



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

## **Independent Review of Water and Sewerage Services**

### **Human rights considerations: submission by the Northern Ireland Human Rights Commission**

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,<sup>1</sup> advising on legislative and other measures which ought to be taken to protect human rights,<sup>2</sup> advising on whether a Bill is compatible with human rights<sup>3</sup> and promoting understanding and awareness of the importance of human rights in Northern Ireland.<sup>4</sup> In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies.
2. The Commission welcomes the opportunity to make a representation to the independent review panel on the future of water and sewerage services. The Commission always encourages Government to address economic issues within a human rights framework and in addition to making this submission is willing to engage further with the panel if it can be of any assistance.
3. The Commission urges the review panel to ensure that its eventual proposals on the management, governance and financing of water and sewerage services make explicit

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<sup>1</sup> Northern Ireland Act 1998, s.69(1).

<sup>2</sup> *Ibid.*, s.69(3).

<sup>3</sup> *Ibid.*, s.69(4).

<sup>4</sup> *Ibid.*, s.69(6).

reference to water as a human right, and are framed in full conformity with the state's human rights obligations. The nature of the obligations and rationale for this approach are outlined in this submission.

### **Water: the human rights framework**

4. Water is integral to the right to life. The right to water is implicit in Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which is binding on the United Kingdom as a matter of international law. General Comment no. 15 (2002) of the treaty body, the Committee on Economic, Social and Cultural Rights, deals with the right to water, and is set out below at **Appendix 1**. The General Comment, not in itself binding but regarded as an authoritative interpretation of the Covenant, states (at paragraph 2):

The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.

The General Comment outlines in detail the legal bases for the right to water (paras. 2-6), both in terms of explicit formulations in some instruments, and of its being a necessary component of certain other rights such as the right to health and the right to adequate food.

5. Paragraph 11 of General Comment 15 states:

The elements of the right to water must be adequate for human dignity, life and health (...) 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.

6. Paragraph 12 outlines a number of key factors applying in all circumstances in relation to determining the adequacy of water required for the right to water. This includes:

*Economic accessibility:* Water, and water facilities and services, must be affordable for all. The direct and indirect costs and **charges associated with securing water must be affordable, and must not compromise or threaten the realisation of other Covenant rights...** [emphasis added]

7. The principle of non-discrimination and equality of opportunity in relation to the right to water is stressed in para. 10:

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

8. Factors relating to adequacy of water services (para. 12) include:

... *Non-discrimination*: Water and water facilities and services **must be accessible to all, including the most vulnerable or marginalised sections of the population**, without discrimination on any of the prohibited grounds... [emphasis added]

There is further reference (para. 16) to state parties giving special attention to individuals and groups who have traditionally faced difficulties in exercising the right to water, including measures to ensure that:

... Nomadic and traveller communities have access to adequate water at traditional and designated halting sites...

9. The General Comment sets out a framework for implementation indicating a duty on states parties to adopt a national strategy or plan of action to realise the right to water based on human rights law and principles; this should incorporate principles of non-discrimination and people's participation, indicators and benchmarks, remedies and accountability (paras. 45-59).
10. More recently, reference to water rights has been made in the draft UN "Guiding Principles on extreme poverty and human rights", adopted by the Sub-Commission on the Promotion and Protection of Human Rights in August 2006 and currently being consulted on prior to consideration by the Human Rights Council. The draft states (Principles 29-30):

Persons living in extreme poverty have a right to drinkable water, and the State is duty-bound to provide this service to them free of charge. (...) The right to drinkable water is directly linked to the right to life. Negligence, omission or planning that results in an absence of water distribution services must be regarded as action threatening human life. Likewise, the destruction of the means of supplying water, the sale of water rights and privatization or management of water resources that results in a lack of access to drinkable

water for groups of the population must be regarded as an encroachment upon this right.

11. The Sub-Commission at the same session adopted a resolution (2006/10) on the "Promotion of the realization of the right to drinking water and sanitation", set out below at **Appendix 2**. This refers to the elaboration by a Special Rapporteur of Draft Guidelines on the right to drinking water and sanitation, set out in **Appendix 3**. The Sub-Commission resolution contains a lengthy recitation of other resolutions, actions and standards (not reproduced here since their import is amply reflected in the three appendices) indicating the value that has been attached to the right to water in UN human rights discourse.

### **Water and human rights: international experience**

12. Practice by many states contrasts sharply with the rights and duties on state parties outlined in the key standards. A recent independent human rights assessment of water rights and their fulfilment is critical of the impact on water rights of the free market models often applied on water and sanitation.<sup>5</sup> The study outlines the ideology of the market model, in this context, as potentially conflicting with human rights objectives. The model is based on creating profits, lowering costs, public assets as commodities to be bought and sold, linking accessibility to ability to pay, and prices being directly related to costs both in relation to supply and to the high investment needed to develop new supplies (López 2004, p38). Advocates of privatisation have argued that it produces greater efficiency than publicly run services. Critics of such an approach have largely supported publicly run systems funded through progressive taxation with charges for high level users (mainly industry.)
13. The proliferation, implementation and impact of market based policies, especially those centred around privatisation, has been particularly well documented in Latin America. The impact has generally been assessed as detrimental to human rights. A recent publication by the Latin American Solidarity Centre (LASC),<sup>6</sup> funded by the development NGO Trócaire and the Irish government, indicates the impact of market based

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<sup>5</sup> López Goldaracena, Oscar (2004) *Los Derechos Humanos al Agua y Saneamiento: Reflexión jurídica desde el Derecho Internacional, Pautas para su cumplimiento* (Montevideo).

<sup>6</sup> LASC (2007) *Thirsting for Justice: Defending the Global Water Commons* (Dublin: LASC).

policies in the 1990s in Argentina, Bolivia, Chile, Ecuador, El Salvador, Honduras, Puerto Rico and elsewhere. Many of the impacts were high increases in prices for water (up to 500%), cut-offs of those who could not afford to pay, lower water quality (including contamination) and non-provision to poorer areas (where there would be no profit on investment). The study also charts significant public opposition to market based approaches, that often forced policy changes including the curtailing of contracts. It records disproportionate impacts on vulnerable groups such as primary carers (mainly women).<sup>7</sup>

14. A key aspect of movements in opposition to market based approaches to water has been the adoption of human rights arguments. This has led to campaigns to insert the human right to water into directly binding national legislative frameworks. There are a number of examples of successful campaigns in this regard, for example Uruguay, where by referendum a constitutional reform was approved to define water as a human right and a public natural resource, and to ban any form of privatisation (LASC 2007, p7).
15. The long term practical impact of the Uruguay constitutional reform enshrining water as a human right will become apparent in due course. However in the short term the very framing of water policies in a human rights context does tend to change the terms of the debate. If a market based approach is taken to water, then why should water not be seen as just another commodity to be charged directly, e.g. at a flat rate to each user or through metering? Why should it not be privately owned and run? Conversely if water is explicitly recognised as a human right, access to water must be secured for everyone by the state; if it follows that water should be seen as a public asset, ought it not to be funded, as with other public services, through taxation?

