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LEGAL RESOURCES FOR

International and National Standards

THE RIGHT TO WATER



COHRE
October 2003



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International and National Standards

THE RIGHT TO WATER

Sources 8

COHRE October 2003

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PREFACE

Although there is sufficient clean water in the world for everyone's basic needs, the human right to water remains relevant. More than a billion individuals lack access to an adequate water supply while over 2 billion persons lack access to adequate sanitation. Contaminated water is responsible for the majority of deaths each year in developing countries, particularly amongst children who suffer from preventable diseases such as diarrhoea and dysentery. Environmental degradation, armed conflict and water scarcity threaten access to water for other critical purposes such as food production and adequate livelihoods.

The lack of access to water has clear human rights dimensions. The poor and other marginalised groups are always the worst affected. Even in countries with an abundance of water and financial resources many individuals lack sufficient water for drinking and other basic needs. Deprived urban areas and rural areas are frequently neglected or totally ignored in infrastructure development and maintenance and in moves to privatise water supply services. Scarce resources are disproportionately directed towards water supply services in areas populated by the wealthy. As a consequence the poor often pay exorbitant prices for drinking water or use contaminated water from rivers or wells. Sanitation facilities are frequently inaccessible resulting in grave consequences for personal and household hygiene. Women and children are often saddled with the arduous tasks of collecting water from great distances. Access by indigenous peoples, nomadic groups and poor farmers to traditional water sources is constantly threatened by pollution and encroachment of more powerful groups.

The right to water is clearly part of international human rights law. In 1977, the international community recognised the right to have access to drinking water in the Mar del Plata Declaration. Other international treaties and declarations have recognised the right to water. In 2002, the United Nations Committee on Economic, Social and Cultural Rights released a General Comment on the Right to Water that clearly stated the basis for the right to water in international human rights law. The Committee has also consistently treated access to water as part of other human rights, such as the rights to health and housing.

Sources No. 8 addresses the human right to water in its complete form, entitling all persons to sufficient, safe and affordable water, accessible from their homes. It demonstrates that the right to water has significant official recognition at the international, regional and national levels. This is a source of inspiration, yet it again indicates the gross disparity between officially recognised binding norms and the actual practice, and the need for communities denied sufficient water and civil society to hold governments to their legal and political commitments.

COHRE's many years of fighting for housing rights have shown that applying human rights approaches to the promotion of economic, social and cultural rights can result in clear improvements in living conditions. The law cannot on its own be seen as a panacea for rectifying on-going injustices such as denial of water service infrastructure to the poor or pollution of drinking water supplies. The law is rarely self-implementing – it normally requires pressure at all levels for the realisation of human rights. However, the official recognition in law of the right to water, and the corresponding governmental obligation to respect and ensure it, provide a solid basis upon which grassroots groups, communities, NGOs, lawyers and others can more forcefully and effectively demand accessible and sufficient water for all. International and national legal standards on the right to water may also be deployed so as to shape the manner in which economic and environmental laws are implemented.

There are a number of specific ways in which we hope this guide will be of use, ranging from comparison of national legislation with international standards to basing campaigns on the legal obligations of governments or international institutions. These are discussed in Section 3.

This publication aims to demonstrate the solid existing basis for the human rights approach to the many dimensions of the global water crisis. COHRE encourages all those utilizing the standards contained in this guide to inform us of how this is being done, in what other ways law on the right to water can be made more accessible to increasing numbers of people and specifically how COHRE can contribute to this task.

Scott Leckie
Executive Director
3 October 2003

2 INTRODUCTION

Sources No. 8 sets out the foundations for the right to water in international and regional treaties and declarations as well as in national laws. It sets out explicit references to the right to water and/or state duties to provide water. It also describes legal provisions that implicitly refer to access to water as a component of an adequate standard of living, hygiene or protection of the environment. This guide covers the authoritative interpretation and application of the right by United Nations and regional official committees of independent experts. It also includes excerpts from decisions of national and regional courts on the right to water.

Implementing the right to water will often require a review of State legislation and policy related to water services regulation, water quality management, overall environmental management, public services regulation, social security measures, human rights and citizens complaints institutions. Therefore, this guide covers legal sources that provide for a right to water, but also surveys a selection of sources that obligate States to carry out measures that form key components of the right to water.

2.1 LEGAL BASIS FOR THE RIGHT TO WATER

At the international level, the United Nations General Assembly recognised in the 1977 *Mar Del Plata Declaration* that – regardless of the level of economic development – all peoples “have the right to have access to drinking water in quantities and of a quality equal to their basic needs.”¹ This right has subsequently been explicitly recognised in a number of legally binding treaties, the *Convention on Elimination of Discrimination Against Women*, 1979 (CEDAW), the *Convention on Rights of Child*, 1989 (CRC) and the *African Charter on the Rights and Welfare of the Child*, 1990.

The standards set out by the United Nations Committee on Economic, Social and Cultural Rights in the General Comment on the Right to Water apply as an authoritative interpretation of the *International Covenant on Economic Social and Cultural Rights*, 1966 (ICESCR), which is currently ratified by 148 States.² According to the Committee:

Article 11, paragraph 1, of the Covenant specifies a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living “including adequate food, clothing and housing”. The use of the word “including” indicates that this catalogue of rights was not intended to be exhaustive. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival. Moreover, the Committee has previously recognized that water is a human right contained in article 11, paragraph 1, (see General Comment No. 6 (1995)). The right to water is also inextricably related to the right to the highest attainable standard of health (art. 12, para. 1) and the rights to adequate housing and adequate food (art. 11, para. 1). 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.³

1 See Section 4.4. below. The right to water is also referred to in the Programme of Action of the *International Conference on Population and Development* (Cairo, 1994).

2 The Committee on Economic, Social and Cultural Rights sought the authorisation of the United Nations Economic and Social Council (one of primary UN Organs made up of member States) to develop General Comments, and received encouragement from the Council to “continue using that mechanism to develop a fuller appreciation of the obligations of State Parties under the Covenant.” Economic and Social Council Resolution 1990/45, para. 10, quoted in Philip Alston, “The Committee on Economic, Social and Cultural Rights in Philip Alston, ed. *The United Nations and Human Rights* (Clarendon Press, Oxford, 1992), 473-508 at 494.

3 General Comment No. 15 on the Right to Water, para. 3. The full text is included below at Section 6.1.

The right to water is also an integral part of other human rights, such as the right to life contained in the *International Covenant on Civil and Political Rights*, 1966 (ICCPR) and the rights to health, food, housing and an adequate standard of living, included in the ICESCR. These rights are also provided for in a series of other international and regional treaties.⁴

States that have not ratified the ICESCR are bound by a number of the components of the right to water that are reflected in other treaties that they may have ratified, as well as aspects of the right to water that have achieved the status of customary law. In addition, key components of the right to water, such as the obligation to refrain from reducing access to water to civilians in wartime and ensuring the quality of drinking water sources, are effectively protected in various international treaties relating to armed conflict, the environment, labour and criminal law.

At the national level, an explicit right to water has been recognized in some constitutions, legislation and court judgments (Sections 5 and 7 below). For example, the Ugandan Constitution of 1995 provides: “The State shall endeavour to fulfil the fundamental rights of all Ugandans to social justice and economic development and shall, in particular ensure that all Ugandans enjoy rights and opportunities and access to ... clean and safe water.”⁵ The South African Constitution of 1996 states: “Everyone has the right to have access to ... sufficient food and water.”⁶

In addition, a wide range of national legal sources emphasise State duties to provide water and entitlements of citizens to secure water access (Section 5.2).

2.2 CONTENT OF THE RIGHT TO WATER

The UN Committee on Economic, Social and Cultural Rights in its General Comment on the Right to Water (General Comment No. 15), provides that States are required to ensure that each person has access to sufficient, safe, acceptable, accessible and affordable water for personal and domestic uses. These include the uses 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.

The Committee noted that other uses of water were also protected by other human rights, including, for example, water necessary to produce food (the right to food), water necessary to ensure environmental hygiene (the right to health) and water necessary to secure one’s livelihood (right to gain a living by work). Priority must be given to water for personal and domestic uses, and the water needed to meet the most essential aspects of each of the other relevant human rights.⁷

The major components of the right to water, and the State actions necessary to achieve them are addressed below. These are drawn primarily from General Comment No. 15, which provides the most detailed account of the right to water in international law. References are made to other international standards that are relevant to specific components of the right to water. States should follow such standards, but should also interpret them in a manner consistent with the right to water set out in General Comment No. 15. References are also made to national laws and case law that indicate measures by which the right to water may be implemented.

4 For example, the European Committee of Ministers recognised in 2001 that the rights to be free from hunger and the right to an adequate standard of living contained in international human rights instruments include the right to a minimum quantity of water of satisfactory quality, below at Section 4.5.

5 The Constitution of the Republic of Uganda, Article 14, below at Section 5.1.

6 Constitution of the Republic of South Africa, Article 27 (1), below at Section 5.1.

7 General Comment No. 15, Section 6.1 below, para. 6.

Availability

The water supply for each person must be sufficient and regular for personal and domestic uses, as corresponding to World Health Organisation guidelines.⁸ This will normally constitute 50-100 litres daily per person, and an absolute minimum of 20 litres.⁹ These standards can be helpful in designing legally enforceable rights and developing indicators for the right to water. The *Menoris Comunidad Paynemil* case from Argentina indicates a situation where a court ordered the State to provide 250 litres of water daily for each inhabitant of an indigenous community whose water source had been polluted by an oil company (Section 7 below).

Quality

The water utilised for personal and domestic uses must be safe and not constitute a threat to health. It must be of an acceptable colour, odour and taste. Safe sanitation services are required in order to maintain the quality of water supplies, as well as to protect the right of each person to privacy, dignity and health.

The European Framework Directive establishing a framework for community action in the field of water policy addresses the obligations of European Union member states to improve water quality in a programmatic fashion (Section 5.2 below).

Accessibility

Water must be within safe physical reach, in or near each house, educational institution or workplace. Water facilities should be in a safe location and address the needs of different groups, in particular women. The absolute minimum quantity of water per person normally requires that the water source be within 1 kilometre, or about 30 minutes collection time. In addition, each person should have the right to access information relevant to water issues. The South African *Water Services Act*, for example, sets out the duty of water service authorities to customers or potential customers to progressively ensure efficient, affordable, economical and sustainable access to water. Water service authorities are required to allocate resources equitably. If a water service authority is unable to meet the requirements of all its customers, it is required to give preference to the provision of basic water supply and sanitation to them (Section 5.2 below).

Affordability

Water should be affordable and not reduce a persons' capacity to buy other essential goods, such as food, housing, education and health care. This means that water must be subsidised for poor communities, and provided free where necessary.

The *World Summit on Sustainable Development Plan of Implementation* indicates that cost-recovery objectives in the water field should not become a barrier to access by poor people (Section 4.5).¹⁰ A number of national laws apply to affordability. For example, the *Australian Utilities Act* included in Section 5.2 below provides for a consumer's debt for water services to be discharged, and water supply continued, if payment would cause substantial hardship for the customer. The Chilean and Venezuelan laws set out in Section 5.2 establish special funds to subsidise water use by low-income families.

⁸ General Comment No 15, para. 12. a.

⁹ Guy Howard and Jamie Bartram, *Domestic Water Quantity, Service Level and Health* (World Health Organization, 2003).

¹⁰ Johannesburg Plan of Implementation of the World Summit on Sustainable Development, Art. 26 (b).

2.3 Obligations Related to the Right to Water

Non-Discrimination

The State is required to ensure that there is no discrimination, in law or in fact, on the basis of a person's defined characteristics, such as race, national or social origin. It is required to allocate resources available for water to services that benefit a wide section of the population, rather than through expensive facilities that benefit only a privileged section. States should provide special attention to groups previously marginalized or who have special needs relating to water, such as indigenous peoples and women.¹¹

Provisions in the human rights treaties and international declarations, listed in Sections 4.1 and 4.4 below, add further content to the obligation of non-discrimination. Instruments of note are the *Convention on the Elimination of All Forms of Discrimination Against Women*, the *Istanbul Declaration on Human Settlements* and the *United Nations Principles for Older Persons*. Also of particular interest is the United Kingdom's *Water Industry Act* (as amended in 1999) which empowers the Secretary of State to require subsidies to be provided by private suppliers to certain vulnerable groups, on the basis of age, ill-health, disability or financial circumstances (Section 5.2).

Duties to Respect, Protect and Fulfil the Right to Water

The State is required to move as expeditiously as possible towards the full realisation of the right to water, using the maximum of its available resources. It has obligations that are of immediate effect, such as the obligation of non-discrimination and the obligation to establish concrete and targeted programmes to achieve the full extent of the right to water.

