meet the obligations to realize the HRTW, 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 HRTW. 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.



COMMISSION EUROPÉENNE

Cabinet du Commissaire Louis Michel  
Membre du Cabinet

24 AVR. 2007

Bruxelles, le  
ID/cs/A 1218 (2007) D 622

Chère Madame,

Le Commissaire Michel a bien reçu votre lettre relative à la question du droit à l'eau et il vous en remercie. Il m'a chargé de répondre en son nom.

Cette question nous interpelle particulièrement en raison de l'effort singulier que la Commission européenne a fourni lors des dernières années dans ce domaine, comme le Commissaire a d'ailleurs pu illustrer dans son discours à l'occasion de l'AMECE auquel vous vous référez. Je ne reviendrai donc pas sur tous les chiffres ainsi que les exemples concrets de notre coopération dans ce domaine.

La Commission considère que l'accès à l'eau est un besoin fondamental de l'être humain et que l'approvisionnement en eau et l'assainissement non seulement constituent en soi des services de base essentiels, mais contribuent également à atteindre les Objectifs du Millénaire du Développement (OMD). Cette position a été à la base du lancement de l'Initiative de l'UE pour l'Eau, inaugurée au Sommet Mondial du Développement Durable de Johannesburg, en septembre 2002.

L'accès à l'eau est également une priorité dans tous les programmes de la Commission européenne. Non seulement dans nos projets, mais aussi, comme le démontre l'Initiative pour l'Eau, au travers d'initiatives rassemblant la Commission européenne, les Etats membres de l'Union ainsi que les différents intervenants africains afin de renforcer le cadre politique, le dialogue, les stratégies nationales et la coordination des bailleurs de fonds autour de la réalisation de ce besoin.

Il n'existe pas de position officielle de l'UE pour le moment sur le développement d'un instrument juridique spécifique relatif au droit à l'eau. Dès lors, la Commission européenne agit dans ce domaine sous l'angle de la protection des droits économiques, sociaux et culturels. Une perspective 'droits de l'homme' est recherchée dans les plans de développement nationaux et dans nos partenariats avec les pays tiers en ayant à l'esprit l'universalité, l'indivisibilité et l'interdépendance de tous les droits, y compris ceux contenus dans le Pacte International relatif aux Droits Economiques, Sociaux et Culturels.

Nous suivrons cependant avec intérêt les débats qui auront lieu au sein d'encintes privilégiées telles que le Conseil pour les Droits de l'Homme des Nations Unies qui a prévu de tenir un débat sur le droit à l'eau lors de sa session de septembre prochain.

Je vous prie d'agréer, Chère Madame, l'expression de mes sincères salutations.

Igor Driesmans

D R A F T

THE HUMAN RIGHT TO WATER

**I Introduction**

1. An estimated 1.1 billion people – one in six of the world's population – have to drink unsafe water everyday. About 1000 children under the age of 5 die every day from diarrhoea related to their lack of access to sufficient safe water. Despite this, many governments in developing countries do not give water and sanitation sufficient priority. At current rates of progress, Sub-Saharan Africa will fail to meet the Millennium Development Goal target, to halve by 2015 the proportion of people without sustainable access to safe drinking water.

2. In trying to address this global challenge, the international community, governments and civil society are paying increasing attention to recognition of the human right to water, in order to boost political commitment and action to tackle this issue and to empower individuals to demand action by governments. This paper sets out the UK government's position on the human right to water, and how it can help to improve access to water in developing countries.

**II Is there a human right to water in international law?**

3. Yes. The right to water is an element of "the right of everyone to an adequate standard of living for himself and his family" (Article 11 of the International Covenant on Economic, Social and Cultural Rights or ICESCR). The UK considers that the right to water entitles everyone to a sufficient amount of reasonably affordable and accessible water necessary for survival, i.e. drinking, cooking and personal hygiene.

4. As with other rights set out in the ICESCR, the right to an adequate standard of living are to be achieved progressively by states, within their available resources. The right to water is not a free-standing right or a right in customary international law. Nor is it derived from other rights such as the right to life. The right does not include water for industry, recreation or transport.

5. The United Nations Committee on Economic, Social and Cultural Rights' General Comment No. 15, contains some useful guidance for governments on how to meet their obligations. The UK does not accept the General Comment in its entirety but we regard it as an important contribution to the debate about what having a right to water means.