### **Relevance to Northern Ireland of international experience**

16. Whilst DRD has ruled out privatisation as an option, the exact structure of provision along with the question of how water is to be paid for are very much up for discussion. The political discourse to date, particularly pre-devolution, has largely assumed a move to a market based approach.

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<sup>7</sup> The LASC study also looked at the impact of the attempt to introduce water charges and metering in Dublin, abandoned due to opposition to placing the cost of water directly onto individuals and families along with the perception that it was a first step to privatisation.

17. The circumstances of Northern Ireland are different to Latin America and other parts of the global South, both in the sense of being relatively affluent and not having a scarcity of rain water. It is reasonable to assume that a number of the problems that market based approaches in the global South have exacerbated would be unlikely to emerge in Northern Ireland. These include cut-offs (which are already prohibited by law), collapse of security of supplies, collapses in water quality, massive price increases, absolute non-affordability of mains water to the poor, and non-provision to rural areas. We should expect that a robust regulatory framework would prevent these scenarios arising here. Whilst such arguments cannot be entirely dismissed,<sup>8</sup> in a practical sense they are not the key issues illustrating the need for a human rights approach in our local context.
18. A key issue is affordability and the broader impact on socioeconomic rights that the introduction of additional charges for water will have on economically marginalised groups. The impact of what may be a substantial additional standing cost to poorer households is likely to trap some households below the poverty line or to push others into poverty. The average bill under the (postponed) charges was expected to reach around £340, after staggered increases from an expected start level of around £100.
19. If a policy change of introducing extra charges has the impact of trapping or bringing people below the poverty line, it can be deemed to be human rights incompatible given this would be a retrogressive step with respect to the right to an adequate standard of living and the impact on physical or mental health. General Comment 15 states (at 12(c)(ii)):
- ...charges associated with securing water must be affordable, and must not compromise or threaten the realisation of other Covenant rights.
- This includes the enjoyment of such rights in a non-discriminatory manner, as well as ensuring access for persons on low incomes.
20. Incomes in Northern Ireland are on average lower than in Great Britain. It has also been argued that in practice

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<sup>8</sup> For example, an academic has already warned MLAs that the introduction of water meters in homes could lead to the outbreak of diseases such as typhoid (*News Letter* p10, *Mirror* p7, 21 June 2007).

Northern Ireland is the most taxed region of the UK.<sup>9</sup> This increases the likely negative impact of charges.

21. Regarding the format of new water charges and their potential to trap or push persons and families into poverty, each option impacts differently. The worst case scenario would in effect be a 'water poll tax', i.e. a uniform standing charge to all households. This would have the severest impact on poorer households. Indeed the proposed charges for 2007-08 were based on a standing charge combined with a variable charge based on property values.<sup>10</sup>
22. A second option would be a charge based on property values; this would also have a major, though less severe, impact on low income households, and would particularly affect some categories such as such as older persons living alone in large family homes. General Consumer Council research has warned:

Due to soaring house prices there is fear about the impact of revaluation of the capital value of homes which consumers do not have control of. They believe there will be an upward revaluation that will lead to higher bills and push more people into financial hardship and debt.<sup>11</sup>
23. Thirdly, a charge based on usage (through metering) will impact on larger poorer families, and may directly interfere with the right to water by effectively inducing water rationing in such households. According to the Consumer Council research this form of charging is that which has most public support, largely due to an untested perception that having a meter will reduce charges.
24. Varying domestic charges relating to usage would presumably require economic justification. A key question is, to what extent are relatively minor increases in domestic volume of usage significant in the costs of provision, as compared with standing costs such as infrastructure? A separate argument could be made that metering should be introduced as an environmental measure. However we note this is not the

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<sup>9</sup> The Adam Smith Institute, a conservative free-market think tank, has calculated that the average resident of Northern Ireland must work from 1 January to 6 June to pay off tax commitments, four days more than the national average; quoted by "We Won't Pay Campaign", [www.wewontpaycampaign.com](http://www.wewontpaycampaign.com), accessed 20 July 2007.

<sup>10</sup> [www.waterreformni.gov.uk/index/initial\\_charges\\_scheme.htm](http://www.waterreformni.gov.uk/index/initial_charges_scheme.htm), accessed 27 July 2007.

<sup>11</sup> [www.consumerCouncil.org.uk/newsroom/393/](http://www.consumerCouncil.org.uk/newsroom/393/), accessed 20 June 2007,

generally asserted rationale for metering, and the case has not been made that environmental protection in Northern Ireland depends to any appreciable degree on reducing domestic consumption of water. Metering is instead usually promoted as a method of reducing a future water bill, which as the Consumer Council has pointed out is an assumption rather than a fact. Increasingly, environmental protection is being recognised as coming within the framework of human rights; the Commission does not contest the need for measures that protect the environment and recognises – indeed, has acted on – special circumstances where environmental protection issues directly impair the enjoyment of a range of ‘traditional’ human rights. There are many ways of protecting the environment in relation to water, and measures which do not interfere with other fundamental human rights must be sought. In this context any system that could oblige poor families to ration bathwater clearly would not be a desirable method of protecting the environment when other options exist.

25. The Northern Ireland Assembly does not have competence over taxation, so that changing income tax to fund water is not within its remit. It can of course reallocate budget to pay for water and sewerage investment, and it can continue to fund water provision through the regional rates.
26. The mitigating measure of a reduced tariff (affordability rate) was proposed to soften the impact on poorer families of water charges. This will help some poorer families but not all. For example, if the qualifying criteria for the reduced rate are tied to receipt of or eligibility for social security benefits, as a proxy measure for low income, not only will this exclude some working low income families, but it will exclude groups who are on low incomes but are ineligible for benefits – such as persons subject to immigration control, or migrant workers subject to the Workers Registration Scheme. Those who are entitled to concessions may still find that the reduced rate impacts severely on them: the current projected full bill (once phasing in is completed) for a reduced-rate household, in a property worth over £110,000, is of an additional amount of £180.<sup>12</sup>
27. Whilst it is proposed to ensure that not more than 3 per cent of household income is spent on water charges, it should be noted that this will be an additional charge on top of an already relatively high cost of living. Should additional

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<sup>12</sup> [www.waterreformni.gov.uk/table\\_\(2\).pdf](http://www.waterreformni.gov.uk/table_(2).pdf), accessed 27 July 2007.

charges be introduced, further research would be needed to examine the overall impact on poorer households of a sequestration of up to 3 per cent of their means, with a focus on the extent to which this might set back strategies for the reduction of poverty, inequalities and social exclusion. One might also envisage an impact, less easily quantifiable, in terms of the additional psychological, familial and social stresses that could arise within households already struggling with deprivation when faced with this new call on their limited resources.