The State has a duty to *respect* the right to water by refraining from interfering with any person's enjoyment of the right to water. Examples of such action include limiting access or destroying water service facilities in time of conflict, or disconnecting any person's water supply arbitrarily, without notice, consultation or reasonable opportunity for redress or in any situation where the person genuinely cannot afford water. Under no circumstances may an individual be deprived of the minimum essential amount of water.

The South African *Water Services Act* (Section 5.2 below) and the *Residents of Bon Vista Mansions and Highveldridge Residents* cases from South Africa (Section 7) address instances of water disconnection from a right to water perspective. The international standards protecting the access of civilians and detainees to water in times of armed conflict are listed in Section 4.2.

The State has a duty to *protect* the right to water by ensuring that third parties do not impede any person's access to water, such as through pollution or inequitable extraction of water. Where the private sector controls water supply, the State is required to regulate and establish independent monitoring, genuine public participation and penalties for non-compliance in order to ensure that equal, affordable, and accessible access to are maintained.

National laws from Australia, Finland, New Zealand, South Africa and United Kingdom in Section 5.2 demonstrate the restrictions these States have imposed on public and private water services providers with regard to contract terms, disconnection policies and cost recovery. Case law from Argentina and India demonstrate instances where courts have intervened to restrict particularly egregious cases of pollution of drinking water sources by oil extraction processes and tanneries (Section 7).

¹¹ General Comment No. 15, paras. 13 and 16 indicates a full list of relevant groups and their particular needs.

The State is bound to *fulfil* the right to water, by taking positive measures to assist individuals and communities achieve the right when they are unable to realise it themselves. The State is bound to ensure that their national laws and policies are geared towards the full realisation of the right to water. The State must adopt appropriate pricing policies, plans of actions and programmes to expand and ensure access to water. These should be developed in a participatory manner. The State must develop indicators for the right to water and targets for progress in each of these indicators. Such indicators should be designed to monitor to extent to which vulnerable groups enjoy the right to water.

The State is bound to ensure that local authorities and private sector are obligated to expand access to water, and are provided with the necessary resources and tools to do so.

International Obligations

States are required to engage in international cooperation and assistance to realise the right to water. They therefore must *respect* the right to water in other countries, such as by refraining from sanctions that restrict the supply of water. General Comment No. 8, addressed in Section 6.2, provides further details on this obligation. The UN *Convention on the Law of the Non-Navigable Uses of International Watercourses* (Section 4.3) sets out international duties relating to shared watercourses.

States must *protect* the right to water in other countries, such as by regulating the actions of corporations headquartered in their jurisdiction. States must help fulfil the right to water in other countries, depending on their availability of resources, such as through technical or financial assistance for projects that expand access to water, in a manner consistent with all human rights. States should also ensure that they take the right to water fully into account when concluding international agreements and making policy decisions at the international level. The 2002 *Johannesburg Plan of Implementation of the World Summit on Sustainable Development* sets out a series of commitments to provide new and additional financial and technical resources to a variety of programmes designed to expand access to water and sanitation sector in developing countries (Section 4.5).

Accountability

Each State should ensure that persons whose right to water has been denied should have access to effective judicial or other appropriate remedies at the national level, and should be entitled to adequate reparation. The cases from Brazil and South Africa in Section 7 indicate the manner in which courts have been used to address disconnections of water supply. The cases from Argentina and India in Section 7 demonstrate the use of the courts to address situations of pollution of drinking water supplies.

Obligations of Non-State Actors

While human rights are principally concerned with obligations of governments, actors in all parts of society should assist in making the right to water a reality. These actors include individuals and communities, civil society and non-governmental organisations, the private sector and international organisations. They must at least respect the right to water, and their contributions to ensuring safe, sufficient, accessible and affordable water will be necessary for the right to water to be fully achieved for all.

3 HOW TO USE SOURCES 8

There are many impressions about the law and the procedures and remedies entrusted with applying and enforcing the law. Among many sectors of society, particularly those that have rarely benefited in practical terms from human rights laws, a degree of scepticism often exists as to the actual potential of laws in promoting and guaranteeing social justice. Such views are entirely reasonable considering the cynicism frequently displayed by governments concerning their legal human rights obligations. There remain significant shortcomings towards promoting issues of equality, social justice and protection of the rights of the poor.

Nevertheless, the experience of COHRE in working directly with groups in a large number of countries towards actively applying housing rights laws has revealed that reliance on such legal norms can make a positive contribution to the struggles of people facing forced evictions and other human rights abuses. Legal resources have a much wider-ranging applicability and impact than is commonly assumed.

Utilizing the law, and international law in particular, provides a solid legal basis for holding governments accountable to protect the full spectrum of human rights of everyone and for promoting national legislative, policy and other initiatives that are in full compliance with these international standards which governments themselves have freely accepted.

Sources No. 8 demonstrates that there is significant recognition of the right to water in international and regional standards as well as in the national systems of many countries. The existence of the legal right to water, coupled with the various monitoring or enforcement measures linked to many such standards, can be referred to and utilised by movements, campaigns, communities, grassroots groups, nongovernmental organisations, lawyers, researchers, academics and others seeking to ensure the eventual fulfilment of this right. The guide is not only a reference document; it can also be used as a basis for developing legal demands in support of the right to water and initiatives at all levels toward the adoption of new, more specific legislation on the right to water.

This publication is intended to be used and usable by everyone — including the layperson, educators, human rights lawyers and other advocates, and international and national policy makers — with an interest in advocating and implementing the right to water. The relevant provisions of international, regional and national laws have been excerpted and appear below. Where the texts of such laws are not readily available, COHRE has provided annotations.

Specific references to the right to water or a specific entitlement to water, either explicitly or implicitly, are represented in bold and italicised format.

There are many ways to use this guide, for example:

1. The general statements of law and principle regarding the right to water can be used to inform individuals and groups of their rights, to inform governments, politicians, policy makers and officials of inter-governmental organisations of their obligations. The resources in this guide may also be used to interpret specific provisions such as those found in national legislation and policy measures.

2. The international and national standards contained in this publication can be used as models in formulating legislative provisions, as well as regulations and policy measures, consistent with international law. The standards in this publication can also be used for comparative analyses in order to evaluate existing or proposed legal standards and provisions. In doing so, the standards in this guide can be used as models to amend and strengthen existing law.
3. Human rights practitioners, and other advocates can use this guide as a basis for applying pressure on governments, international institutions and others to respect, protect and ensure the right to water, and thereby meet their obligations under international law.
4. This publication can be used as a comprehensive research tool for those who desire to delve deeper into the topic of the right to water.
5. The legal resources on the right to water can be publicised throughout all forms of the mass media and elsewhere.
6. This guide can be used in litigation for the right to water, particularly where a country's courts directly apply international standards, or use them to interpret national law. Comparative national law and jurisprudence can be used to indicate to courts that the right to water is recognised elsewhere and can be enforced by courts.

In addition to these general uses there are a range of more specific activities that are arranged into the following categories: Distribution, translation and documentation; Legal uses; Utilizing the United Nations and regional organizations; Political and strategic uses; Campaigning and networking uses; and Academic and educational uses.

Many of the possible uses of this guide indicated below might require the acquisition of the full texts of the legal instruments from which relevant provisions have been excerpted, therefore citations are provided where relevant. In addition, COHRE can provide the documents listed throughout the guide. Please visit our website at www.cohre.org/water for more information. UN documents can be obtained either from the UN information office in your country. Human rights documents can be obtained directly from the website of the Office of the UN High Commissioner for Human Rights www.unhcr.ch.

Distribution, Translation and Documentation

The legal standards and provisions contained in Sources No. 8 can be widely publicised and distributed throughout all levels of society, in an effort to achieve wider public recognition and awareness of these important documents.

The texts listed below can be translated into local languages in order to prepare accessible leaflets, brochures and booklets for wide distribution. Most of the UN resources are available in the six official UN languages (Arabic, Chinese, English, French, Russian and Spanish). If material is produced in languages other than these, please send these to COHRE and we will publicise these throughout our network.

Consideration could be given to establishing a right to water documentation centre in your country. If human rights documentation centres already exist, COHRE's Sources series could be provided to them.

Legal Uses

The legal foundations contained in this publication can be used to propose new national legislation, amend existing laws, and to ensure that national law is consistent with international human rights law and relevant international environmental law.

The standards in this guide can be used in litigation to enforce right to water standards, where they are provided for in a national system. They can also be used to monitor the extent to which national and local water policies and agreements with water service providers are consistent with international legal standards. These texts should be brought to the attention of those working in the legal community, in particular to human rights, environmental and development organisations and lawyers and other advocates working on water issues.

Utilising the United Nations and Regional Organisations

The texts contained in Chapter 4 can be used as a basis for preparing parallel reports to relevant UN or other human rights bodies charged with monitoring the implementation of and compliance with international obligations, as well as for preparing individual complaints where these are available. The texts can also be used as the foundation on which to develop stronger international standards with respect to the right to water.

Political and Strategic Uses

The human rights standards in this guide should be used to promote human rights approaches to the issues relating to water. Bearing these goals in mind, the legal standards and provisions listed in this guide should be brought to the attention of national, regional and local governments through whatever means are considered appropriate within your country. The government should be encouraged to respond to and respect these provisions and, in particular, should become duly aware of the legal obligations established in these texts, develop new policies or laws designed to further the standards embodied in these texts, and to encourage the UN and regional organisations to develop further standards and norms with respect to the right to water.

The texts in this publication should also be brought to the attention of policy makers and political parties within each country. In particular, they should be brought to the attention of government agencies mandated with addressing social services, water and sanitation, housing, environment, finance, trade and health as they relate to the right to water.

Campaigning and Networking Uses

The human right to water can be used as part of campaigns that highlight the injustice of denial of access to water. The legally binding standard can be used to bolster political arguments. The right to water, as defined in the General Comment No. 15, includes realisable and clearly defined obligations and can form the basis for concrete negotiations between States, the communities concerned and civil society advocates. The fact that the right to water has international recognition in both developed and developing countries can be raised to challenge claims that access to water is invariably a privilege. The legally binding standard on the right to water can also form the basis for advocates to form coalitions in a timely manner to promote access to water.

The texts should be brought to the attention of non-governmental organisations, inter-governmental agencies and other entities dealing with water issues. These texts should be used to ensure that those procedures for access to water in each country comply with international standards. Where a particular State has ratified a relevant treaty, advocates can argue that this State is bound to uphold its commitment.¹² Where a State has not rati-

¹² Information on which of the main human rights treaties have been ratified by a particular state is available at <http://www.unhchr.ch/pdf/report.pdf>.

fied a treaty, a campaign for ratification may simultaneously increase awareness on the importance and value of the rights contained in the treaty as well as help bind the State to the norms in the treaty.

Academic and Educational Uses

The legal resources in this guide can be sent to research institutes and universities within each country or region. Requests can be made to these institutions to provide their own commentary about these legal standards and their suggestions for their further development. To this end, legal activists, academics and scholars can be asked to carry out detailed research on the extent to which existing legal standards protect the right to water, with the aim of strengthening such standards.

Status of Various International Instruments

Covenant, Convention, and Treaty

The terms “Covenant”, “Convention”, and “Treaty” are synonymous and refer to legally binding instruments for the Governments that have ratified or acceded to them, thus becoming State Parties. Governments that have signed but not yet ratified a Covenant, Convention or Treaty are not legally bound to enforce that respective instrument but are under an obligation not to undertake activities that violate the object and purpose of the instrument. If your Government is a State Party to any of the Covenants, Conventions or Treaties listed below then it has clearly identifiable legal obligations to implement the provisions of that instrument. Governments that have ratified these treaties are also bound in relation to their voting in international organisations to which they are members, as well as the acts of individuals and corporations over whom they have legitimate influence.

Declarations and Recommendations

“Declarations and Recommendations” are generally documents of intent, which constitute political commitments, but do not in most circumstances create legally binding obligations on the countries that have voted for or signed onto them. Declarations and resolutions cannot be ratified in the same way Covenants, Conventions and Treaties can. They constitute political commitments that can be used to assist in the interpretation of international treaties and national Constitutional and legislative provisions. They may also constitute indications of overall trends in the development of international customary law. In some instances declarations may gain the force of international customary law binding upon States if the declaration in question is treated by States to be a legally binding norm in a consistent and widespread manner. One notable example is the Universal Declaration of Human Rights, where many, if not most of its provisions, have ripened into such a legal status.