**III How does the UK government interpret the human right to water?**

6. When we refer to the "the human right to water" or (for convenience) to "the right to water", we refer to it as an element of the right to an adequate standard of living in the ICESCR, as set out in section II. The right to water

## D R A F T

entitles everyone to sufficient, affordable, safe water for drinking, cooking and personal hygiene.

7. Water is a finite natural resource and essential for life. Water is required for many different purposes. The right to water means that priority in allocation must be given to water for drinking, cooking and personal hygiene needs. States must have regard to sustainability and for the need for the right to be realised by present and future generations.

8. It is up to each state to decide which measures are required to fulfil its obligations. However, states have a duty to take whatever steps they can to ensure that everyone enjoys the right to water, without discrimination. States must also monitor their progress in realising this right.

9. Whilst states have overall responsibility for ensuring realisation of the right to water, the manner in which services are provided, managed or regulated will be determined by each individual state. The right does not prescribe any particular model or role for public and private sectors or for civil society, and non state providers may be central to realising the right.

10. Water has to be accessible to everyone without discrimination. *Accessible* means reasonably physically and economically accessible. Economic accessibility means that water has to be reasonably affordable to consumers who pay for it delivered to their house or to a hand-pump or tap stand that they use. However, sustainable services must be based on a principle of cost recovery and people's ability to pay or contribute labour. Delivering safe water costs money but at the same time the needs of the poorest and most vulnerable must be reasonably accommodated within the systems and structures adopted by governments.

11. Since the right to water applies to everyone, states should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right. This is likely to mean that states:

- (i) must seek to increase service delivery beyond those reached by existing networks;
- (ii) cannot ignore more remote communities and must seek to address lagging regions and neglected rural communities;
- (iii) must seek to ensure that those without tenure have access to water services on an equal basis to those with tenure;
- (iv) must seek to protect the poorest and most vulnerable from exclusion through social, cultural, traditional, or other practices.

#### **IV Why should DFID support developing countries in realising the human right to water?**

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12. DFID sees human rights as central to the development agenda and the fight against poverty. We are committed to working with developing country governments to assist them in implementing their human rights obligations and to empowering people living in poverty to claim their rights. We advocate a "rights based approach" to development, which incorporates the human rights principles of participation, inclusion and fulfilling obligation.

13. In our recent White Paper, *Eliminating world poverty: Making governance work for the poor*, we emphasise the importance of human rights for effective state-building and good governance. In addition, we state that one of three principles used to assess how UK aid will be provided is the partner government's commitment to respect for human rights and international obligations.

14. We believe that promoting the right to water will further our development aims. There are a number of important benefits to be gained from supporting the right:

- (i) The right sets a standard, based on universally shared values. It is legally binding, and requires all ratifying states<sup>1</sup> to take steps, within their available resources, towards progressive realisation of the right.
- (ii) The right gives people's demands for access to water legitimacy. It will help ensure that the poorest and most excluded consumers have sufficient voice to hold governments to account for their obligations.
- (iii) The right to water encompasses the range of principles which underpin all human rights such as participation, inclusion and accountability. These principles help to ensure that the *process* of planning and delivering water services is also respectful of human rights, strengthening the case for incorporating good practice, such as poor people's participation in decision-making processes.
- (iv) Since everyone can claim equal entitlement to human rights, the right to water takes us beyond the Millennium Development Goal target and gives states responsibility for ensuring reasonable access to safe water for all, including the poorest and most socially excluded. This means that states must seek to ensure that the steps they take are non-discriminatory. They must seek to take specific measures to meet the needs of the poorest and of those individuals and groups who have traditionally faced difficulties in exercising this right.
- (v) Sustainable methods of delivering water services, including cost recovery, are not automatically equitable or affordable. In order to

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<sup>1</sup> States that have ratified the ICESCR

## D R A F T

meet their obligations, states must seek to take specific measures to address the issue of affordability.

- (vi) The right requires governments to put in place an adequate system for monitoring progress.

### **V How will DFID support implementation of the human right to water?**

15. We will support partner governments to fulfil their obligations under the ICESCR and we will strengthen the ability of people living in poverty to claim their right to water. We will review and update our policies and programmes in line with our commitment to supporting the right to water.

16. National development policies can be a starting point for turning human rights into plans and action. Where appropriate, we will discuss how the right to water can be realised in particular countries in the context of dialogue over poverty reduction strategies and other national development strategies.