28. Other groups may not be able to enjoy the right to water and related socioeconomic rights in a non-discriminatory fashion due to the impact of a new system for water provision. For example it is unclear what the impact will be on rural dwellers reliant on septic tanks, or on Irish Travellers on halting sites.
29. The practical application within future policy of human rights-based approaches could entail the designation of water as a public asset, and ought to preclude a charging regime that sets back the progressive reduction of poverty or even pushes more households into poverty.
30. It would be possible to enshrine the right to water in a Bill of Rights, or in other domestic legislation; of course this statement should not be taken as indicating anything about the Commission's eventual advice on that matter. Such an approach has limitations if it relies on costly and slow legal remedies to secure the right. However if the very framework of a human rights approach, identifying rights holders and duty bearers, can significantly underpin the review and subsequent policy, it is likely to mitigate the potential for new charges to provoke poverty. The UN Human Development Report 2006 states:

Declaring water a human right clearly does not mean that the water crisis will be resolved in short order. Nor does a rights framework provide automatic answers to difficult policy questions about pricing, investment and service delivery. However, human rights represent a powerful moral claim. They can also act as a source of empowerment and mobilisation, creating expectations and enabling poor people to expand their entitlements through legal and political channels.<sup>13</sup>

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<sup>13</sup> [hdr.undp.org/hdr2006/pdfs/report/HDR06-complete.pdf](http://hdr.undp.org/hdr2006/pdfs/report/HDR06-complete.pdf), accessed 3 August 2007.

## **Conclusions**

31. There is a well developed human rights framework regarding the right to water. This framework is being harnessed to secure the right to water in many parts of the world and is relevant to the circumstances of Northern Ireland, particularly with reference to affordability.
32. Should new charges be introduced the impact on socioeconomic rights could be severe in setting back child and adult poverty reduction strategies, in pushing more poorer households into poverty and into a position of potentially having to ration water. With a human rights-based approach underpinning new policy, such scenarios should not emerge.
33. The Commission would encourage the review panel to ensure that its eventual proposals on the management, governance and financing of water and sewerage services make explicit reference to water as a human right, and are framed in full conformity with the state's human rights obligations. To this end we particularly draw attention to the framework set out in General Comment 15 of the ICESCR.

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## Appendix 1

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

### General Comment No. 15 (2002)

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

##### I. INTRODUCTION

1. Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights. The Committee has been confronted continually with the widespread denial of the right to water in developing as well as developed countries. Over one billion persons lack access to a basic water supply, while several billion do not have access to adequate sanitation, which is the primary cause of water contamination and diseases linked to water.<sup>14</sup> The continuing contamination, depletion and unequal distribution of water is exacerbating existing poverty. States parties have to adopt effective measures to realize, without discrimination, the right to water, as set out in this general comment.

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

2. The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.

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 right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival. Moreover, the Committee has previously recognized that water is a human right contained in article 11, paragraph

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<sup>14</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.

1, (see General Comment No. 6 (1995)).<sup>15</sup> The right to water is also inextricably related to the right to the highest attainable standard of health (art. 12, para. 1)<sup>16</sup> and the rights to adequate housing and adequate food (art. 11, para. 1).<sup>17</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 right to water has been recognized in a wide range of international documents, including treaties, declarations and other standards.<sup>18</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

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<sup>15</sup> See paras. 5 and 32 of the Committee’s General Comment No. 6 (1995) on the economic, social and cultural rights of older persons.

<sup>16</sup> See General Comment No. 14 (2000) on the right to the highest attainable standard of health, paragraphs 11, 12 (a), (b) and (d), 15, 34, 36, 40, 43 and 51.

<sup>17</sup> See para. 8 (b) of General Comment No. 4 (1991). See also the report by Commission on Human Rights’ Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr Miloon Kothari (E.CN.4/2002/59), submitted in accordance with Commission resolution 2001/28 of 20 April 2001. In relation to the right to adequate food, see the report by the Special Rapporteur of the Commission on the right to food, Mr Jean Ziegler (E/CN.4/2002/58), submitted in accordance with Commission resolution 2001/25 of 20 April 2001.

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

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 right to water has been consistently addressed by the Committee during its consideration of States parties' reports, in accordance with its revised general guidelines regarding the form and content of reports to be submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, and its general comments.

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 right to water for personal and domestic uses. Priority should also be given to the water resources required to prevent starvation and disease, as well as water required to meet the core obligations of each of the Covenant rights.<sup>19</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>20</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>21</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

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<sup>19</sup> See also World Summit on Sustainable Development, Plan of Implementation 2002, paragraph 25 (c).

<sup>20</sup> This relates to both *availability* and to *accessibility* of the right to adequate food (see General Comment No. 12 (1999), paras. 12 and 13).

<sup>21</sup> See also the Statement of Understanding accompanying the United Nations Convention on the Law of Non-Navigational Uses of Watercourses (A/51/869 of 11 April 1997), which declared that, in determining vital human needs in the event of conflicts over the use of watercourses "special attention is to be paid to providing sufficient water to sustain human life, including both drinking water and water required for production of food in order to prevent starvation"..

a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions.<sup>22</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>23</sup>

9. With a view to assisting States parties' implementation of the Covenant and the fulfilment of their reporting obligations, this General Comment focuses in Part II on the normative content of the right to water in articles 11, paragraph 1, and 12, on States parties' obligations (Part III), on violations (Part IV) and on implementation at the national level (Part V), while the obligations of actors other than States parties are addressed in Part VI.

## II. NORMATIVE CONTENT OF THE RIGHT TO WATER

10. The right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.

11. The elements of the right to water must be *adequate* for human dignity, life and health, in accordance with articles 11, paragraph 1, and 12. The adequacy of water should not be interpreted narrowly, by mere reference to volumetric quantities and technologies. Water should be treated as a social and cultural good, and not primarily as an economic good. The manner of the realization of the right to water must also be sustainable, ensuring that the right can be realized for present and future generations.<sup>24</sup>

12. While the adequacy of water required for the right to water may vary according to different conditions, the following factors apply in all circumstances:

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<sup>22</sup> See also para. 15, General Comment No. 14.