General Comments and General Recommendations:

“General Comments and General Recommendations” are official interpretations or elaborations on a specific right enumerated in an international instrument such as a covenant, convention, or treaty. “General Comments and General Recommendations” are issued by UN treaty monitoring committees, composed of independent experts elected by UN member states, to monitor the implementation of specific covenants, conventions, or treaties. General Comments and General Recommendations are authoritative interpretations of these treaties.¹³

¹³ For example, the Committee on Economic, Social and Cultural Rights sought the authorisation of the United Nations Economic and Social Council (one of primary UN Organs made up of member States), to develop General Comments, and received encouragement from the Council to “continue using that mechanism to develop a fuller appreciation of the obligations of State Parties under the Covenant.” Economic and Social Council Resolution 1990/45, para. 10, quoted in Philip Alston, “The Committee on Economic, Social and Cultural Rights in Philip Alston, ed. *The United Nations and Human Rights* (Clarendon Press, Oxford, 1992), 473-508 at 494.

Concluding Observations

“Concluding Observations” are adopted by UN human rights treaty monitoring committees. They are country-specific and are released after each review or examination of a country and are an evaluation of the extent to which the country is implementing the obligations of the respective human rights treaty. State Parties are expected to address the Committee’s concerns and take up their recommendations between reporting periods. Though there are no formal mechanisms to enforce Concluding Observations, treaty bodies may include “follow-up” mechanisms in their work. There is an opportunity for significant NGO participation in the reporting process, including the possibility to challenge the State’s official report. Concluding Observations have been used by some NGOs to campaign at the national level, and to expose inconsistencies between the position taken by the State in the UN system and the position taken nationally before its courts.

Regional Human Rights Instruments:

“Regional Human Rights Instruments” are those treaties and declarations adopted under the auspices of a particular regional inter-governmental organisation. Unlike international instruments, such instruments are agreed upon by States from a particular region, and apply only to this region. The most notable examples of such regional organisations are:

The *African Union* (formally known as the *Organisation of African Unity – OAU*), an inter-governmental organisation comprised of 53 member States from Africa.

The *Organization of American States* (OAS), an inter-governmental organisation comprised of 35 member States from the Caribbean, Central America, North America and South America.

The *Council of Europe* (COE), comprised of most countries in Western Europe and an increasing number of Governments of Eastern Europe and the Commonwealth of Independent States. At present, there are 45 member Governments active within the Council of Europe.

Resolutions:

“Resolutions” are generally adopted by bodies comprised of governments, with the exception of the UN Sub-Commission on the Promotion and Protection of Human Rights (formerly known as the Sub-Commission on the Prevention of Discrimination and Protection of Minorities) and some others that are composed of independent experts acting in their own expert capacity. For the most part, resolutions are not considered to be legally binding. Resolutions are, however, considered persuasive views on international law and often affirm customary international legal principles or articulate emerging international legal principles. Furthermore, when a Government votes for a resolution, it indicates at the very least a political willingness to work towards the achievement of its contents. Exceptions to the general rule that resolutions are non-binding are resolutions adopted by the UN Security Council, which are legally binding according to the UN Charter. In any event, the adoption of a resolution constitutes a significant political pledge of the international community towards a particular aim.

4

INTERNATIONAL LEGAL STANDARDS

International treaties and declarations provide significant support for the right to water. A number of human rights treaties explicitly or implicitly recognise and guarantee water as a human right. Certain treaties include human rights, such as the right to non-discrimination, which are relevant in addressing the causes of lack of access to water. A number of treaties set out State obligations corresponding to a number of specific obligations that governments are required to fulfil in order to effectively guarantee the human right to water.

Section 4.1 includes provisions from human rights treaties that provide the basis for the recognition, content and interpretation of the human right to water.¹⁴ Section 4.2 covers provisions of international humanitarian law and international criminal law that refer to access to water. Section 4.3 includes provisions from international environmental law and international labour law. Section 4.4 sets out international declarations that refer explicitly or implicitly to the right to water. Section 4.5 comprises treaties and declarations on the right to water and on water governance that apply only to specific regions.

The references below distinguish between explicit and implicit references to the right to water. It should be noted that while it is easier to demonstrate the existence of the right to water in treaties where it is explicitly set out, in legal terms, an explicit provision is not necessarily of a higher status than an implicit reference. The legal force of treaties is addressed in Section 3 under the question of terminology.

4.1 INTERNATIONAL HUMAN RIGHTS TREATIES

A number of human rights treaties explicitly recognise the right to water such as the *Convention on the Rights of the Child* and the *Convention on the Elimination of All Forms of Discrimination Against Women*. The right to water is also implicitly contained in Article 11.1 of the *International Covenant on Economic Social and Cultural Rights*.¹⁵

Many other human rights treaties also include implicit references to the right to water, including the right to life, the right to the highest attainable standard of health, the right to adequate housing, the right to an adequate standard of living and the right to be free from arbitrary or unlawful interference with the home. These rights implicitly refer to the right to water given that access to sufficient, safe and affordable water is an essential component of these rights – a point recognised by General Comments with respect to each of these rights released by the UN Committee on Economic, Social and Cultural Rights (See Section 6.1 and 6.2 below).

This section also includes references in international human rights treaties to the right to be free from discrimination on the basis of race, gender or other such ground, which also requires the State to take measures to ensure substantively equal treatment for each person in its water policies and programmes.¹⁶

¹⁴ Section 6.3 lists Concluding Observations by treaty monitoring bodies that apply these treaties to specific country situations.

¹⁵ General Comment No. 15 on the Right to Water, para. 3, below at Section 6.1.

¹⁶ See paras. 13-16 of General Comment No. 15.

Explicit Provisions

Convention on the Rights of the Child, 1989¹⁷

Article 24

1. States Parties recognize the right of the child to highest attainable health and to facilities for the treatment of illness and rehabilitation of health...
2. State Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: ...
 - c) to combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking *water*, taking into consideration the dangers and risks of environmental pollution; ...

Convention on the Elimination of All Forms of Discrimination against Women, 1979¹⁸

Article 14 (2)

State parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to women the right: ...

(h) To enjoy adequate living conditions, particularly in relation to housing, *sanitation*, electricity and water *supply*, transport and communication.

Implicit Provisions

International Covenant on Civil and Political Rights 1966¹⁹

Article 1(2)

... All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of *subsistence*...

Article 2 (1)

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

¹⁷ <http://www.unhchr.ch/html/menu3/b/k2crc.htm>.

¹⁸ <http://www.unhchr.ch/html/menu3/b/e1cedaw.htm>.

¹⁹ http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

Article 6 (1)

...Every human being has the inherent right to *life*. This right shall be protected by law. No one shall be arbitrarily deprived of his life...²⁰

Article 17

1. No one shall be subjected to arbitrary or unlawful attacks or unlawful interference with his privacy, *family, home or correspondence*....
2. Everyone has the right to protection of the law against such interferences or attacks.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

International Covenant on Economic, Social and Cultural Rights, 1966²¹

Article 1(2)

All peoples may, for their own ends, freely dispose of their *natural wealth and resources* without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own *means of subsistence*.

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 11

1. The State Parties to the present Covenant recognize the right of everyone to an *adequate standard of living* for himself and his family, including *adequate food*, clothing and *housing* and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be *free from hunger*, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed:

20 See the broad interpretation of this article by UN Human Rights Committee, below at Section 6.3.

21 http://www.unhchr.ch/html/menu3/b/a_ceschr.htm.

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or *reforming agrarian systems* in such a way as to achieve the most efficient development and utilization of *natural resources*....

Article 12

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

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

(a) The provision for the *reduction of the stillbirth rate* and of *infant mortality* and for the *healthy development* of the child.

(b) The improvement of all aspects of environmental and industrial *hygiene*.

(c) The prevention, treatment and control of epidemic, endemic, occupational and other *diseases*.

(d) The creation of *conditions* which would assure to all medical service and medical attention in the event of sickness.

International Convention on the Elimination of All Forms of Racial Discrimination, 1965²²

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.....

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, *special and concrete measures* to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ...

(e) Economic, social and cultural rights, in particular: ...

(iii) The right to housing;

(iv) The right to public health, medical care, social security and social services;

(f) The right of access to *any place or service* intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks.

²² http://www.unhchr.ch/html/menu3/b/d_icerd.htm.

4.2 INTERNATIONAL HUMANITARIAN AND CRIMINAL LAW²³

International humanitarian law treaties, which govern the actions of States and other actors in times of war or occupation, clearly set out obligations to respect and ensure access to water for prisoners of war, interned persons and the civilian population. These requirements indicate the significant importance accorded by international law to access to water even in extreme situations of armed conflict. In addition, the definition of war crimes set out in the Statute of the International Criminal Court would cover acts such as the deprivation of water supply to civilians as a means of warfare.

Explicit Provisions

Geneva Convention (III) relative to the Treatment of Prisoners of War, 1949²⁴

Article 20

The Detaining Power shall supply prisoners of war who are being evacuated with sufficient food and *potable water*, and with the necessary clothing and medical attention.

Article 26

The basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies. ...

Sufficient drinking *water* shall be supplied to prisoners of war...

Article 46

The Detaining Power shall supply prisoners of war during transfer with sufficient food and *drinking water* to keep them in good health, likewise with the necessary clothing, shelter and medical attention...

Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949²⁵

Article 89

Daily food rations for internees shall be sufficient in quantity, quality and variety to keep internees in a good state of health and prevent the development of nutritional deficiencies. Account shall also be taken of the customary diet of the internees.

Sufficient *drinking water* shall be supplied to internees...

Internees who work shall receive additional rations in proportion to the kind of labour which they perform.

Expectant and nursing mothers and children under fifteen years of age, shall be given additional food, in proportion to their physiological needs.

²³ International Humanitarian Law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflicts. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. See: <http://www.icrc.org> for a summary of the sources, content and application of humanitarian law.

²⁴ <http://www.unhchr.ch/html/menu3/b/91.htm>.

²⁵ <http://www.unhchr.ch/html/menu3/b/92.htm>.

Article 127

The Detaining Power shall supply internees during transfer with *drinking water* and food sufficient in quantity, quality and variety to maintain them in good health, and also with the necessary clothing, adequate shelter and the necessary medical attention...

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977²⁶

Article 54 Protection of objects indispensable to the survival of the civilian population

1. Starvation of civilians as a method of warfare is prohibited.
2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, *drinking water installations* and supplies and *irrigation works*, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.
3. The prohibitions in paragraph 2 shall not apply to such of the objects covered by it as are used by an adverse Party:
 - (a) as sustenance solely for the members of its armed forces; or
 - (b) if not as sustenance, then in direct support of military action, provided, however, that in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or *water* as to cause its starvation or force its movement.
4. These objects shall not be made the object of reprisals.

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977²⁷

Article 14 Protection of objects indispensable to the survival of the civilian population

Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless for that purpose, objects indispensable to the survival of the civilian population such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, *drinking water installations and supplies and irrigation works*.

²⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict.

²⁷ <http://www.unhchr.ch/html/menu3/b/94.htm>.

Implicit Provisions

Geneva Conventions (I-IV) – Common Article 3²⁸

Article 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria...
2. The wounded and sick shall be collected and cared for...

Geneva Convention (III) relative to the Treatment of Prisoners of War, 1949²⁹

Article 15

The Power detaining prisoners of war shall be bound to provide free of charge for their *maintenance* and for the medical attention required by their state of health.

Article 51

Prisoners of war must be granted suitable working conditions, especially as regards *accommodation*, food, clothing and equipment; such conditions shall not be inferior to those enjoyed by nationals of the Detaining Power employed in similar work; account shall also be taken of climatic conditions.

Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949³⁰

Article 23

Each High Contracting Party ... shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases

Article 36

Departures permitted under the foregoing Article [All protected persons are able to leave the territory unless their departure is contrary to the interests of the State] shall be carried out in satisfactory conditions as regards safety, *hygiene, sanitation* and food.

²⁸ See Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field,; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Geneva Convention (III) relative to the Treatment of Prisoners of War, 1949; Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War 1949 <http://www.unhchr.ch/html/intlinst.htm> under “Humanitarian Law”.

²⁹ <http://www.unhchr.ch/html/menu3/b/91.htm>.

³⁰ <http://www.unhchr.ch/html/menu3/b/92.htm>.

Article 49

The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of *hygiene, health, safety and nutrition*, and that members of the same family are not separated.

Article 55

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the *food* and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.

The Occupying Power may not requisition foodstuffs, articles or medical supplies available in the occupied territory, except for use by the occupation forces and administration personnel, and then only if the requirements of the civilian population have been taken into account...

The Protecting Power shall, at any time, be at liberty to verify the state of the food and medical supplies in occupied territories, except where temporary restrictions are made necessary by imperative military requirements.