17. Our programme activities to support the right to water may include:

- (i) strengthening political and policy support for meeting the needs of the poorest;
- (ii) helping to make public institutions more accountable to the poor, including supporting improved access to information, where appropriate;
- (iii) building the capacity of those with duties to fulfil the right;
- (iv) supporting measures to tackle discrimination and social and cultural practices which exclude particular groups from accessing services;
- (v) strengthening the legal and policy framework for accessing water;
- (vi) supporting public expenditure reviews and other analysis of budget allocation to ensure that water service provision is targeting poor people;
- (vii) supporting national and local monitoring systems (with disaggregated data), including state reporting on treaty obligations;
- (viii) supporting measures to raise awareness of the right to water;
- (ix) supporting measures to increase poor people's voice and participation in processes which affect their rights;



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- (x) strengthening the capacity of poor and excluded groups to make claims through legal, political and social channels, including support for community advocacy and action.





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### The Right to Water & Protecting Refugees

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#### **Background**

The United Nations High Commissioner for Refugees (UNHCR) has the mandate on behalf of the international community to pursue protection, assistance and solutions for refugees. This entails a fundamental responsibility of providing legal security (asylum, non-refoulement and full enjoyment of human rights), physical safety (against natural or man-made threats) and material assistance (basic necessities of life). Provision of water cuts across all of these areas as it is a basic human right for the survival, health and well-being of the refugees.

The basic principles for the provision of drinking water are similar across all humanitarian settings but it takes on particular significance in a refugee operation due to the extreme vulnerability of refugees and their dependency on external help. These people are marginalized from access to normal services, and are often located in inhospitable living environments and insecure regions of the world. Furthermore, refugee groups are typically made of 70 to 80% women and children who bear the brunt of water collecting activities.

#### **Refugees' Right to Water**

Timely and adequate provision of clean water to refugees is of special importance given that they have traditionally faced difficulties in fully exercising their rights and are very prone to exploitation. The right to water for refugees revolves around UDHR (Universal Declaration of Human Rights, 1948) Article 25: *"Everyone has the right to a standard of living adequate for the health and well-being of himself and his family"*.

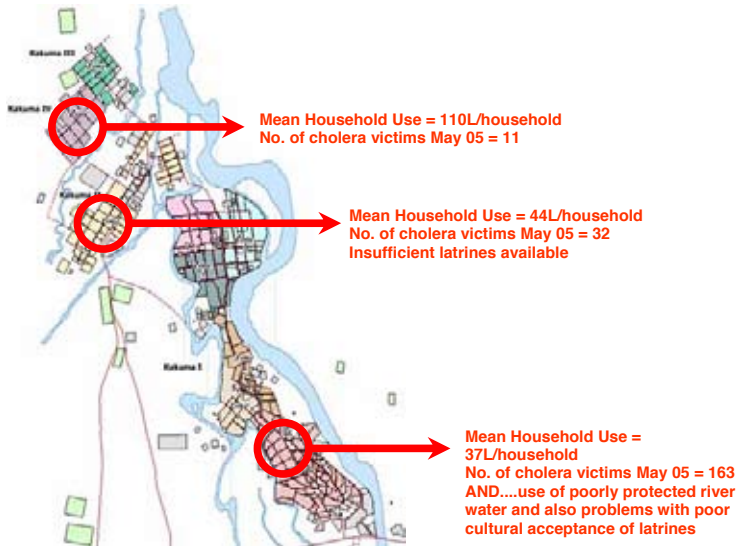
The right to water was explicitly recognized and has become an international priority when in late 2002 ECOSOC (Economics and Social Council), a UN organ and the supervisory body for International Covenant on Economic, Social and Cultural Rights (CESCR), adopted a "General Comment" stressing *"The human right to drinking water is fundamental for life and health"*.

The General Comment also drew specially attention to UNHCR's beneficiaries and urged state parties to ensure that: *"Refugees, asylum-seekers, internally displaced persons and returnees have access to adequate drinking water whether they stay in camps or in urban area. ...They should be granted the right to water in the same conditions as nationals."*