<sup>23</sup> According to the WHO definition, vector-borne diseases include diseases transmitted by insects (malaria, filariasis, dengue, Japanese encephalitis and yellow fever), diseases for which aquatic snails serve as intermediate hosts (schistosomiasis) and zoonoses with vertebrates as reservoir hosts.

<sup>24</sup> For a definition of sustainability, see the *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 1992*, Declaration on Environment and Development, principles 1, 8, 9, 10, 12 and 15; and Agenda 21, in particular principles 5.3, 7.27, 7.28, 7.35, 7.39, 7.41, 18.3, 18.8, 18.35, 18.40, 18.48, 18.50, 18.59 and 18.68.

(a) *Availability*. The water supply for each person must be sufficient and continuous for personal and domestic uses.<sup>25</sup> These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.<sup>26</sup> The quantity of water available for each person should correspond to World Health Organization (WHO) guidelines.<sup>27</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>28</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>29</sup> All water facilities and services must be of sufficient quality, culturally appropriate and sensitive to gender, life-cycle and

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<sup>25</sup> "Continuous" means that the regularity of the water supply is sufficient for personal and domestic uses.

<sup>26</sup> In this context, "drinking" means water for consumption through beverages and foodstuffs. "Personal sanitation" means disposal of human excreta. Water is necessary for personal sanitation where water-based means are adopted. "Food preparation" includes food hygiene and preparation of food stuffs, whether water is incorporated into, or comes into contact with, food. "Personal and household hygiene" means personal cleanliness and hygiene of the household environment.

<sup>27</sup> See J. Bartram and G. Howard, "Domestic water quantity, service level and health: what should be the goal for water and health sectors", WHO, 2002. See also P.H. Gleick, (1996) "Basic water requirements for human activities: meeting basic needs", *Water International*, 21, pp. 83-92.

<sup>28</sup> The Committee refers States parties to WHO, *Guidelines for drinking-water quality*, 2nd edition, vols. 1-3 (Geneva, 1993) that are "intended to be used as a basis for the development of national standards that, if properly implemented, will ensure the safety of drinking water supplies through the elimination of, or reduction to a minimum concentration, of constituents of water that are known to be hazardous to health."

<sup>29</sup> See also General Comment No. 4 (1991), para. 8 (b), General Comment No. 13 (1999) para. 6 (a) and General Comment No. 14 (2000) paras. 8 (a) and (b). Household includes a permanent or semi-permanent dwelling, or a temporary halting site.

privacy requirements. Physical security should not be threatened during access to water facilities and services;

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

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

(iv) *Information accessibility*: accessibility includes the right to seek, receive and impart information concerning water issues.<sup>30</sup>

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

#### *Non-discrimination and equality*

13. The obligation of States parties to guarantee that the right to water is enjoyed without discrimination (art. 2, para. 2), and equally between men and women (art. 3), pervades all of the Covenant obligations. The Covenant thus proscribes any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to water. The Committee recalls paragraph 12 of General Comment No. 3 (1990), which states that even in times of severe resource constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes.

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 right to water. States parties should ensure that the allocation of water resources, and investments in water, facilitate access to water for all members of society. Inappropriate resource allocation can lead to discrimination that may not be overt. For example, investments should not disproportionately favour expensive water supply services and facilities that are often accessible only to a small, privileged fraction of the population, rather than investing in services and facilities that benefit a far larger part of the population.

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<sup>30</sup> See para. 48 of this General Comment.

15. With respect to the right to water, States parties have a special obligation to provide those who do not have sufficient means with the necessary water and water facilities and to prevent any discrimination on internationally prohibited grounds in the provision of water and water services.

16. Whereas the right to water applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, indigenous peoples, refugees, asylum seekers, internally displaced persons, migrant workers, prisoners and detainees. In particular, States parties should take steps to ensure that:

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

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

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

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

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

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

(g) Prisoners and detainees are provided with sufficient and safe water for their daily individual requirements, taking note of the requirements of international humanitarian law and the United Nations Standard Minimum Rules for the Treatment of Prisoners;<sup>31</sup>

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<sup>31</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;

(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.

Comment [dz1]:

### 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 right to water, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2, para. 2) and the obligation to take steps (art. 2, para.1) towards the full realization of articles 11, paragraph 1, and 12. Such steps must be deliberate, concrete and targeted towards the full realization of the right to water.

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 right to water. Realization of the right should be feasible and practicable, since all States parties exercise control over a broad range of resources, including water, technology, financial resources and international assistance, as with all other rights in the Covenant.

19. There is a strong presumption that retrogressive measures taken in relation to the right to water are prohibited under the Covenant.<sup>32</sup> If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party's maximum available resources.

#### *Specific legal obligations*

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

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

21. The obligation to *respect* requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to water. The obligation includes, inter alia, refraining from engaging in any practice

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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>32</sup> See General Comment No. 3 (1990), para. 9.

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 right to water embraces those obligations by which States parties are bound under international humanitarian law.<sup>33</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>34</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 right to water. Third parties include individuals, groups, corporations and other entities as well as agents acting under their authority. The obligation includes, inter alia, adopting the necessary and effective legislative and other measures to restrain, for example, third parties from denying equal access to adequate water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems.

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 fulfil*

25. The obligation to *fulfil* can be disaggregated into the obligations to facilitate, promote and provide. The obligation to facilitate requires the

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<sup>33</sup> For the interrelationship of human rights law and humanitarian law, the Committee notes the conclusions of the International Court of Justice in *Legality of the Threat or Use of Nuclear Weapons (Request by the General Assembly)*, ICJ Reports (1996) p. 226, para. 25.

<sup>34</sup> See arts. 54 and 56, Additional Protocol I to the Geneva Conventions (1977), art. 54, Additional Protocol II (1977), arts. 20 and 46 of the third Geneva Convention of 12 August 1949, and common article 3 of the Geneva Conventions of 12 August 1949.

State to take positive measures to assist individuals and communities to enjoy the right. The obligation to promote obliges the State party to take steps to ensure that there is appropriate education concerning the hygienic use of water, protection of water sources and methods to minimize water wastage. States parties are also obliged to fulfil (provide) the right when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal.

26. The obligation to fulfil requires States parties to adopt the necessary measures directed towards the full realization of the right to water. The obligation includes, *inter alia*, according sufficient recognition of this right within the national political and legal systems, preferably by way of legislative implementation; adopting a national water strategy and plan of action to realize this right; ensuring that water is affordable for everyone; and facilitating improved and sustainable access to water, particularly in rural and deprived urban areas.