Article 59

If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to *reliefschemes* on behalf of the said population, and shall facilitate them by all the means at its disposal.

Such schemes, which may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross, shall consist, in particular, of the provision of consignments of foodstuffs, medical supplies and clothing.

All Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection.³¹

Article 62

Subject to imperative reasons of security, protected persons in occupied territories shall be permitted to receive the individual relief consignments sent to them.

Article 76

Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein. They shall, if possible, be separated from other detainees and shall enjoy conditions of food and *hygiene* which will be sufficient to keep them in good health, and which will be at least equal to those obtaining in prisons in the occupied country. (art. 76);

Article 81

Parties to the conflict who intern protected persons shall be bound to provide free of charge for their *maintenance*, and to grant them also the medical attention required by their state of health...

Article 91

Every place of internment shall have an adequate infirmary, under the direction of a qualified doctor, where internees may have the attention they require, as well as an appropriate *diet*.

³¹ Article 60 also provides that the occupying State may not divert relief consignments from the purposes for which they are intended, except in cases of urgent necessity, in the interests of the civilian population and with the consent of the Protecting State.

Article 100

The disciplinary regime in places of internment shall be consistent with humanitarian principles... [i]n particular... the reduction of food rations [is] prohibited.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977³² Article 55

Article 55

1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the *health or survival* of the population.

2. Attacks against the natural environment by way of reprisals are prohibited.

Article 69

1. In addition to the duties specified in Article 55 of the Fourth Convention concerning food and medical supplies, the Occupying Power shall, to the fullest extent of the means available to it and without any adverse distinction, also ensure the provision of clothing, bedding, means of shelter, other *supplies essential to the survival of the civilian population* of the occupied territory and objects necessary for religious worship.

Ensure food supplies, to the fullest extent of the means available, without any adverse distinction, and *supplies essential to the survival of the population* (art 69, AP I)

Article 70

2. The Parties to the conflict and each High Contracting Party shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel provided in accordance with this Section, even if such assistance is destined for the civilian population of the adverse Party.

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977³³

Article 18

2. If the civilian population is suffering undue hardship owing to a lack of the *supplies essential for its survival*, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned.³⁴

³² Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict, <http://www.unhchr.ch/html/menu3/b/94.htm>.

³³ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflict, <http://www.unhchr.ch/html/menu3/b/94.htm>.

³⁴ Article 18 also provides that the relief schemes shall be undertaken subject to the consent of the State Party concerned.

Rome Statute of the International Criminal Court, 17 July 1998³⁵

Article 5: Crimes within the Jurisdiction of the Court

The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

Article 7: Crimes against humanity

1. For the purpose of this Statute, “crime against humanity” [includes] ...

(c) Extermination ... [which] ... 2(b) includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

Article 8: War crimes

2. For the purpose of this Statute, “war crimes” means: ...

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of *objects indispensable to their survival*, including wilfully impeding relief supplies as provided for under the Geneva Conventions...

4.3 INTERNATIONAL ENVIRONMENTAL AND LABOUR TREATIES

International environmental and labour treaties include provisions and guidelines that correspond to obligations contained in the right to water. The right to water requires states to assess the impacts of actions that may impinge upon water availability and natural ecosystems watersheds, such as climate change, desertification and loss of biodiversity.³⁶ A number of environmental conventions apply in particular to the issues of water availability and quality and therefore provide further detail to the obligations of States in this regard. For example, the Biodiversity Convention requires States to carry out actions such as to support local populations restore depleted biodiversity. The Desertification Convention provides for the effective participation of local populations in developing national action plans to address drought and desertification. While these Conventions assist in the implementation of the right to water, the standards contained in General Comment No. 15 should be used to supplement environmental conventions, such as, by requiring States to take steps to the maximum of their available resources to ensure access to water.

The right to water contained in General Comment No. 15 also obligates States to refrain from actions that interfere with the right to water in other countries.³⁷ This obligation is also reflected in more detail in the UN Convention on Non-Navigable Uses of International Watercourses which requires, for example, that States prevent the causing of significant harm to other watercourse States. It furthermore requires each State to take account of the population

³⁵ <http://www.un.org/law/icc/statute/romefra.htm>.

³⁶ See para. 28 of General Comment No. 15, Section 6.1 below.

³⁷ See para. 31 of General Comment No. 15.

dependent on the watercourse and social and economic needs in each watercourse State concerned, and in the event of a dispute of uses of a watercourse, for sufficient water to sustain human life to be given priority. In addressing issues of international water management, it will therefore be necessary to take account of both General Comment No. 15 and the Watercourses Convention.

Implicit Provisions

Convention on Biological Diversity (1992)³⁸

Article 10: Sustainable Use of Components of Biological Diversity

Each Contracting Party shall, as far as possible and as appropriate:

- (a) Integrate consideration of the conservation and sustainable use of biological resources into national decision-making;
- (b) Adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity;
- (c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;
- (d) Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced; and
- (e) Encourage cooperation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources.

United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (1994)³⁹

Article 2: Objective

1. The objective of this Convention is to combat desertification and mitigate the effects of drought in countries experiencing serious drought and/or desertification, particularly in Africa, through effective action at all levels, supported by international cooperation and partnership arrangements, in the framework of an integrated approach which is consistent with Agenda 21, with a view to contributing to the achievement of sustainable development in affected areas.
2. Achieving this objective will involve long-term integrated strategies that focus simultaneously, in affected areas, on improved productivity of land, and the rehabilitation, conservation and sustainable management of land and water resources, leading to improved living conditions, in particular at the community level.

³⁸ <http://www.biodiv.org/convention/articles.asp>.

³⁹ <http://www.unccd.int/convention/text/convention.php>.

Article 10: National Action Programmes

National action programmes shall specify the respective roles of government, local communities and land users and the resources available and needed. They shall, *inter alia*:

- (a) incorporate long-term strategies to combat desertification and mitigate the effects of drought...
- (b) allow for modifications to be made in response to changing circumstances and be sufficiently flexible at the local level to cope with different socio-economic, biological and geo-physical conditions; ...
- (e) promote policies and strengthen institutional frameworks which develop cooperation and coordination ... between the donor community, governments at all levels, local populations and community groups, and facilitate access by local populations to *appropriate information and technology*;
- (f) provide for effective participation at the local, national and regional levels of non- governmental organizations and local populations, both women and men, particularly *resource users, including farmers and pastoralists* and their representative organizations, in policy planning, decision-making, and implementation and review of national action programmes; ...

3. National action programmes may include, *inter alia*, some or all of the following measures to prepare for and mitigate the effects of drought:

- (a) establishment and/or strengthening, as appropriate, of early warning systems, including local and national facilities and joint systems at the subregional and regional levels, and mechanisms for assisting environmentally displaced persons;
- (b) strengthening of *drought preparedness* and management, including drought contingency plans at the local, national, subregional and regional levels, which take into consideration seasonal to inter-annual climate predictions;
- (e) development of sustainable irrigation programmes for both crops and livestock.

UN Convention on the Law of the Non-Navigational Uses of International Watercourses, 1997⁴⁰

Article 5: Equitable and reasonable utilization and participation

1. Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable utilization thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse.

⁴⁰ <http://www.un.org/law/ilc/texts/nnavfra.htm>.

Article 6: Factors relevant to equitable and reasonable utilization

1. Utilization of an international watercourse in an equitable and reasonable manner within the meaning of Article 5 requires taking into account all relevant factors and circumstances, including:

- (a) Geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;
- (b) The social and economic needs of the watercourse States concerned;
- (c) The population dependent on the watercourse in each watercourse State;
- (d) The effects of the use or uses of the watercourses in one watercourse State on other watercourse States;
- (e) Existing and potential uses of the watercourse;
- (f) Conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect;
- (g) The availability of alternatives, of comparable value, to a particular planned or existing use.

2. In the application of Article 5 or paragraph 1 of this Article, watercourse States concerned shall, when the need arises, enter into consultations in a spirit of cooperation.

3. The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is a reasonable and equitable use, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.

Article 7: Obligation not to cause significant harm

1. Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States.

Article 10: Relationship between different kinds of uses

1. In the absence of agreement or custom to the contrary, no use of an international watercourse enjoys inherent priority over other uses.

2. In the event of a conflict between uses of an international watercourse, it shall be resolved with reference to Articles 5 to 7, with special regard being given to the requirements of *vital human needs*.

This Convention is not yet in force. However, it is considered to codify the state of international customary law on non-navigable uses of international watercourses.

In regard to Article 10.2 of the Convention, the Statement of Understanding issued by States negotiating the Convention stated:

“In determining ‘vital human needs’, 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.”⁴¹

⁴¹ (A/51/869 of 11 April 1997).

Occupational Health Services Convention, 1985 (No. 161)⁴²

Article 5

Without prejudice to the responsibility of each employer for the health and safety of the workers in his employment, and with due regard to the necessity for the workers to participate in matters of occupational health and safety, occupational health services shall have such of the following functions as are adequate and appropriate to the occupational risks of the undertaking: ...

(b) Surveillance of the factors in the working environment and working practices which may affect workers' health, including *sanitary* installations, canteens and housing where these facilities are provided by the employer;...

Indigenous and Tribal Peoples Convention, 1989, (No. 169)⁴³

Article 2

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.
2. Such action shall include measures for: ...

(c) Assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.

Article 7

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.
2. The improvement of the *conditions of life* and work and *levels of health* and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.
3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.
4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the *environment* of the territories they inhabit.

⁴² <http://ilolex.ilo.ch:1567/cgi-lex/convde.pl?C161>.

⁴³ <http://www.ilo.org/ilolex/english/convdisp1.htm>.

Article 15

1. The rights of the peoples concerned to the *natural resources* pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

*The Occupational Health Convention has been ratified by 22 countries while the Indigenous and Tribal Peoples Convention has been ratified by 17 countries as of October 2003.*⁴⁴

4.4 INTERNATIONAL DECLARATIONS AND RESOLUTIONS

International Declarations and Resolutions constitute political commitments made by States that can be used to assist in the interpretation of international treaties and national Constitutional and legislative provisions. They may constitute indications of overall trends in the development of international customary law. A number of environment and development declarations, including the Mar Del Plata Declaration (1977), the Report of the International Conference on Population and Development and Agenda 21 (1994) and the Report of the UN Conference on Environment and Development (1992) explicitly mention the right to have access to drinking water. The Universal Declaration on Human Rights, elements of which are commonly considered to constitute international customary law, includes a number of implicit references to the right to water

Environment, development and sustainable development declarations also include provisions that correspond to obligations of the right to water. These declarations require States to carry out a number of actions, examples of which include to:

- improve water quality,
- widely expand access to water,
- address the inequality in health status between developing and developed countries,
- ensure access to water for older persons,
- ensure an adequate environment for all,
- ensure basic human needs and protection of ecosystems in water allocation, and beyond these requirements charge water users appropriately in order to ensure sustainability,
- for developed States, to provide new and additional financial and technical resources to a variety of programmes designed to expand access to water and sanitation sector in developing countries.

⁴⁴ Ratification status for ILO Conventions can be checked at :
<http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN>.

Explicit Provisions

Mar del Plata Declaration, United Nations Water Conference, 1977

Preamble

...all peoples, whatever their stage of their stage of development and social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs.

Report of the International Conference on Population and Development, Cairo, 1994⁴⁵

Principle 2

Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature. People are the most important and valuable resource of any nation. Countries should ensure that all individuals are given the opportunity to make the most of their potential. They have the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, *water* and *sanitation*.

Agenda 21, UN Conference on Environment and Development, 1992⁴⁶

Chapter 18.47

Safe water-supplies and environmental sanitation are vital for protecting the environment, improving health and alleviating poverty. Safe water is also crucial to many traditional and cultural activities. An estimated 80 per cent of all diseases and over one third of deaths in developing countries are caused by the consumption of contaminated water, and on average as much as one tenth of each person's productive time is sacrificed to water-related diseases. Concerted efforts during the 1980s brought water and sanitation services to hundreds of millions of the world's poorest people. The most outstanding of these efforts was the launching in 1981 of the International Drinking Water Supply and Sanitation Decade, which resulted from the Mar del Plata Action Plan adopted by the United Nations Water Conference in 1977. The commonly agreed premise was that "all peoples, whatever their stage of development and their social and economic conditions, have the *right to have access to drinking water* in quantities and of a quality equal to their basic needs". The target of the Decade was to provide safe drinking-water and sanitation to underserved urban and rural areas by 1990, but even the unprecedented progress achieved during the Decade was not enough. One in three people in the developing world still lacks these two most basic requirements for health and dignity. It is also recognized that human excreta and sewage are important causes of the deterioration of water-quality in developing countries, and the introduction of available technologies, including appropriate technologies, and the construction of sewage treatment facilities could bring significant improvement.