#### **The situation on the ground**

The literature abounds with examples of a lack of access to clean water in refugee situations and the consequences. In the summer of 1994 more than one million Rwandans fled the genocide in their country to the neighboring DRC. There as many as 60,000 died from a vicious cycle of water shortage and, inevitably, cholera (UNHCR, 2003). A survey in 2004 suggested that 42% of school-going children in Kyangwali camp (Uganda) were regularly diverted from their school programmes to help their mothers collect water (AAH, 2004). A nutritional survey report conducted in refugee camps in Eastern Chad in May 2004 noted that the mean reported time required for water collection was almost 6 hours, most households used unsafe water sources and

that there was a high prevalence of malnourished children with reported diarrhoeal diseases (CDC, 2004). An MSF report from northern Uganda provided even a grimmer picture highlighting that people had to queue for three hours a day for water with an average availability of <3 liters per person per day. Those searching for water outside the camps risked being attacked by LRA fighters and so were compelled to gather contaminated water from unhygienic sources (MSF, 2005). Inequalities in water distribution across Kakuma camp (Northern Kenya) was a direct factor in a cholera outbreak there (Fig. 1; Cronin, 2005).



**Figure 1** – Map of Kakuma camp, Kenya, showing how the area with the lowest household mean water consumption was the hardest hit by the cholera outbreak. The use of average camp-wide water consumption figures (~16L litres/person/day in this case) often hides such inequalities in distribution.



*80% of all refugees are women and children – this camp is in El Aïun, Algeria.*

To better understand the situation on the ground and to enable better monitoring and planning and improve services, UNHCR initiated an annual systematic data collection from its major refugee camps (approximately 130 worldwide) on the level of services in key sectors from 2003. It revealed that, in fact, the attention to this vital sector remains far from being satisfactory in several camps. Also planned are in-depth analyses of those cases of deficient services in order to better understand the level of physical and social burden on refugee women and children, who are mainly responsible for fetching water. This is expected to improve services and contribute towards the Office's efforts in developing result-based management strategies.

### *Access to Water in Refugee Situations*

Water provision as a right and a function of UNHCR's protection mandate does not fully reflect on the fact that provision of clean water, and other essential services like food, health, sanitation, shelter and education for that matter, is central to refugee dignity, and not merely for their health and well-being.

In a refugee situation, it should go beyond 'what' (i.e. 20L per person per day of clean water, important as this is and, unfortunately, as of yet not universally attained for refugees) should be provided, but should also include 'how' water is supplied and/or collected. 'How' water is managed is based on UNHCR's and its partners' many years of experience of dealing with refugees and gives rise to common observations with strong protection concerns, especially linked to women and children. UNHCR water programmes therefore strive to ensure:



*Women and children bear the brunt of the water collection activities. These refugees from Darfur are staying at Bahai spontaneous settlement, Chad*

- sufficient water for basic needs to each and every person throughout the camp including schools and health posts and adequate containers for household storage;
- acceptability and safety of the water supplied and regular monitoring for faecal contamination;
- water distribution points are located centrally along safe access paths and are within 200m from the dwellings with minimum waiting time;
- water distribution time and duration are planned according to users' convenience and cultural habits; this is normally limited to daylight hours so that the physical safety of the users is not compromised;
- sustainable exploitation of the available water sources and minimisation of associated environmental impacts to help develop a good rapport with the host community and uphold the institution of asylum.

- controlled discharge and drainage of wastewater and stormwater to avoid water-induced hazards in the camp and the vicinity;
- refugees and other stakeholders are empowered and encouraged to participate in all stages of a project with equal representation of women;
- education is not hindered by children (especially girls) having to fetch water during school hours;
- effective co-ordination of all actors in a refugee camp working in the water, sanitation, drainage, vector control and environmental protection sectors which is essential to optimise the quality of service provision;
- promotion of harmonious living in a community setting, while respecting individual requirements of different ethnic groups residing in the same camp.

### *Social costs of water collection*

These guiding principles for water supply in refugee situations are built on the core values that help enhance dignity and protection of the persons of concern to UNHCR. This means, in practical terms, that there is equitable distribution of water so that it does not become a source of power that can be abused for sexual or commercial exploitation. Safe access to water points is important to minimise the potential for gender-based violence. Access and distance to the collection point is also important as it affects the amount of energy expenditure spent on this task and time. In fact a woman collecting water for a family of four from a water-point at 200 m away



*People need to feel safe when they collect water – children at Kyangwali camp, Uganda*

from her house would spend on average about 15 percent of her standard distributed ration (which is just 2,100 kilocalories per day) on this task alone. Gender and minority voices also need to be heard in the water sector. As Clifton and Gell (2001) point out 'communities are safer and more resilient to crisis when they are more egalitarian, and when all social groups are empowered in a way that enables them to contribute their respective opinions and resources'.