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>35</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 ecosystems 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>36</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

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<sup>35</sup> See footnote 5 above, Agenda 21, chaps. 5, 7 and 18; and the World Summit on Sustainable Development, Plan of Implementation (2002), paras. 6 (a), (l) and (m), 7, 36 and 38.

<sup>36</sup> See the Convention on Biological Diversity, the Convention to Combat Desertification, the United Nations Framework Convention on Climate Change, and subsequent protocols.

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>37</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 right to water.

31. To comply with their international obligations in relation to the right to water, States parties have to respect the enjoyment of the right in other countries. International cooperation requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries. Any activities undertaken within the State party's jurisdiction should not deprive another country of the ability to realize the right to water for persons in its jurisdiction.<sup>38</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>39</sup> Water should never be used as an instrument of political and economic pressure. In this

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<sup>37</sup> Article 14, para. 2, of the Convention on the Elimination of All Forms of Discrimination Against Women stipulates States parties shall ensure to women the right to "adequate living conditions, particularly in relation to [...] sanitation". Article 24, para. 2, of the Convention on the Rights of the Child requires States parties to "To ensure that all segments of society [...] have access to education and are supported in the use of basic knowledge of [...] the advantages of [...] hygiene and environmental sanitation."

<sup>38</sup> The Committee notes that the United Nations Convention on the Law of Non-Navigational Uses of Watercourses requires that social and human needs be taken into account in determining the equitable utilization of watercourses, that States parties take measures to prevent significant harm being caused, and, in the event of conflict, special regard must be given to the requirements of vital human needs: see arts. 5, 7 and 10 of the Convention.

<sup>39</sup> In General Comment No. 8 (1997), the Committee noted the disruptive effect of sanctions upon sanitation supplies and clean drinking water, and that sanctions regimes should provide for repairs to infrastructure essential to provide clean water.

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 right to water of individuals and communities in other countries. Where States parties can take steps to influence other third parties to respect the right, through legal or political means, such steps should be taken in accordance with the Charter of the United Nations and applicable international law.

34. Depending on the availability of resources, States should facilitate realization of the right to water in other countries, for example through provision of water resources, financial and technical assistance, and provide the necessary aid when required. In disaster relief and emergency assistance, including assistance to refugees and displaced persons, priority should be given to Covenant rights, including the provision of adequate water. International assistance should be provided in a manner that is consistent with the Covenant and other human rights standards, and sustainable and culturally appropriate. The economically developed States parties have a special responsibility and interest to assist the poorer developing States in this regard.

35. 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.

36. 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.

#### *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 right to water can be identified, which are of immediate effect:

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

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

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

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

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

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

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

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

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

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 fulfil their core obligations indicated in paragraph 37 above.

#### **IV. VIOLATIONS**

39. When the normative content of the right to water (see Part II) is applied to the obligations of States parties (Part III), a process is set in motion, which facilitates identification of violations of the right to water. The following paragraphs provide illustrations of violations of the right to water.

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 right to water. In accordance with international law, a failure to act in good faith to take

such steps amounts to a violation of the right. It should be stressed that a State party cannot justify its non-compliance with the core obligations set out in paragraph 37 above, which are non-derogable.

41. In determining which actions or omissions amount to a violation of the right to water, it is important to distinguish the inability from the unwillingness of a State party to comply with its obligations in relation to the right to water. This follows from articles 11, paragraph 1, and 12, which speak of the right to an adequate standard of living and the right to health, as well as from article 2, paragraph 1, of the Covenant, which obliges each State party to take the necessary steps to the maximum of its available resources. A State which is unwilling to use the maximum of its available resources for the realization of the right to water is in violation of its obligations under the Covenant. If resource constraints render it impossible for a State party to comply fully with its Covenant obligations, it has the burden of justifying that every effort has nevertheless been made to use all available resources at its disposal in order to satisfy, as a matter of priority, the obligations outlined above.

42. Violations of the right to water can occur through *acts of commission*, the direct actions of States parties or other entities insufficiently regulated by States. Violations include, for example, the adoption of retrogressive measures incompatible with the core obligations (outlined in para. 37 above), the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to water, or the adoption of legislation or policies which are manifestly incompatible with pre-existing domestic or international legal obligations in relation to the right to water.

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

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 right to water. This includes, inter alia: (i) arbitrary or unjustified disconnection or exclusion from water services or facilities; (ii) discriminatory or unaffordable increases in the price of water; and (iii) pollution and diminution of water resources affecting human health;

(b) Violations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to water by third parties.<sup>40</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

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<sup>40</sup> See para. 23 for a definition of "third parties".

regulate and control water services providers; (iv) failure to protect water distribution systems (e.g., piped networks and wells) from interference, damage and destruction; and

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

## **V. IMPLEMENTATION AT THE NATIONAL LEVEL**

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

### *Legislation, strategies and policies*

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

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 right to water. The strategy must: (a) be based upon human rights law and principles; (b) cover all aspects of the right to water and the corresponding obligations of States parties; (c) define clear objectives; (d) set targets or goals to be achieved and the time-frame for their achievement; (e) formulate adequate policies and corresponding benchmarks and indicators. The strategy should also establish institutional responsibility for the process; identify resources available to attain the objectives, targets and goals; allocate resources appropriately according to institutional responsibility; and establish accountability mechanisms to ensure the implementation of the strategy. When formulating and

implementing their right to water national strategies, States parties should avail themselves of technical assistance and cooperation of the United Nations specialized agencies (see Part VI below).

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 right to water. In order to create a favourable climate for the realization of the right, States parties should take appropriate steps to ensure that the private business sector and civil society are aware of, and consider the importance of, the right to water in pursuing their activities.

50. States parties may find it advantageous to adopt framework legislation to operationalize their right to water strategy. Such legislation should include: (a) targets or goals to be attained and the time-frame for their achievement; (b) the means by which the purpose could be achieved; (c) the intended collaboration with civil society, private sector and international organizations; (d) institutional responsibility for the process; (e) national mechanisms for its monitoring; and (f) remedies and recourse procedures.

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 right to water has been delegated to regional or local authorities, the State party still retains the responsibility to comply with its Covenant obligations, and therefore should ensure that these authorities have at their disposal sufficient resources to maintain and extend the necessary water services and facilities. The States parties must further ensure that such authorities do not deny access to services on a discriminatory basis.