45 Cairo, 5-13 September 1994 in: United Nations publication, Sales No. E.95.XIII.18), chap. I, resolution 1, annex, chaps. VII and VIII. <http://www.un.org/popin/icpd2.htm>.

46 <http://www.un.org/esa/sustdev/agenda21.htm>.

Implicit Provisions

Universal Declaration on Human Rights 1948⁴⁷

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to *life*, liberty and security of person.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 25

Everyone has the *right to a standard of living adequate for the health*, and well-being of himself and his family, including food, housing...

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Stockholm Declaration, UN Conference on the Human Environment, 1972⁴⁸

Principle 1

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment....

Principle 2

The natural resources of the earth including the air, *water*, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

⁴⁷ <http://www.un.org/Overview/rights.html>.

⁴⁸ <http://www.unep.org/Documents/Default.asp?DocumentID=97>.

Alma-Ata Declaration, Report of the International Conference on Primary Health Care, 1978⁴⁹

I

The Conference strongly reaffirms that health, which is a state of complete physical, mental and social wellbeing, and not merely the absence of disease or infirmity, is a fundamental human right and that the attainment of the highest possible level of health is a most important world-wide social goal whose realization requires the action of many other social and economic sectors in addition to the health sector.

II

The existing gross inequality in the health status of the people particularly between developed and developing countries as well as within countries is politically, socially and economically unacceptable and is, therefore, of common concern to all countries.

General Assembly Resolution 35/1980⁵⁰

Paragraph 1

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

The New Delhi Statement: New Delhi, India, 14 September 1990⁵¹

“Some for all not more for some”

Principle No. 1: The Environment and Health

Safe water and proper means of waste disposal are essential for environmental sustainability and better human health, and must be at the centre of integrated water resources management...

United Nations Principles for Older Persons, 1991⁵²

Independence

1. Older persons should have access to adequate food, *water*, shelter, clothing and health care through the provision of income, family and community support and self-help.

49 Alma-Ata, 6-12 September 1978 in: World Health Organization, “Health for All” Series, No. 1, (WHO, Geneva, 1978). <http://www.who.int/hpr/archive/docs/almaata.html>.

50 <http://www.un.org/documents/ga/res/35/a35r18e.pdf>.

51 <http://www.jiscmail.ac.uk/files/WSSCC/NEWDELHI.DOC>.

52 <http://www.un.org/esa/socdev/iyop/iyoppop.htm>.

Rio Declaration on Environment and Development, UN Conference on Environment and Development, 1992⁵³

Principle 1

Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

Principle 10

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Agenda 21, UN Conference on Environment and Development, 1992⁵⁴

Chapter 18

18.1. Freshwater resources are an essential component of the Earth's hydrosphere and an indispensable part of all terrestrial ecosystems. The freshwater environment is characterized by the hydrological cycle, including floods and droughts, which in some regions have become more extreme and dramatic in their consequences. Global climate change and atmospheric pollution could also have an impact on freshwater resources and their availability and, through sea-level rise, threaten low-lying coastal areas and small island ecosystems.

18.2. Water is needed in all aspects of life. The general objective is to make certain that *adequate supplies of water of good quality* are maintained for the entire population of this planet, while preserving the hydrological, biological and chemical functions of ecosystems, adapting human activities within the capacity limits of nature and combating vectors of water-related diseases. Innovative technologies, including the improvement of indigenous technologies, are needed to fully utilize limited water resources and to safeguard those resources against pollution.

18.3. The widespread scarcity, gradual destruction and aggravated pollution of freshwater resources in many world regions, along with the progressive encroachment of incompatible activities, demand integrated water resources planning and management. Such integration must cover all types of interrelated freshwater bodies, including both surface water and groundwater, and duly consider water quantity and quality aspects. The multi-sectoral nature of water resources development in the context of socio-economic development must be recognized, as well as the multi-interest utilization of water resources for water supply and sanitation, agriculture, industry, urban development, hydropower generation, inland fisheries, transportation, recreation, low and flat lands management and other activities. Rational water utilization schemes for the development of surface and underground water-supply sources and other potential sources have to be supported by concurrent water conservation and wastage minimization measures. Priority, however, must be accorded to flood prevention and control measures, as well as sedimentation control, where required...

53 <http://www.unep.org/Documents/Default.asp?DocumentID=78&ArticleID=1163>.

54 <http://www.un.org/esa/sustdev/agenda21.htm>.

18.5. The following programme areas are proposed for the freshwater sector:

- Integrated water resources development and management;
- Water resources assessment;
- Protection of water resources, water quality and aquatic ecosystems;
- Drinking-water supply and sanitation;
- Water and sustainable urban development;
- Water for sustainable food production and rural development;
- Impacts of climate change on water resources.

...

18.7. The overall objective is to satisfy the freshwater needs of all countries for their sustainable development.

18.8. Integrated water resources management is based on the perception of water as an integral part of the ecosystem, a natural resource and a social and economic good, whose quantity and quality determine the nature of its utilization. To this end, water resources have to be protected, taking into account the functioning of aquatic ecosystems and the perenniality of the resource, in order to satisfy and reconcile needs for water in human activities. In developing and using water resources, priority has to be given to the *satisfaction of basic needs* and the safeguarding of ecosystems. Beyond these requirements, however, water users should be charged appropriately...

General Assembly resolution 45/94, 1994⁵⁵

1. Recognizes that all individuals are entitled to live in an environment adequate for their *health and well-being*;

Istanbul Declaration on Human Settlements, UN Habitat II, 1996⁵⁶

Paragraph 129

Health problems related to adverse environmental conditions, including a lack of access to safe water and sanitation, inadequate waste management, poor drainage, air pollution, and exposure to excessive noise levels, as well as ineffective and inadequate health services, exact a heavy toll on the quality of life and the overall contribution to society of millions of people. They may also aggravate social tension and inequity and increase the vulnerability of people to the effects of disasters. An integrated approach to the provision of environmentally sound infrastructure in human settlements, particularly for people living in poverty in rural and urban areas, is an investment in sustainable human settlements development that can enhance the quality of life, reduce negative impacts on the environment, improve the overall health of a population, and reduce the burden of investment in curative health and poverty alleviation...

Paragraph 136

To improve the health and well-being of all people throughout their life-span, particularly people living in poverty, Governments at the appropriate levels, including local authorities, in partnership with other interested parties, should:

⁵⁵ <http://www.un.org/documents/ga/res/45/a45r094.htm>.

⁵⁶ <http://www.earthsummit2002.org/toolkits/women/un-doku/un-conf/hab%202%20IV%20C%205.htm>.

(a) Develop and implement national, subnational and local health plans or strategies and strengthen environmental health services to prevent, mitigate and respond to diseases and ill health resulting from poor conditions in living and working environments and the conditions of people living in poverty, and continue work towards the Agenda 21 objective of achieving a 10 to 40 per cent improvement in health indicators by the year 2000;

(b) Adopt measures to prevent and control air, *water* and soil pollution and to reduce noise levels, where appropriate, and develop and ensure access to appropriate preventive and curative health-care systems in order to tackle related health problems;

(c) Ensure adequate research to assess how and to what extent women and children are particularly susceptible or exposed to environmental degradation and hazards, including, as necessary, research and data collection on specific groups of women and children, particularly women with low incomes, indigenous women and women belonging to minorities;

(d) Improve shelter conditions so as to mitigate those health and safety risks, particularly risks to women, older persons, children and people with disabilities, that are associated with activities in the home;

Rome Declaration on World Food Security 1996⁵⁷

19. Objective 2.1:

To pursue poverty eradication, among both urban and rural poor, and sustainable food security for all as a policy priority and to promote, through sound national policies, secure and gainful employment and equitable and equal access to productive resources such as land, water and credit, so as to maximize the incomes of the poor.

To this end, governments, in partnership with all actors of civil society, as appropriate, will:

(a) Review and adopt policies to pursue the eradication of hunger and attain sustainable food security at the household and national levels as a top policy priority, and make every effort to eliminate obstacles such as unemployment and lack of access to factors of production that adversely affect the attainment of food security, and implement the relevant commitments they entered into at the World Summit for Social Development, Copenhagen 1995; ...

(d) Pursue sound economic, agriculture, fisheries, forestry and land reform policies that will permit farmers, fishers, foresters and other food producers, particularly women, to earn a fair return from their labour, capital and management, and encourage conservation and sustainable management of natural resources including in marginal areas;

(e) Improve equal access, by men and women, to land and other natural and productive resources, in particular, where necessary, through the effective implementation of land reform and the promotion of efficient utilization of natural and agricultural resources and resettlement on new lands, where feasible;...

⁵⁷ <http://www.fao.org/docrep/003/w3613e/w3613e00.htm>.

20. Objective 2.2:

To enable food insecure households, families and individuals to meet their food and nutritional requirements and to seek to assist those who are unable to do so. To this end, governments, in partnership with all actors of civil society, as appropriate, will: ...

(b) Implement, where appropriate, cost-effective public works programmes for the unemployed and underemployed in regions of food insecurity;

(c) Develop within available resources well targeted *social welfare* and *nutrition safety nets* to meet the needs of the food insecure, particularly needy people, children, and the infirm.

21. Objective 2.3:

To ensure that food supplies are safe, physically and economically accessible, appropriate and adequate to meet the energy and nutrient needs of the population.

To this end, governments, in partnership with all actors of civil society, as appropriate, will:

(a) Monitor the availability and nutritional adequacy of food supplies and reserve stocks, giving particular attention to areas at high risk of food insecurity, to nutritionally vulnerable groups, and to areas where seasonal variations have important nutritional implications;

(b) Apply measures, in conformity with the Agreement on the Application of Sanitary and Phytosanitary Measures and other relevant international agreements, that ensure the quality and safety of food supply, particularly by strengthening normative and control activities in the areas of human, animal and plant health and safety; ...

Johannesburg Plan of Implementation of the World Summit on Sustainable Development (2002)⁵⁸

24. Human activities are having an increasing impact on the integrity of ecosystems that provide essential resources and services for human well-being and economic activities. Managing the natural resources base in a sustainable and integrated manner is essential for sustainable development. In this regard, to reverse the current trend in natural resource degradation as soon as possible, it is necessary to implement strategies which should include targets adopted at the national and, where appropriate, regional levels to protect ecosystems and to achieve integrated management of land, water and living resources, while strengthening regional, national and local capacities. This would include actions at all levels as set out below.

25. Launch a programme of actions, with financial and technical assistance, to achieve the Millennium development goal on safe drinking water. In this respect, we agree 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 without *access to basic sanitation*, which would include actions at all levels to:

(a) Mobilize international and domestic financial resources at all levels, transfer technology, promote best practice and support capacity-building for *water and sanitation infrastructure and services development*, ensuring that such infrastructure and services meet the needs of the poor and are gender-sensitive;

⁵⁸ http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POIToc.htm.

(b) Facilitate access to public information and participation, including by women, at all levels in support of policy and decision-making related to *water resources management* and project implementation;

(c) Promote priority action by Governments, with the support of all stakeholders, in water management and capacity-building at the national level and, where appropriate, at the regional level, and promote and provide new and additional financial resources and innovative technologies to implement chapter 18 of Agenda 21;

(d) Intensify water pollution prevention to reduce health hazards and protect ecosystems by introducing technologies for affordable sanitation and industrial and domestic wastewater treatment, by mitigating the effects of groundwater contamination and by establishing, at the national level, monitoring systems and effective legal frameworks;

(e) Adopt prevention and protection measures to promote sustainable water use and to address water shortages.

26. Develop integrated water resources management and water efficiency plans by 2005, with support to developing countries, through actions at all levels to:

(a) Develop and implement national/regional strategies, plans and programmes with regard to integrated river basin, watershed and groundwater management and introduce measures to improve the efficiency of water infrastructure to reduce losses and increase recycling of water;

(b) Employ the full range of policy instruments, including regulation, monitoring, voluntary measures, market and information-based tools, land-use management and cost recovery of water services, without cost recovery objectives becoming a barrier to *access to safe water* by poor people, and adopt an integrated water basin approach;

(c) Improve the efficient use of water resources and promote their allocation among competing uses in a way that gives priority to the satisfaction of *basic human needs* and balances the requirement of preserving or restoring ecosystems and their functions, in particular in fragile environments, with human domestic, industrial and agriculture needs, including safeguarding *drinking water quality*;

(d) Develop programmes for mitigating the effects of extreme water-related events;

(e) Support the diffusion of technology and capacity-building for non-conventional water resources and conservation technologies, to developing countries and regions facing water scarcity conditions or subject to drought and desertification, through technical and financial support and capacity-building;

(f) Support, where appropriate, efforts and programmes for energy-efficient, sustainable and cost-effective desalination of seawater, water recycling and water harvesting from coastal fogs in developing countries, through such measures as technological, technical and financial assistance and other modalities;

(g) Facilitate the establishment of public-private partnerships and other forms of partnership that give priority to the needs of the poor, within stable and transparent national regulatory frameworks provided by Governments, while respecting local conditions, involving all concerned stakeholders, and monitoring the performance and improving accountability of public institutions and private companies.