Indeed all groups with special needs, such the elderly and unaccompanied minors, disabled and HIV/AIDS patients, must be facilitated and encouraged in the water supply and management processes.

### **Conclusions**

Ensuring improved access to and the availability of adequate amounts of water in refugee settings are central to the protection of these marginalised peoples. UNHCR has joined hands with its partners (102 in total in 2005) in implementing a range of water sector activities in its operations all over the world. These partners include government bodies, Non-Governmental Organisations (38 international NGOs are currently in partnership with UNHCR) and experts drawn from standby agreements with RedR-Australia and the Swiss Agency for Development and Cooperation (SDC). By virtue of its operation base primarily in the rural and remote areas of developing countries, UNHCR's work in the water sector in both refugee and returnee areas is supporting the Millennium Development Goals and such work is vital to build capacity and help sustainable long-term solutions for the refugees. The challenge ahead is to maintain and improve the vital water sector, often with limited resources (funds and appropriate technical staff) in the difficult political, security and physical environment, which is the case often in a refugee setting.

**Disclaimer:** *The views expressed herein are those of the authors and do not necessarily reflect the views of the United Nations.*

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### 35/18. Proclamation of the International Drinking Water Supply and Sanitation Decade<sup>2</sup>

#### *The General Assembly.*

*Deeply concerned* that a large part of the world's population does not have reasonable access to safe and ample water supplies and that an even larger part is without adequate sanitation facilities,

*Concerned also* that the plight of that population will not improve significantly unless there is a major commitment and effort on the part of Governments and of the international community to bring about the necessary changes,

*Recalling* that Habitat: United Nations Conference on Human Settlements called for Governments to adopt programmes to provide safe drinking water for all by 1990, if possible,<sup>3</sup>

*Recalling further* that in the Mar del Plata Action Plan, the United Nations Water Conference called for the designation of the decade 1981-1990 as the International Drinking Water Supply and Sanitation Decade,<sup>4</sup>

*Noting with satisfaction* the growing efforts by Governments and by intergovernmental and non-governmental organizations, in response to that Plan, to increase the flow of technical and financial co-operation to developing countries in water supply and sanitation,

*Recalling also* its resolution 34/191 of 18 December 1979, by which it decided to hold a special one-day meeting to launch formally the International Drinking Water Supply and Sanitation Decade,

*Bearing in mind* resolution 25, entitled "International Drinking Water Supply and Sanitation Decade", adopted on 30 July 1980 by the World Conference of the United Nations Decade for Women: Equality, Development and Peace,<sup>5</sup>

1. *Proclaims* the period 1981-1990 as the International Drinking Water Supply and Sanitation Decade, during which Member States will assume a commitment to bring about a substantial improvement in the standards and levels of services in drinking water supply and sanitation by the year 1990;

2. *Calls upon* Governments which have not yet done so to develop the necessary policies and set the targets to this end, to take all appropriate steps for their implementation, to set sufficiently high priorities for the activities concerned and to mobilize adequate resources to achieve their targets for the Decade;

3. *Urges* Governments to strengthen, as appropriate, their institutional frameworks for carrying out these activities, to mobilize the necessary technical expertise at all levels and, in general, to heighten popular awareness and support through education and public participation programmes;

4. *Calls upon* Governments, organs, organizations and bodies of the United Nations system and other intergovernmental and non-governmental organizations

concerned to continue and, if possible, to increase their technical and financial co-operation with developing countries in order to enable them to attain the targets they have set, and to continue also their efforts to co-ordinate their activities so as to maximize the impact of their assistance to developing countries;

5. *Calls upon* the regional commissions to review periodically, on the basis of national reports, the progress being made by the Governments of their respective regions in establishing national targets and carrying out programmes to attain those targets;

6. *Decides* to review at its fortieth session the progress made towards the attainment of the Decade's national and international goals, as outlined in the report of the Secretary-General concerning the present situation and prospects relative to the Decade,<sup>6</sup> and requests the Secretary-General, in consultation with the Administrative Committee on Co-ordination, to prepare a comprehensive analysis of the situation on the basis of progress reports by Governments and by the international organizations concerned and to submit it to the General Assembly at that session through the Economic and Social Council.