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

#### *Indicators and benchmarks*

53. To assist the monitoring process, right to water indicators should be identified in the national water strategies or plans of action. The indicators should be designed to monitor, at the national and international levels, the State party's obligations under articles 11, paragraph 1, and

12. Indicators should address the different components of adequate water (such as sufficiency, safety and acceptability, affordability and physical accessibility), be disaggregated by the prohibited grounds of discrimination, and cover all persons residing in the State party's territorial jurisdiction or under their control. States parties may obtain guidance on appropriate indicators from the ongoing work of WHO, the Food and Agriculture Organization of the United Nations (FAO), the United Nations Centre for Human Settlements (Habitat), the International Labour Organization (ILO), the United Nations Children's Fund (UNICEF), the United Nations Environment Programme (UNEP), the United Nations Development Programme (UNDP) and the United Nations Commission on Human Rights.

54. Having identified appropriate right to water indicators, States parties are invited to set appropriate national benchmarks in relation to each indicator.<sup>41</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 right to water. Thereafter, in the subsequent reporting process, the State party and the Committee will consider whether or not the benchmarks have been achieved, and the reasons for any difficulties that may have been encountered (see General Comment No.14 (2000), para. 58). Further, when setting benchmarks and preparing their reports, States parties should utilize the extensive information and advisory services of specialized agencies with regard to data collection and disaggregation.

#### *Remedies and accountability*

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>42</sup> The Committee notes that the right has been

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<sup>41</sup> See E. Riedel, "New bearings to the State reporting procedure: practical ways to operationalize economic, social and cultural rights – The example of the right to health", in S. von Schorlemer (ed.), *Praxishandbuch UNO*, 2002, pp. 345-358. The Committee notes, for example, the commitment in the 2002 World Summit on Sustainable Development Plan of Implementation to halve, by the year 2015, the proportion of people who are unable to reach or to afford safe drinking water (as outlined in the Millennium Declaration) and the proportion of people who do not have access to basic sanitation.

<sup>42</sup> Principle 10 of the Rio Declaration on Environment and Development (*Report of the United Nations Conference on Environment and Development*, see footnote 5 above), states with respect to environmental issues that "effective access to judicial and administrative proceedings, including remedy and redress, shall be provided".

constitutionally entrenched by a number of States and has been subject to litigation before national courts. All victims of violations of the right to water should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition. National ombudsmen, human rights commissions, and similar institutions should be permitted to address violations of the right.

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.

57. The incorporation in the domestic legal order of international instruments recognizing the right to water can significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases. Incorporation enables courts to adjudicate violations of the right to water, or at least the core obligations, by direct reference to the Covenant.

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

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 right to water.

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

60. United Nations agencies and other international organizations concerned with water, such as WHO, FAO, UNICEF, UNEP, UN-Habitat, ILO, UNDP, the International Fund for Agricultural Development (IFAD), as well as international organizations concerned with trade such as the World Trade Organization (WTO), should cooperate effectively with States parties, building on their respective expertise, in relation to the implementation of the right to water at the national level. The international financial institutions, notably the International Monetary Fund and the World Bank, should take into account the right to water in their lending policies, credit agreements, structural adjustment programmes and other development projects (see General Comment No.

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2 (1990)), so that the enjoyment of the right to water is promoted. When examining the reports of States parties and their ability to meet the obligations to realize the right to water, the Committee will consider the effects of the assistance provided by all other actors. The incorporation of human rights law and principles in the programmes and policies by international organizations will greatly facilitate implementation of the right to water. The role of the International Federation of the Red Cross and Red Crescent Societies, International Committee of the Red Cross, the Office of the United Nations High Commissioner for Refugees (UNHCR), WHO and UNICEF, as well as non-governmental organizations and other associations, is of particular importance in relation to disaster relief and humanitarian assistance in times of emergencies. Priority in the provision of aid, distribution and management of water and water facilities should be given to the most vulnerable or marginalized groups of the population.

## Appendix 2

### SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

#### **Resolution 2006/10. Promotion of the realization of the right to drinking water and sanitation**

*The Sub-Commission on the Promotion and Protection of Human Rights,*

*Reaffirming* the indivisibility, interdependence and interrelated nature of economic, social and cultural rights and civil and political rights,

*Mindful* that the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and a wide range of other texts provide unequivocally that all persons are entitled to the full realization of economic, social and cultural rights,

*Recalling* the Declaration on the Right to Development,

*Recalling also* that in part I, paragraph 10, of the Vienna Declaration and Programme of Action, the World Conference on Human Rights reaffirmed the right to development as a universal and inalienable right and an integral part of human rights, and urged States and the international community to promote effective international cooperation for the realization of the right to development and the elimination of obstacles to development,

*Taking account* of the results of the World Summit for Social Development, held in Copenhagen from 6 to 12 March 1995, especially the recommendations in its Programme of Action concerning the United Nations system to strengthen United Nations operational activities for development in order to ensure the implementation of the World Summit outcome, as well as the capacity of the United Nations system for gathering and analysing information and establishing indicators of social development, taking into account the work carried out by different countries, in particular by developing countries,

*Recalling* resolutions I (Assessment of water resources), II (Community water supply), III (Agricultural water use), IV (Research and development of industrial technologies), VIII (Institutional arrangements for international cooperation in the water sector) and IX (Financing arrangements for international cooperation in the water sector) adopted at the United Nations Water Conference, held in Mar del Plata, Argentina, from 14 to 25 March 1997,

*Bearing in mind* the International Drinking Water Supply and Sanitation Decade (1981-1990) and the observance, on 22 March of each year, of the World Day for Water, proclaimed by the General Assembly in its resolution 35/18 of 10 November 1980 and 47/193 of 22 December 1992, respectively,

*Bearing in mind also* the objectives of a "20:20"-type compact concerning in particular the access of all to drinking water supply and sanitation services, as stated in the *Human Development Report 1994*,

*Recalling* the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, adopted in London in 1999 under the auspices of the Economic Commission for Europe, and which refers to the principle of

equitable access to water, which should be provided for all members of the population,

*Recalling also* the principles of the Madeira Declaration on the sustainable management of water resources, adopted by the European Council on Environment Law on 17 April 1999, and the resolution on drinking water adopted by the Council on 28 April 2000,

*Considering* that, in its resolution 55/196 of 20 December 2000, the General Assembly proclaimed the year 2003 as the International Year of Freshwater,

*Taking into account* general comment No. 15 (2002) on the right to water, adopted by the Committee on Economic, Social and Cultural Rights, which states that water is a public good fundamental for life and health and should be treated as a social and cultural good,

*Taking particular account* of the International Decade for Action, "Water for Life", 2005-2015, proclaimed by the General Assembly in its resolution 58/217 of 23 December 2003, the goal of which is a greater focus on water-related issues at all levels and on the implementation of water-related programmes and projects, in order to help to achieve internationally agreed water-related goals contained in Agenda 21, the United Nations Millennium Declaration and the Johannesburg Plan of Implementation,