27. Support developing countries and countries with economies in transition in their efforts to monitor and assess the quantity and quality of water resources, including through the establishment and/or further development of national monitoring networks and water resources databases and the development of relevant national indicators.

28. Improve water resource management and scientific understanding of the water cycle through cooperation in joint observation and research, and for this purpose encourage and promote knowledge-sharing and provide capacity-building and the transfer of technology, as mutually agreed, including remote-sensing and satellite technologies, particularly to developing countries and countries with economies in transition.

29. Promote effective coordination among the various international and intergovernmental bodies and processes working on water-related issues, both within the United Nations system and between the United Nations and international financial institutions, drawing on the contributions of other international institutions and civil society to inform intergovernmental decision-making; closer coordination should also be promoted to elaborate and support proposals and undertake activities related to the International Year of Freshwater, 2003 and beyond.

4.5 REGIONAL HUMAN RIGHTS TREATIES AND DECLARATIONS

Africa, the Americas and Europe have developed a series of regional treaties and declarations that also provide for or support the right to water. Unlike international instruments, regional instruments are agreed upon by States from each of these three particular regions, and apply only to their particular region.

Regional standards are useful in supplementing international treaties and declarations, particularly where the rights they contain are more extensive or clearly defined than in international texts. For example, Article 11 (2) of the *Additional Protocol to the Inter-American Convention on the Human Rights in the Area of Economic, Social and Cultural Rights* clearly refers to the right to live in a healthy environment and to have access to basic public services. These two rights are not explicitly provided for in international standards.

Where regional standards provide similar or lesser protection to international treaties and declarations, they remain useful as they may have more legitimacy among political decision-makers, civil society and the population and they may be seen to be more closely related to the particular situation of the country. In the Inter-American case, the greater availability of Spanish and Portuguese materials on the Inter-American system increases the popularity and usability of these instruments. Regional instruments are also useful outside their specific regions as further evidence of the existence of the right to water as a norm shared across peoples.

Each regional human rights system includes a Court, commission or committee that can address individual complaints of human rights violations.⁵⁹ In all cases, individual complaints may only be made after domestic remedies have been exhausted.

⁵⁹ Further information on making complaints can be accessed at www.cohre.org/litigation.

AFRICA

Explicit Provisions

African Charter on the Rights and Welfare of the Child, 1990⁶⁰

Article 14

1. Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.
2. State Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures: ...

(c) to ensure the provision of adequate nutrition and safe *drinking water*.

Implicit Provisions

African (Banjul) Charter of Human and People's Rights, 1981⁶¹

Article 16

1. Every individual shall have the right to enjoy the best attainable state of physical and mental *health*.
2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Article 18

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

Article 24

All peoples shall have the right to a *general satisfactory environment favorable to their development*.

60 <http://www1.umn.edu/humanrts/africa/afchild.htm>.

61 <http://www1.umn.edu/humanrts/instreet/z1afchar.htm>.

AMERICAS

Implicit Provisions

American Convention On Human Rights, 1969⁶²

Chapter III – Economic, Social and Cultural Rights

Article 26. Progressive Development

The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

American Declaration Of The Rights And Duties Of Man, 1948⁶³

Article XI. Right to the preservation of health and to well-being

Every person has the right to the preservation of his health through *sanitary and social measures* relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.

Article XXIII. Right to Property

Every person has a right to own such private property as meets the essential needs of *decent living* and helps to maintain the *dignity of the individual and of the home*.

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador,” 1988⁶⁴

Article 11: Right to a Healthy Environment

1. Everyone shall have the right to live in a *healthy environment* and to have *access to basic public services*.
2. The States Parties shall promote the protection, preservation, and improvement of the environment.

Article 12: Right to Food

1. Everyone has the right to *adequate nutrition* which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development.
2. In order to promote the exercise of this right and eradicate malnutrition, the States Parties undertake to improve methods of production, supply and distribution of food, and to this end, agree to promote greater international cooperation in support of the relevant national policies.

⁶² See <http://www.oas.org>.

⁶³ <http://www1.umn.edu/humanrts/oasinstr/zoas2dec.htm>.

⁶⁴ <http://www.unesco.org/most/rr4am3.htm>.

EUROPE

Explicit Provisions

Recommendation (2001) 14 of the Committee of Ministers to Member States on the European Charter on Water Resources

Paragraph 5

Everyone has the right to a sufficient quantity of *water* for his or her basic needs.

International human rights instruments recognise the fundamental right of all human beings to be free from hunger and to an adequate standard of living for themselves and their families. It is quite clear that these two requirements include the right to a minimum quantity of *water* of satisfactory quality from the point of view of health and hygiene.

Social measures should be put in place to prevent the supply of water to destitute persons from being cut off.

Paragraph 19

Without prejudice to the right to *water* to meet basic needs, the supply of water shall be subject to payment in order to cover financial costs associated with the production and utilisation of water resources.

Implicit Provisions

Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998) (the Aarhus Convention)⁶⁵

Article 1: Objective

In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.

Convention for the Protection of Human Rights and Fundamental Freedoms, 1950⁶⁶

Article 2: Right to Life

1. Everyone's *right to life* shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law...

⁶⁵ <http://www.unece.org/env/pp/>

Article 8: Right to Respect for Family and Private Life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

European Social Charter, 1961⁶⁷

Article 11: The right to protection of health

With a view to ensuring the effective exercise of the right to protection of *health*, the Contracting Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed *inter alia*:

- to remove as far as possible the causes of ill-health;
- to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
- to prevent as far as possible epidemic, endemic and other diseases.

Article 12: The right to social security

With a view to ensuring the effective exercise of the right to *social security*, the Contracting Parties undertake: to establish or maintain a system of social security;...

Article 13: The right to social and medical assistance

With a view to ensuring the effective exercise of the right to social and medical assistance, the Contracting Parties undertake:

- to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition; ...

Revised European Social Charter, 1996⁶⁸

Article 31: The right to housing

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to *housing* of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination;
3. to make the price of housing accessible to those without adequate resources.

⁶⁶ Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 Rome, 4.XI.1950. Available online at: <http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm>.

⁶⁷ <http://conventions.coe.int/treaty/en/treaties/html/035.htm>.

⁶⁸ <http://conventions.coe.int/Treaty/en/Treaties/Word/163.doc>.

Protocol on Water and Health (1999) to the 1992 Convention on the Protection and Use of Transboundary Watercourses and Lakes⁶⁹

Article 1: Objective

The objective of this Protocol is to promote at all appropriate levels, nationally as well as in trans-boundary and international contexts, the protection of human health and well-being, both individual and collective, within a framework of sustainable development, through improving water management, including the protection of water ecosystems, and through preventing, controlling and reducing water-related disease.

Article 4:

1. The Parties shall take all appropriate measures to prevent, control and reduce water-related disease within a framework of integrated water-management systems aimed at sustainable use of water resources, ambient water quality which does not endanger human health, and protection of water ecosystems.

2. The Parties shall, in particular, take all appropriate measures for the purpose of ensuring:

(a) Adequate supplies of wholesome drinking *water* which is free from any micro-organisms, parasites and substances which, owing to their numbers or concentration, constitute a potential danger to human health. This shall include the protection of water resources which are used as sources of drinking water, treatment of water and the establishment, improvement and maintenance of collective systems;

(b) Adequate *sanitation* of a standard which sufficiently protects human health and the environment. This shall in particular be done through the establishment, improvement and maintenance of collective systems;

(c) Effective protection of water resources used as sources of drinking water, and their related water ecosystems, from pollution from other causes, including agriculture, industry and other discharges and emissions of hazardous substances. This shall aim at the effective reduction and elimination of discharges and emissions of substances judged to be hazardous to human health and water ecosystems;

(d) Sufficient safeguards for human health against water-related disease arising from the use of water for recreational purposes, from the use of water for aquaculture, from the water in which shellfish are produced or from which they are harvested, from the use of waste water for irrigation or from the use of sewage sludge in agriculture or aquaculture;

(e) Effective systems for monitoring situations likely to result in outbreaks or incidents of water-related disease and for responding to such outbreaks and incidents and to the risk of them...

Article 8

1. In order to achieve the objective of this Protocol, the Parties shall pursue the aims of:

(a) *Access to drinking water* for everyone;

(b) Provision of *sanitation* for everyone...

⁶⁹ done in London, on 17 June 1999 <http://www.unece.org/env/documents/2000/wat/mp.wat.2000.1.e.pdf>.

5 NATIONAL LEGAL STANDARDS

5.1 SELECTED CONSTITUTIONAL SOURCES

Many national constitutions throughout the world specifically impose duties upon the State to ensure availability, quality, accessibility or affordability of water for the population at large. A number of such provisions contain explicit references to the right to water. Although this section does not focus on provisions on the right to a health environment (or a similar formulation), such provisions may provide a legal basis for the improvement of water quality, including through the prevention of pollution and the provision of adequate sanitation services. The right to a healthy environment, or a similar right, has been formally included in most Constitutions adopted since 1992.⁷⁰ The provisions from Ecuador, Colombia, Mexico and Venezuela are unofficial translations from the original Spanish, and links are provided to websites containing the original provisions.

There are, of course, no guarantees – legal or otherwise – that inclusion of access to water in a Constitution will inevitably lead to its implementation. However, the establishment within Constitutions of the right to water, and the corresponding series of State obligations to create the necessary legal, social and economic conditions represent important legal foundations for a range of further actions towards ensuring this right.

Constitutional provisions can be applied in three primary ways: development of legislation, enforcement in courts and in political discourse. First, the manner by which most Constitutional provisions are worded implies the necessity for the State to adopt legislation specifying the entitlements of individuals and households as well as the legal duties of the national, regional and municipal authorities.

Second, the obligations contained in Constitutional provisions may be enforced in courts. In many countries, it remains difficult to base legal complaints on the right to water before a court of law exclusively upon Constitutional provisions as most courts of law have traditionally been reluctant to entertain complaints dealing essentially with economic, social and cultural rights. However, an increasing numbers of Courts now accept the need to treat economic, social and cultural rights as enforceable by the Courts and they are becoming increasingly familiar with the concept and application of economic, social and cultural rights. It is necessary to consult the Constitution and the jurisprudence of each country's courts in order to determine whether a Constitutional right to water may be enforced by the courts. However, it is normally the case that courts can enforce rights and duties contained in legislation. In such cases, the provisions of the Constitution can be used to interpret such legislation.

Third, the inclusion of the right to water, or State duties to ensure the provision of safe and sufficient water, in a Constitution signifies a political commitment that everyone possesses not just a need for water, but is also entitled to it as a matter of right. National campaigns can often rely on Constitutional provisions in order to bolster their claims.

⁷⁰ This point is recognised in the Conclusions of a meeting of experts on human rights and environmental protection convened by the UN High Commissioner for Human Rights and the United Nations Environment Programme; <http://www.unhchr/environment/index.html>.

Explicit Rights to Water and Sanitation

ECUADOR

Constitution (1998)⁷¹

Article 23 (20)

Without prejudice to the rights established in this constitution and the effective international instruments, the State shall recognise and guarantee to the people the following: ...

The right to a quality of life that ensures health, feeding and nutrition, *potable water*, a clean environment, social education, work, recreation, housing, clothing and other necessary services.

Article 42

The State shall guarantee the right to health, its promotion and protection through ... the provision of *potable water* and *basic sanitation* ...

Article 246

The State shall promote the development of communal or self-management companies, such as cooperatives ... potable water management councils and others of similar type, whose property and management belongs to the community or the people that work in them, use their services or consume their products.

Article 249

The State shall be responsible for the provision of public utilities of potable water and irrigation ... The State may provide those services directly or by means of delegation to mixed public-private companies or private companies, through concession, association, capitalisation, or other contractual forms. The contractual conditions may not be unilaterally modified ...

The State shall guarantee that *public utilities* supplied under its control and regulation, respond to the principles of efficiency, responsibility, universality, accessibility, continuity and quality; and will ensure that their tariffs are equitable.