*55th plenary meeting  
10 November 1980*

### 35/53. United Nations Institute for Training and Research

#### A

#### REPORT OF THE EXECUTIVE DIRECTOR

##### *The General Assembly.*

*Recalling* its resolutions 3201 (S-VI) and 3202 (S-VI) of 1 May 1974, containing the Declaration and the Programme of Action on the Establishment of a New International Economic Order,

*Recalling* its resolution 3281 (XXIX) of 12 December 1974, containing the Charter of Economic Rights and Duties of States,

*Recalling also* its resolution 3362 (S-VII) of 16 September 1975, by which it set in motion measures that form the basis and framework for the work of the competent bodies and organizations of the United Nations system,

*Recalling further* its resolution 34/17 of 9 November 1979 on the United Nations Institute for Training and Research,

*Acknowledging* the value of the research and "futures studies" undertaken by the United Nations Institute for Training and Research,

*Recognizing* the role of the United Nations Institute for Training and Research in assisting, through training and other services within its mandate, members of permanent missions to the United Nations and other national officials concerned with the work of the United Nations,

1. *Takes note with appreciation* of the report of the Executive Director of the United Nations Institute for Training and Research<sup>7</sup> and of his introductory statement on 2 October 1980;<sup>8</sup>

<sup>2</sup> A/35/367.

<sup>3</sup> Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 14 (A/35/14).

<sup>4</sup> Ibid., Thirty-fifth Session, Second Committee, 6th meeting, paras. 18-25.

<sup>1</sup> See also sect. I, foot-note 10, and sect. X.B.3, decision 35/405.

<sup>2</sup> See Report of Habitat: United Nations Conference on Human Settlements, Vancouver, 31 May-11 June 1976 (United Nations publication, Sales No. E.76.IV.7 and corrigendum), chap. II, recommendation C.12.

<sup>3</sup> See Report of the United Nations Water Conference, Mar del Plata, 14-25 March 1977 (United Nations publication, Sales No. E.77.II.A.12 and corrigendum), chap. I, para. 15.

<sup>4</sup> See Report of the World Conference of the United Nations Decade for Women: Equality, Development and Peace, Copenhagen, 14-30 July 1980 (United Nations publication, Sales No. E.80.IV.3 and corrigendum), chap. I, sect. B.

## Appendix 6. CNCDH, Sub-Committee B, Draft opinion on the right to water and sanitation

1. Les États membres du « Conseil des droits de l'homme » ont été invités à exprimer leurs points de vue sur le droit à l'eau en prévision des travaux du Conseil sur le sujet, lors de sa 6ème session, en septembre 2007. La France a déjà répondu à un questionnaire sur certains aspects du droit à l'eau (avril 2007) et aura à se prononcer en termes plus généraux lors des débats du Conseil.
2. La CNCDH rappelle que la France fait partie des très nombreux États qui ont reconnu officiellement le droit à l'eau et qui l'ont mis en œuvre dans leur législation nationale. Ainsi, en 1994, Madame Simone Veil, en tant que ministre des affaires sociales, avait déclaré : « un libre accès à une eau saine est un droit de l'homme ». Le Président Chirac avait lui-même proposé en 2003 que « l'accès à l'eau soit reconnu comme un droit fondamental ». La France a pris position en faveur du droit à l'eau lors du Forum mondial de Mexico (2006) et a adopté une disposition sur le droit à l'eau dans sa Loi sur l'eau et les milieux aquatiques (2006).
3. La CNCDH note que le concept de « droit à l'eau » a trait uniquement à l'accès à la fois à l'eau potable et à l'assainissement. Il concerne une quantité limitée d'eau potable nécessaire aux besoins essentiels de l'homme et s'exerce au plan interne dans les zones de territoires fixées par les autorités compétentes conformément à la loi ; il requiert de la part des usagers qu'ils acquittent le prix du service de l'eau, étant entendu que les personnes démunies doivent bénéficier de dispositions particulières au cas où ce service ne serait pas disponible dans des conditions compatibles avec leur situation économique.
4. La CNCDH est convaincue que le droit à l'eau est indispensable à l'exercice du droit à la dignité, du droit à la santé, qu'il fait partie des droits protégés par le « Pacte international relatif aux droits économiques, sociaux et culturels », notamment aux articles 11 et 12, et qu'il relève également d'autres traités internationaux ou régionaux.
5. La CNCDH considère que l'Observation Générale n° 15 sur le droit à l'eau (2002) du Comité des droits économiques, sociaux et culturels et le projet de directives pour la réalisation du droit à l'eau potable et à l'assainissement adopté par la Sous-commission des droits de l'homme des Nations Unies (2006) définissent des bases juridiques et des orientations très utiles pour la mise en œuvre du droit à l'eau.
6. La CNCDH souligne que, pour avoir toute son effectivité, le droit à l'eau doit être mis en œuvre par des dispositions précises de droit interne, couvrant ses différents aspects, notamment l'accès à l'eau et à l'assainissement pour des personnes démunies ou en milieu rural parfois déficient.
7. La CNCDH encourage les actions internationales destinées à améliorer l'accès à l'eau potable et à l'assainissement dans les pays en voie de développement. Elle considère essentiel que les objectifs du Millénaire soient atteints dans tous les pays et estime que la reconnaissance mondiale du « droit à l'eau » devrait favoriser la mise en œuvre des objectifs du Millénaire pour le développement.
8. La CNCDH note avec satisfaction l'adoption en France d'une loi destinée à faciliter les actions de coopération décentralisée et à permettre l'augmentation des crédits d'aide au développement dans ce secteur. Elle souhaite que les pouvoirs publics ainsi que l'ensemble des acteurs de la coopération décentralisée, notamment les entreprises et les ONG, contribuent ainsi à la réalisation des objectifs du Millénaire pour le développement.
9. La CNCDH souhaite que le Conseil des droits de l'homme adopte une résolution par laquelle l'accès à l'eau potable et à l'assainissement serait reconnu comme un droit fondamental bénéficiant, au niveau international, de la même protection que les autres droits indispensables à la mise en œuvre