*Recalling* its resolution 1997/18 of 27 August 1997, in which it decided to entrust to Mr El-Hadji Guissé the task of drafting, without financial implications, a working paper on the question of the promotion of the realization of the right of access of everyone to drinking water supply and sanitation services,

*Taking into consideration* the working paper on the promotion of the realization of the right of everyone to access to drinking water supply and sanitation services prepared by Mr Guissé (E/CN.4/Sub.2/1998/7),

*Recalling* Commission on Human Rights decision 2002/105 of 22 April 2002, approving the appointment of Mr 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,

*Taking into consideration* the preliminary, interim and final reports on the promotion of the realization of the right to drinking water supply and sanitation prepared by the Special Rapporteur and submitted to the Sub-Commission at its fifty-fourth, fifty-fifth and fifty-sixth sessions, respectively (E/CN.4/Sub.2/2002/10, E/CN.4/Sub.2/2003/WP.3 and E/CN.4/Sub.2/2004/20),

*Bearing in mind* that water is the source of life,

*Bearing in mind also* that all persons have the right to sufficient supplies of water to meet their essential needs and to have access to culturally acceptable, accessible, secure and affordable sanitation facilities that take account of the requirements of hygiene, human dignity, public health and environmental protection,

*Considering* that water resources constitute a public good and that they must be used in an equitable manner and managed in cooperation with users in a spirit of solidarity,

*Deeply concerned* that more than 1 billion people in the world are still deprived of access to drinking water supply and that almost 4 billion are not living in decent conditions of sanitation,

1. *Welcomes with satisfaction* the report of the Special Rapporteur, Mr El-Hadji Guissé, on the realization of the right to drinking water and sanitation (E/CN.4/Sub.2/2005/25), which contains draft guidelines for the realization of the right to drinking water and sanitation;

2. *Re-emphasizes* that the right to water is an individual and collective human right and is closely linked to other rights, such as the rights contemplated in several international human rights instruments and in general comment No. 15 (2002) of the Committee on Economic, Social and Cultural Rights;

3. *Reaffirms* that the access of everyone to drinking water supply must not be subject to any restriction but must be subject to regulation and control by the public authorities;

4. *Adopts* the guidelines for the realization of the right to drinking water and sanitation, referred to in paragraph 1 of the present resolution;

5. *Requests* all States and international organizations to give priority, in political decision-making at the national, regional and international levels, to the implementation of their international obligations in the area of drinking water and sanitation;

6. *Calls upon* all States to cooperate in the area of drinking water supply and sanitation for the realization of the right of everyone to water;

7. *Requests* the Secretary-General to bring to the attention of States, international organizations and non-governmental organizations concerned with questions relating to water and sanitation, the guidelines for the realization of the right to drinking water and sanitation, as well as general comment No. 15 (2002) of the Committee on Economic, Social and Cultural Rights;

8. *Invites Mr Guissé* to continue his work on the right to drinking water and sanitation and to submit a follow-up report to the fifty-ninth session of the Sub-Commission or to the first session of the future expert advice mechanism of the Human Rights Council;

9. *Decides* to submit the report of Mr Guissé on the realization of the right to drinking water and sanitation, which contains draft guidelines for the realization of the right to drinking water and sanitation, to the Human Rights Council for consideration and adoption.

*21st meeting*  
*24 August 2006*  
[Adopted without a vote]

## Appendix 3

### SUB-COMMISSION ON THE PROTECTION AND PROMOTION OF HUMAN RIGHTS

extract from Report of the Special Rapporteur (E/CN.4/Sub.2/2005/25)

#### **DRAFT GUIDELINES FOR THE REALIZATION OF THE RIGHT TO DRINKING WATER AND SANITATION**

*Considering* that water is the source of life,

*Considering* that the right to drinking water and sanitation is unquestionably a human right,

*Considering* that all persons have the right to sufficient supplies of water to meet their essential needs and to have access to acceptable sanitation facilities that take account of the requirements of hygiene, human dignity, public health and environmental protection,

*Recalling* the guiding principles expounded by the conferences on water and sanitation held at Dublin, Marrakesh, Paris and Rio de Janeiro and in the Declaration on the Right to Development,

*Recalling* the International Covenant on Economic, Social and Cultural Rights, in which all States recognize "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions" (art. 11, para. 1) and "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" (art. 12, para. 1),

*Emphasizing in particular* the Convention on the Elimination of All Forms of Discrimination against Women, ratified by 164 States, and the Convention on the Rights of the Child, ratified by 190 States,

*Noting with satisfaction* the adoption of the Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes adopted under the auspices of the United Nations Economic Commission for Europe and the World Health Organization, which focuses especially on ensuring "adequate supplies of wholesome drinking water" and "adequate sanitation",

*Considering* that water resources constitute a common heritage and must be used in an equitable manner and managed in cooperation with the users in a spirit of solidarity,

The following draft guidelines are recommended to States and to the international community:

#### **1. The right to water and sanitation**

1.1 Everyone has the right to a sufficient quantity of clean water for personal and domestic uses.

1.2 Everyone has the right to have access to adequate and safe sanitation that is conducive to the protection of public health and the environment.

1.3 Everyone has the right to a water and sanitation service that is:

- (a) Physically accessible within, or in the immediate vicinity of the household, educational institution, workplace or health institution;
- (b) Of sufficient and culturally acceptable quality;
- (c) In a location where physical security can be guaranteed;
- (d) Supplied at a price that everyone can afford without compromising their ability to acquire other basic goods and services.

## **2. State actions to implement the right to water and sanitation**

2.1 Each level of government in a State, including the national Government, regional governments and the local authorities, has a responsibility to move progressively and as expeditiously as possible towards the full realization of the right to water and sanitation for everyone, using practical and targeted measures and drawing, to the maximum extent possible, on all available resources.

2.2 National Governments should ensure that other levels of government have the necessary resources and skills to discharge their responsibilities.

2.3 States should at all levels of government:

- (a) Give priority in water and sanitation policies and programmes to the persons without any basic access;
- (b) Adopt and implement a plan of action for the full realization of the right to water and sanitation which establishes specific targets, indicators and time frames and identifies the necessary national and international resources;
- (c) Formally recognize the right to water and sanitation in relevant laws and regulations;
- (d) Refrain, and ensure that private persons and organizations refrain, from interfering with the enjoyment of the right to water and sanitation or any other human rights, unless such interference is permitted by law and includes appropriate procedural protection.