SOUTH AFRICA

Constitution (1996)

Article 27

(1) Everyone has the right to have access to

- a health care services, including reproductive health care;
- b sufficient food and *water*; and
- c social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.

⁷¹ <http://www.consuladoecuadornj.com/constitucion.htm>.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

South Africa's Water Services Act and National Water Act expand on this Constitutional right, and are included in Section 5.2 below. Two South African cases on the right to have access to water are included in Section 7.

UGANDA

Constitution (1995)

Preamble

The State shall protect important natural resources, including land, *water*, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda.

Article 14

The State shall endeavour to fulfil the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that ... all Ugandans enjoy rights and opportunities and access to education, health services, *clean and safe water*, decent shelter, adequate clothing, food, security and pensions and retirement benefits.

Explicit State Duties in Relation to Water

CAMBODIA

Constitution (1993)

Article 59

The State shall protect the environment and balance of abundant natural resources and establish a precise plan of management of land, *water*, air, wind geology, ecological system, mines, energy, petrol, and gas, rocks and sand, gems, forests and forest products, wildlife and aquatic resources.

COLOMBIA

Constitution (1991)⁷²

Article 366

General welfare and the improvement of the quality of life of the population are social purposes of the State. A fundamental objective of its activity will be the resolution of the unmet needs of health, education, environmental protection and of *drinkable water*. For such effects, in the plans and budgets of the Nation and of the territorial entities, social public expenditures will have priority over any other allocation.

⁷² <http://www.senado.gov.co/Senado/decripc/Desconsta.htm>.

Article 367

The law shall set the competences and responsibilities relating to the provision of household public utilities, their coverage, quality and financing, and tariffs regimes which should address in addition to the criteria of costs, those of solidarity and redistribution of income ...

Article 368

The Nation, the departments, the districts, the municipalities and the decentralised entities will grant subsidies in their respective budgets, in order for make it possible for persons of low-income to afford payment for household public utilities necessary to cover their *basic needs*.

ERITREA

Constitution (1996)

Article 10

The State shall work to bring about a *balanced and sustainable development* throughout the country, and shall use all available means to improve their livelihood in a sustainable manner, through their development. The State shall have the responsibility to regulate all land, *water* and natural resources and to ensure their management in a balanced and sustainable manner and in the interest of the *present and future generations*; and to create the right conditions for securing the participation of the people to safeguard the environment.

ETHIOPIA

Constitution (1995)

Article 90

To the extent the country's resources permit, policies should aim to provide all Ethiopians access to public health and education, *clean water*, housing, food and social security.

CO-OPERATIVE REPUBLIC OF GUYANA

Constitution (1980)

Article 36

In the interests of the present and future generations, the State will protect and make rational use of its land, mineral and *water resources*, as well as its fauna and flora, and will take all appropriate measures to conserve and improve the environment.

THE GAMBIA

Constitution (1996)

Article 216

4. The State shall endeavour to facilitate *equal access to clean and safe water*.

IRAN

Constitution (1979)

Article 43: Principles

The economy of the Islamic Republic of Iran, with its objectives of achieving the economic independence of the society, uprooting poverty and deprivation, and fulfilling human needs in the process of development while preserving human liberty, is based on the following criteria: ...

1. the provision of basic necessities for all citizens: housing, food, clothing, *hygiene*, medical treatment, education, and the necessary facilities for the establishment of a family; ...

Article 45: Public Wealth

Public wealth and property, such as uncultivated or abandoned land, mineral deposits, seas, lakes, rivers and other public waterways, mountains, valleys, forests, marshlands, natural forests, unenclosed pastures, legacies without heirs, property of undetermined ownership, and public property recovered from usurpers, shall be at the disposal of the Islamic government for it to utilize in accordance with the public interest. Law will specify detailed procedures for the utilization of each of the foregoing items.

LAOS

Constitution (1991)

Article 17

All organisations and citizens must protect the environment and natural resources: land, underground, forests, fauna, *water sources* and atmosphere.

MEXICO

Constitution (1917)⁷³

Article 27

Ownership of the lands and waters within the boundaries of the national territory is vested originally in the Nation, which has had, and has, the right to transmit the title thereof to private persons, thereby constituting private property ...

⁷³ As amended in 1998 and 2001, <http://www.cddhcu.gob.mx/leyinfo/>.

The nation shall at all times have the right to impose on private property such limitations that the public interest might demand, as well as the right to regulate, in the social benefit, the utilisation of natural resources which are susceptible of appropriation, in order to ensure a more equitable distribution of the public wealth, conserve these natural resources, achieve balanced development of the country and improve the living conditions of rural and urban populations.

NIGERIA

Constitution (1999)

Article 20

The State shall protect and improve the environment and safeguard the *water*, air and land, forest and wild life of Nigeria.

PANAMA

Constitution (1994)

Article 256

Concessions for the operation of the ground, subsoil, forests and *water* use ... will be inspired by social welfare and the public interest.

PORTUGAL

Constitution (1989)

Article 81 Primary duties of the State

In economic and social matters the primary duties of the State are:

- a. To promote an increase in the social and economic well-being and quality of life of the people, in particular of those most underprivileged, in the context of a strategy of sustainable development; ...
- m. To adopt a *national water policy*, with rational use, planning and management of water resources.

VENEZUELA

Constitution (1999)⁷⁴

Article 127

It is a right and a duty of each generation to protect and maintain the environment for their own benefit and for the benefit of the future world ...

It is the State's fundamental obligation, along with the active participation of the society, to guarantee that the population develops in an environment free from pollution where the air, the *water*, the soil, the coasts, the climate, the ozone layer and all living species are particularly protected according to the law.

Article 178

It is within each Municipality's competence to govern and administer its own concerns and the management of those issues that the Constitution and national laws assign to it, particularly the planning and promotion of economic and social development, the provision of *household public utility services*, the application of policies regarding tenants issues, following the criteria of equity, justice and concern for social interest, in conformity with the relevant laws applicable to the case, the promotion of the community participation and the improvement in general of the living conditions of the community, in the following areas ...

(6) *Potable water services*, electricity, domestic gas, *sewerage, irrigation canals and disposal of wastewaters* ...

Article 184

The Law shall create open and flexible mechanisms so that the States and Municipalities decentralise and transfer to communities and organized local groups that demonstrate the capacity to provide them, services that they manage, promoting:

(1) The transfer of ... *public utilities provision* services ...

(2) The participation of the community and citizens, through local associations and non-governmental organizations, in the formulation of investment proposals before the governmental bodies in charge of the elaboration of the respective investment plans, as well as in the implementation, evaluation and control of works, social programs and public utilities within their jurisdiction.

ZAMBIA

Constitution (1996)

The State shall endeavour to provide clean and safe water.

⁷⁴ <http://www.venezuela.gov.ve/ns/constitucion.asp>.

5.2 SELECTED NATIONAL LAWS

Constitutional recognition of the right to water, international human rights standards or more general government duties related to water are rarely sufficient to ensure that sufficient, safe, acceptable, accessible and affordable water will be ensured to everyone, or that it will be treated as a human right. Implementing legislation or policies will be required to transform provisions on the right to water – often written with little explanation – into concrete, practical and effective laws and regulations. While existing laws regulating access to water, or prohibiting discrimination, may provide significant protection, it is likely that most countries will need to enact new standards to ensure that all aspects of an individual’s right to water are covered by law.

In order to illuminate the manner in which some countries have sought to provide the necessary legislative substance for the right to water, a selection of national provisions are set out below. Of the national laws included in this Section, only South Africa’s *Water Services Act* explicitly sets out a right to water and basic sanitation. However, the laws below address key features of the right to water and the corresponding State obligations. The inclusion of the laws below does not necessarily imply that these are model clauses. Indeed, several of these laws could be substantially improved by revising current provisions and addressing new issues in order to implement the full extent of the right to water. Such issues could include, for example, a requirement for the use of indicators indicating disparities between genders and ethnic groups in access to water. In addition, it may be noted that several provisions only grant a Minister the power to act in a particular manner to ensure access to water, but does not require the exercise of such power.

These laws obviously are important in access to water campaigns at the national or local level. They are also useful, in conjunction with international standards, in lobbying for legislative and policy reform at the national level.

The extracts of national laws provided below are accompanied by annotations in italics in order to summarise certain portions for brevity. The national laws from Chile and Venezuela, for which official English translations are unavailable, are provided only in summarised form.

Availability⁷⁵

A number of the national laws included address the issue of *availability* of water, South Africa’s *Water Services Act*, which authorises the Minister of Water Affairs and Forestry to set standards for water tariffs, requires that such standards consider the financial sustainability of water services, and the need to provide for availability of water in drought. South Africa’s *National Water Act* authorises the Minister to require those who use water sources to apply for licences where this is necessary to efficiently manage and equitably allocate water. The *European Directive establishing a framework for Community action in the field of water policy* requires States to take account of the principle of cost recovery in order to contribute to conservation measures. This Directive should be read together with Recommendation 14 of the European Committee of Ministers (see Section 4.5) which provides an exception to the principle of cost recovery for the right to water required to meet basic needs.

Finland’s *Water Services Act* requires that a water plant be established, or its area of operation extended, if required due to a relatively large number of inhabitants or due to considerations of health or environmental protection. The Act also requires that a municipal water supply plant maintain separate accounts from the municipal-

⁷⁵ The requirement of sufficient water is addressed in Section 2 (Introduction). See also General Comment No. 15, Section 6.1, particularly at paras. 12 (a) and 28.

ity. This provision is relevant given that a significant cause of poor water services in many countries is the diversion of revenues by municipalities from water use charges to non-water related uses. The Act also requires that water charges, as considered necessary, must be established such as to promote as the sparing use of water and reduction in the amount of wastewater. New Zealand's *Local Government Act* addresses water conservation through means other than pricing by providing that a person supplied water may not allow it to be wasted

Quality⁷⁶

Many of the laws surveyed below address issues of *water quality*. South Africa's *Water Services Act* requires industries to apply for approval from a Water Services Authority before discharging any industrial effluent. The *European Directive establishing a framework for Community action in the field of water policy* requires time-bound measures for States to reduce pollution in surface water and ground waters and restore them to good ecological potential. Special measures are envisaged for water used for drinking purposes in order to reduce the level of purification required in water treatment facilities. The Directive also requires states to take account of the polluter pays principle. Finland's *Water Services Act* states that water supply charges may vary in accordance with the polluter pays principle. The Act also places an obligation on water supply plants to inspect the quality of the raw water they use.

Accessibility⁷⁷

Most of the national laws below require the State to promote or ensure *accessibility* of water, South Africa's *Water Services Act* requires water service authorities to progressively ensure efficient, affordable, economic and sustainable access to water services. Water service authorities are bound by a duty to act reasonably in providing such services, subject to availability of resources.⁷⁸ Taking account of resources limitations in the country, the Act states that if a water services authority is unable to provide access to water for all potential customers in its area, it must prioritise the provision of basic water and sanitation. In emergency situations, an authority must take reasonable steps to provide basic water supply and sanitation to any person. The Act does not state that this latter duty is subject to availability of resources. The Act requires water service authorities to develop a development plan indicating a time frame for achieving universal access for basic water supply and sanitation. They must publicly report on the implementation on this plan annually. Finally, the Act authorises the Minister to give grants and loans to water services authorities.

Venezuela's *Organic Law on the provision of potable water and sanitation services* sets out a scheme of subsidies that create incentives for companies to improve and expand services to low-income areas. South Africa's *National Water Act* addresses access to water from natural sources, which is relevant for rural areas. The Act provides exemptions from having to apply for a licence to access water from a water body that is adjacent to the land that one occupies where this water is used for personal and domestic uses. The *Australian Utilities Act* addresses circumstances in developed countries, and acts to ensure accessibility by requiring water distributors to provide services upon application by any person.

76 The requirement of safe and acceptable water is addressed in Section 2. See also General Comment No. 15, Section 6.1, particularly at para. 12 (b).

77 The requirement of physical accessibility is addressed in Section 2. See also General Comment No. 15, Section 6.1, particularly at paras. 12 (c) (i) and 37.

78 The duty to take reasonable measures towards the realisation of a socio-economic right has been applied by the South African Constitutional Court in the Grootboom decision, below at Section 7.