du « droit à un niveau de vie suffisant » (art. 25 de la Déclaration universelle des droits de l'homme).

10. La CNCDH demande à la diplomatie française de se mobiliser, avec l'ensemble de ses partenaires, notamment au sein de l'Union européenne et dans le cadre de l'OIF, pour prendre les initiatives nécessaires afin d'aboutir à une telle consécration.

## Appendix 7. Websites

### ORGANISATION NAME

#### LOBBYING GROUPS

Green Cross International	<a href="http://gcinwa.newaccess.ch/index_fr.htm">http://gcinwa.newaccess.ch/index_fr.htm</a>
WaterAid	<a href="http://www.wateraid.org.uk">http://www.wateraid.org.uk</a>
Blue Planet Project	<a href="http://www.blueplanetproject.net/francais/index.html">http://www.blueplanetproject.net/francais/index.html</a>
ACME Switzerland	<a href="http://www.acme-suisse.ch">http://www.acme-suisse.ch</a>
Les Amis de la Terre	<a href="http://www.amisdelaterre.org/sommaire.php3">http://www.amisdelaterre.org/sommaire.php3</a>
Water Treaty	<a href="http://www.watertreaty.org">http://www.watertreaty.org</a>
Freshwater Action Network (FAN)	<a href="http://www.freshwateraction.net">http://www.freshwateraction.net</a>
Right to water	<a href="http://www.righttowater.org.uk/code/homepage.asp">http://www.righttowater.org.uk/code/homepage.asp</a>
Water Justice	<a href="http://www.waterjustice.org/?mi=15">http://www.waterjustice.org/?mi=15</a>
Planète Bleue	<a href="http://eau.apinc.org/">http://eau.apinc.org/</a>
ACME	<a href="http://www.acme-eau.org/index.php">http://www.acme-eau.org/index.php</a>

#### AGENCES DE L'EAU, FRANCE

French Water Agencies	<a href="http://www.lesagencesdeleau.fr">http://www.lesagencesdeleau.fr</a>
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#### OFFICIAL DOCUMENTS

Un reference documents	<a href="http://millenniumindicators.un.org/unsd/mifre/mi_links.asp">http://millenniumindicators.un.org/unsd/mifre/mi_links.asp</a>
UN declarations	<a href="http://www.un.org">http://www.un.org</a>
Geneva Convention	<a href="http://www.icrc.org">http://www.icrc.org</a>

#### DIVERS INFORMATIONS

Association 4D	<a href="http://www.association4d.org">http://www.association4d.org</a>
Académie de l'eau	<a href="http://www.academie-eau.org">http://www.academie-eau.org</a>
H2O	<a href="http://www.h2o.net">http://www.h2o.net</a>
Institut du développement durable et des relations internationales	<a href="http://www.iddri.org">http://www.iddri.org</a>
World business council for sustainable development	<a href="http://www.wbcsd.org">http://www.wbcsd.org</a>
Pseau	<a href="http://www.pseau.org">http://www.pseau.org</a>
World Bank	<a href="http://web.worldbank.org">http://web.worldbank.org</a>
Global water partnership	<a href="http://www.gwpforum.org">http://www.gwpforum.org</a>
World water council	<a href="http://www.worldwatercouncil.org">http://www.worldwatercouncil.org</a>
2003 Water year	<a href="http://www.wateryear2003.org">http://www.wateryear2003.org</a>
World water forum	<a href="http://www.worldwaterforum4.org.mx/home/home.asp">http://www.worldwaterforum4.org.mx/home/home.asp</a>