No one whose access to water and sanitation may be legally curtailed after the appropriate procedures have been followed should be deprived of the minimum essential amount of water or of minimum access to basic sanitation services;

- (e) Establish a regulatory system for private and public water and sanitation service providers that requires them to provide physical, affordable and equal access to safe, acceptable and sufficient water and to appropriate sanitation and includes mechanisms to ensure genuine public participation, independent monitoring and compliance with regulations.

### **3. Preventing discrimination and addressing the needs of vulnerable or marginalized groups**

3.1 States should ensure that no persons or public or private organizations engage in discriminatory practices which limit access to water and sanitation on the grounds of sex, age, ethnic origin, language, religion, political or other opinion, national or social origin, disability, health status or other status.

3.2 States should give particular attention to the needs of individuals or groups who are vulnerable or who have traditionally faced difficulties in exercising their right to water and sanitation, including women, children, indigenous peoples, persons living in rural and deprived urban areas, nomadic and traveller communities, refugees, asylum-seekers, internally displaced persons, migrant workers, prisoners and detainees, as well as other groups facing difficulties with gaining access to water.

3.3 States should give priority to providing water and sanitation services to institutions serving vulnerable groups, such as schools, hospitals, prisons and refugee camps.

3.4 States should enact and implement legislation to protect access by persons to traditional water sources in rural areas.

### **4. Availability and equitable distribution of water**

4.1 States should ensure that everyone has a sufficient amount of safe water, including by adopting and implementing integrated water resource management programmes and water efficiency plans, combating the depletion of water resources due to unsustainable extraction, diversion and damming, reducing water wastage during distribution and establishing mechanisms to respond to emergency situations.

4.2 States should adopt measures to prevent over-consumption and promote efficient water use, such as public education, dissemination of appropriate conservation technologies and, as necessary, restrictions on water use beyond an acceptable consumption threshold, including through the imposition of charges.

4.3 The priority in water distribution shall be for essential personal and domestic uses for all.

In order to realize the right to adequate nutrition and the right to earn a living through work, marginalized or disadvantaged farmers and other vulnerable groups should be given priority in access to water resources for their basic needs.

4.4 The right to water should be exercised in a manner that is sustainable for present and future generations.

### **5. Improving access to drinking water supply**

5.1 States should progressively ensure that everyone has access to water and sanitation services and that these services are equitably distributed. Where available resources are not sufficient to guarantee the

delivery of high-quality services, States should invest in services that give priority to the needs of those without basic access, normally through low-cost services that can be upgraded, rather than through expensive services that would only benefit a small section of the population.

5.2 States should promote hygienic use of water and sanitation services.

5.3 Water and sanitation facilities should be designed to take account of the needs of women and children.

5.4 No one should be denied access to water and sanitation because of his/her housing or land status. Informal human settlements should be upgraded through the provision of water and sanitation services and through assistance with the construction of their own water and sanitation facilities.

## **6. Affordability**

6.1 States should ensure that they have appropriate water and sanitation pricing policies, including through flexible payment schemes and cross-subsidies from high-income users to low-income users.

6.2 States should subsidize water and sanitation services for low-income households and poor areas that lack the means to secure access to such services. Subsidies should normally be used for connection to distribution networks or for the construction and maintenance of small-scale water supply and sanitation facilities, such as wells, boreholes and latrines.

6.3 Where public resources cannot guarantee high-quality services for all, States should offer a range of services, including low-cost technology options, to promote affordable access for low-income households.

6.4 States should ensure, before a person's access to water and sanitation services is reduced owing to non-payment, that account is taken of that person's ability to pay. No one should be deprived of the minimum essential amount of water or access to basic sanitation facilities.

## **7. Water quality**

7.1 States should establish water-quality standards on the basis of the World Health Organization guidelines, taking account of the needs of vulnerable groups and upon consultation with users.

7.2 Water-quality standards should give priority to the elimination of the pollutants with the most significant impact on health in the particular country or context, rather than to the setting of high thresholds that cannot be attained immediately within the available resources. They should be periodically reviewed and progressively raised.

7.3 States should devise regulations and policies to control pollution of water resources by all persons and organizations, both public and private, including surveillance, disincentives, pollution penalties and assistance with compliance.

7.4 States should prevent and progressively reduce contamination of watersheds and aquatic ecosystems by substances such as bacterial pathogens and chemical pollutants. They should monitor water quality in reservoirs and distribution systems.

7.5 States should provide financial and technical assistance, including information and training, to communities which depend on small-scale water supply systems, particularly low-income communities.

## **8. Participatory rights**

8.1 Everyone has the right to participate in decision-making processes that affect their right to water and sanitation. Special efforts must be made to ensure the equitable representation in decision-making of vulnerable groups and sections of the population that have traditionally been marginalized, in particular women.

8.2 Communities have the right to determine what type of water and sanitation services they require and how those services should be managed and, where possible, to choose and manage their own services with assistance from the State.

8.3 Everyone should be given equal access to full and transparent information concerning water, sanitation and the environment held by public authorities or third parties.

## **9. Remedies and monitoring**

9.1 Everyone should have access to administrative or judicial procedures for the making of complaints about acts or omissions committed by persons or public or private organizations in contravention of the right to water and sanitation.

9.2 States should monitor the implementation of obligations concerning the right to water and sanitation, including by establishing or authorizing independent institutions such as human rights commissions or regulatory agencies to carry out monitoring activities in a manner that ensures full transparency and accountability.

## **10. International obligation and duty of solidarity**

10.1 States should refrain from actions that interfere with the enjoyment of the right to water and sanitation in other countries and should prevent individuals and companies under their jurisdiction from taking such actions.

10.2 Depending on the availability of resources, developed countries should provide sufficient financial and technical assistance to supplement the resources of developing countries with a view to ensuring that everyone has access, as promptly as possible, at least to basic water and sanitation services. Every developed country should undertake, at a minimum, to allocate a portion of its official development assistance proportional to its Gross National Product to achieving the goals set out in

the United Nations Millennium Declaration and the Johannesburg Plan of Implementation adopted by the World Summit on Sustainable Development concerning access to water and sanitation.

10.3 Bilateral and multilateral assistance for the water and sanitation sector should be channelled, as a matter of priority, towards countries that are unable to realize the essential aspects of the right to water and sanitation for their people; such assistance should not interfere with the realization of human rights and should focus on bringing tangible benefits to those with no basic access to water and sanitation.

10.4 International organizations, including United Nations specialized agencies, trade and financial institutions, and the States members of such bodies should ensure that their policies and actions respect the right to water and sanitation. States should take account of the right to water and sanitation when formulating and implementing international agreements that have an impact on this right.