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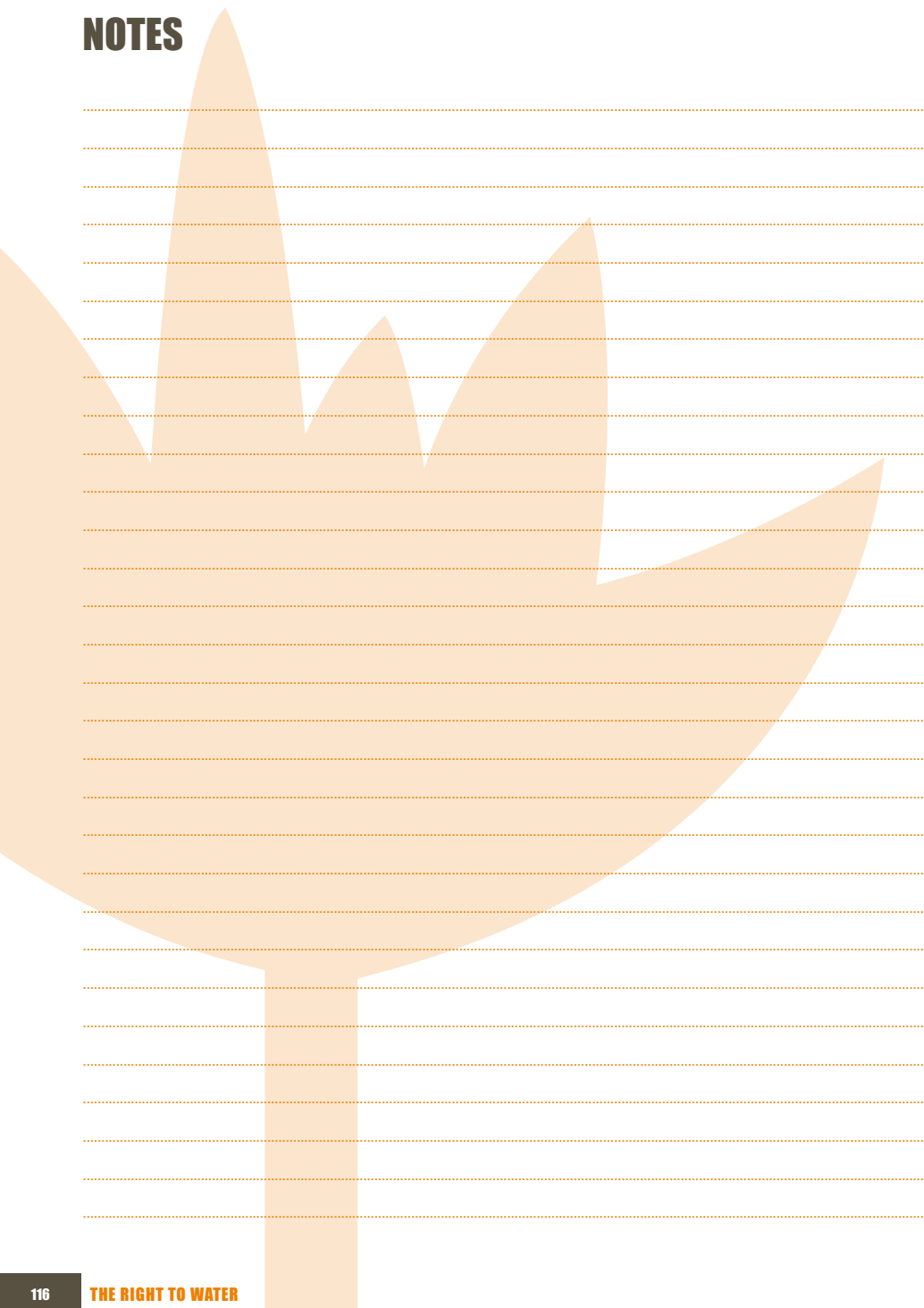
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# NOTES



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