Affordability⁷⁹

Most national laws address the issue of *affordability* of water by addressing water service pricing policy and subsidies. Venezuela's *Organic law on the provision of potable water and sanitation services establishes* a system of public subsidies in order to help low income users afford their basic water and sanitation and indicates a variety of forms of subsidies that may be provided. A simpler but more specific subsidy scheme is provided in Chile's *Law 18.778*.⁸⁰

The *Australian Utilities Act* provides that terms in water supply contracts must be fair and reasonable. The Act further states that in cases of financial hardship, a debt owed by a person to a utility may be waived, and the cost borne by the State. The United Kingdom's *Water Industry Act* authorises the Secretary of State to make special provision for particular classes of persons on the basis of their financial circumstances or age, ill-health or disability of themselves or their dependants, at the cost of the State. Finland's *Water Service Act* states that water charges must be reasonable and equitable for all users. Such charges must also cover the investment and costs of the water supply plant in the long term, but may only include a minimum return on capital. Water services may be subsidised by municipal, national or European Community Funds.

A number of laws restrict disconnections of water services, in particular those that occur due to inability on the part of the user to pay. Under the South African *Water Services Act*, there may be no disconnection for inability to pay. However, as the onus of proving inability to pay lies on the water user, the extent to which this right is realised will depend on the level of access to legal advice and representation. New Zealand's *Local Government Act* specifies that water supply cannot be restricted such that it creates unsanitary conditions in land or a building and that water supply cannot be discontinued, except for repairs or to stop nuisances or dangers to public health.

The United Kingdom's *Water Industry Act* specifies that water supply cannot be disconnected or restricted for certain types of water users, such as domestic households, hospitals, schools and other such public institutions. Finland's *Water Service Act* provides for a longer delay in disconnection when failure to pay is due to financial difficulties caused by serious illness, unemployment or such cause through no fault of the customer and the water provider has been notified. However, on its face, this provision would appear to be in conflict with the right to water, which would not permit disconnection in such circumstances.

Discrimination and Attention to Vulnerable Groups⁸¹

On the issue of *Discrimination and Vulnerable Groups*, few national water laws explicitly state that there will be no discrimination in the water sector, as this would often be provided for in Constitutional provisions or anti-discrimination legislation. However, a number of water laws provide for differential treatment for vulnerable groups, which often necessary in order to ensure that all people have substantively equal access to water. As noted

79 The requirement that water, and water services and facilities, are affordable is addressed in Section 2. See also General Comment No. 15, Section 6.1, particularly at paras. 12 (c) (ii) and 27. See also para. 56 of the General Comment with respect to the State obligations before it takes any action that interferes with any person's right to water.

80 Chile's subsidy system for water and other utilities has been seen as a model for targeted subsidies towards low-income groups. The system is based on the assessed income of the household. However, it has been shown that the 60% of the poorest 20% of Chileans were not accessing subsidies, even though a significant range of persons in middle income groups applied for and were granted subsidies. Subsidies provided automatically based on geographic regions in Colombia provided subsidies to a greater proportion of the poorest 20% of the population. See Andrés Gómez-Lobo and Dante Contreras, *Subsidy Policies for the Utility Industries: A Comparison of the Chilean and Colombian Schemes*, University of Chile, November 2000. In Chile, and in other contexts, there is a concern that subsidies requiring applications where based on individual income, rather than subsidies based on their type of residence or area of residence may exclude low-income deserving applicants who may not have necessary documents, knowledge of the system or are who unwilling to be singled out as poor.

81 State obligations to refrain from discrimination and to ensure attention to the needs of vulnerable groups are addressed in Section 2. See also General Comment No. 15, Section 6.1, particularly at paras. 12 (c) (ii) and 13-16.

above, the United Kingdom does not permit water services to be disconnected to institutions and homes used by specific vulnerable groups. In addition, the Secretary of State may require differential charges for certain classes of users, on the basis of age, disability or ill-health. The South African *Water Services Act* allows the State to make standards that differ according to different geographic areas based on their socio-economic or physical attributes.⁸²

The South African *National Water Act* provides that in water licence applications, pricing options and financial aid to water users, state regulations may consider different socio-economic considerations and the need to address past racial and gender discrimination. In the constitution of Catchment Management Agencies, the Minister may intervene to ensure sufficient gender representation and groups prejudiced by past racial and gender discrimination in relation to access to water.

Remedies for Violations⁸³

A number of laws provide for remedies allowing water user to make complaints. The *Australian Utilities Act* provides for a Consumer Council that, among other things, would protect the rights of customers and seek to ensure that utility services continue to be provided to persons suffering financial hardship. It may provide a direction to a utility in this regard instructing it not to withdraw services, or instructing it to re-connect services within 24 hours. South Africa's *Water Services Act* states that a disconnection procedure must be fair and equitable, provide for reasonable notice and an opportunity to make representations.

Monitoring⁸⁴

The laws surveyed below provide for *monitoring* of public and/or private water service providers. Finland's *Water Service Act* grants jurisdiction to a Consumer Ombudsman to ensure compliance with the law. It also provides for compensation to be provided to customers for damage caused due to error in water services.

All the national laws included below provide for State regulation of water service providers. New Zealand's *Local Government Act*, however, provides specifically that a local authority must develop a policy on partnerships with the private sector, which must address how the local authority will assess, monitor and report on the extent to which community outcomes are furthered by a partnership with the private sector. Any contracting out of water services to the private sector may not be for a term longer than 15 years, and the local government must retain control over pricing, management of water services and development of policy related to water service delivery. The South African *Water Services Act* provides for the Minister to monitor the performance of the water service authorities, and to intervene if necessary. The *European Framework Directive* addresses the quality of penalties for breaches of national laws adopted under the Directive, stating that they should be effective, proportionate and dissuasive.

82 The Constitutional Court of South Africa in the case of *City Council of Pretoria v. Walker* (1998) addressed a situation where a Council charged residents of a former black township effectively lower rates than occupants of formerly-white areas, and selectively enforced debts only against the latter area. The Court held that cross-subsidisation and differences in charges was acceptable, but that the selective enforcement of debts had an impact on the plaintiff in a manner comparably serious to an invasion of dignity, the discrimination was unfair (at para. 81). One Judge, Justice Sachs, dissented on this point and held that the policy of selective enforcement was based on the identification of objectively determinable characteristics of different geographical areas, and not on race.

83 The requirement of accountability is addressed in Section 2. See also General Comment No. 15, Section 6.1, particularly at para. 55.

84 The requirement to monitor water service providers, as a State obligation to protect, is addressed in Section 2. See also General Comment No. 15, Section 6.1, particularly at para. 24.

Participation and Access to Information⁸⁵

The requirement of *public participation* in water governance is addressed by most of the laws below. The *Australian Utilities Act*, the South African *Water Services Act* and New Zealand's *Local Government Act* provide for public consultations, particularly on licensing operators. The New Zealand's *Local Government Act* provides very clearly defined processes for consultation.

Access to Information is a critical element of the consultative process, and a required element in its own right. The *Australian Utilities Act* provides in this regard for all licenses of water operators and related documentation to be provided on the regulatory commission's website. Finland's *Water Services Act* obligates water supply plants to provide information on connection to the network, management of water supply services, water quality and the composition of charges levied. South Africa's *Water Services Act* requires the Minister to establish a national information system on water services that provides information in an accessible format.

AUSTRALIA

Australian Utilities Act 2000 No. 65 (2002)⁸⁶

This Act governs the operations of the Independent Competition and Regulatory Commission (ICRC), which considers licence applications for utility providers.

Section 36: Public consultation

(1) Before ICRC makes a defined licence decision under this division, it may give public notice about the matter to be decided and invite submissions about that matter from interested people.

(2) The public notice must –

(a) be published in a daily newspaper and on ICRC's web site on the Internet; and

(b) state where copies of relevant documents may be inspected; and

(c) state - (i) where submissions may be lodged; and (ii) the closing date for submissions, that is at least 28 days after the notice is published.

(3) If ICRC gives public notice under subsection (1) about a defined licence decision, it must not make the decision unless it has—

(a) allowed the utility a reasonable opportunity— (i) to examine submissions lodged with ICRC in accordance with the public notice; and (ii) to make representations to ICRC about any matter raised in the submissions; and

(b) considered the matters raised in all the submissions and representations properly made to ICRC....

The ICRC is required to make all documentation related to decisions on provisions of licenses to utility providers available for inspection by members of the public at its offices, at other places determined by ICRC and on its web-site. A member of the public may inspect without charge or make a copy of such document for a fee at the ICRC's office (Article 53).

⁸⁵ See General Comment No. 15, Section 6.1, particularly at paras. 12 (c) (iv) and 48.

⁸⁶ <http://www.legislation.act.gov.au/a/2000-65/default.asp>.

Section 83: Water connection service

(1) A water distributor must, on application by a person for any of the following utility services, provide the service in accordance with the distributor's standard customer contract:

(a) connect the premises to which the application relates to the distributor's network; ...

Section 84: Water supply service

(1) A water supplier must, on application by a person, and in accordance with the supplier's standard customer contract, supply water to premises owned or occupied by the person....

Sections 85 and 86 contain similar obligations for sewerage utilities to provide sewerage connection service and sewerage service on application.

Section 89: Approval of terms

(1) ICRC may, in writing— (a) approve; or (b) refuse to approve; the terms of a standard customer contract, ...

(2) ICRC may approve the terms of a standard customer contract only if satisfied that, when in force as a standard customer contract—

(a) the terms would be consistent with — (i) the conditions of the utility's licence; and (ii) the requirements imposed by or under this Act or a related law, including in particular, the requirements of each industry code and technical code that is applicable; and

(b) the charges payable under the contract would be consistent with the relevant price direction by ICRC; and

(c) the terms would be fair and reasonable

Section 170 addresses the functions of the Essential Services Consumer Council (the Council).

Section 170: Functions

The council has the following functions:

(a) to facilitate the resolution of complaints, for example, by—

(i) providing information to consumers and the public about its functions; and

(ii) assisting the parties to a complaint to resolve the issue themselves or to reach agreement about the terms of any direction or declaration to be made by the council;

(b) to determine unresolved complaints under part 12 (Complaints);

(c) to ensure, so far as practicable, that utility services continue to be provided to persons suffering financial hardship;

(d) to protect the rights of customers and consumers under the Act;

(e) to advise the Minister, the Minister responsible for part 5 (Technical regulation) or ICRC on any matter about the council's functions;

(f) to do anything incidental to any of its other functions.

Note The *Legislation Act 2001*, s 196 (1) provides that a provision of an Act that gives an entity (including the council) a function also gives the entity the powers necessary and convenient to exercise the function.

Section 185: Complaints to which ... [this Section] ... applies

(1) This part applies to the following complaints:

(a) a complaint by a consumer affected by a contravention by a utility of a customer contract;

- (b) a complaint by a consumer about substantial hardship caused, or likely to be caused, by a utility failing to provide a utility service or withdrawing a utility service;
- (c) a complaint by a person affected by a contravention by a utility of section 51 in relation to personal information;
- (d) a complaint by a person affected by a contravention by a utility of an obligation under this Act in relation to its network operations;
- (e) a complaint by a person about an act or omission of an authorised person for a utility in relation to network operations; ...

Section 207: Continuity of utility services—nonpayment of customer debt

- 1) This section applies to a complaint about the actual or potential withdrawal of a utility service because of a failure to pay a customer debt in relation to residential premises.
- (2) If the council is satisfied that the withdrawal of the utility services causes, or would cause, substantial hardship for a consumer, it may give the utility a written direction—
 - (a) not to withdraw the service; or
 - (b) if the service has been withdrawn—to restore the service as soon as practicable and, in any event, within 24 hours after the direction is given to the utility.
- (3) A direction may contain ancillary directions, for example, that the service not be withdrawn—(a) during a stated period; or (b) unless the consumer fails to comply with a stated condition.

Section 208: Discharge of customer debt

- (1) If the council is satisfied that payment of a customer debt in relation to residential premises would cause substantial hardship for the customer, it may, in writing, declare that the debt is discharged in whole or to a stated extent.
- (2) The declaration may provide for the discharge to be conditional on payment by the customer of a stated amount or amounts in accordance with the declaration.
- (3) A declaration has effect for all purposes according to its terms.
- (4) The amount of the debt discharged by a declaration may not exceed—(a) \$10 000; or (b) if another amount is prescribed by the regulations—that amount.

Section 221: Direction by Minister

- (1) The Minister responsible for a Government program may give a written direction to a utility to take stated action that the Minister considers appropriate to ensure that the utility's services are provided in accordance with the program.
- (2) A direction may, for example, require the utility to provide particular services to particular classes of persons free of charge, at stated charges or subject to stated discounts or rebates.
- (3) A direction must state the Minister's estimate of the cost to be incurred by the utility in complying with the direction.

Section 223: Liability for costs

- (1) A direction under section 221 has no effect unless the Treasurer certifies in writing that proper arrangements exist for the Territory to pay to the utility the amount of the costs ...
- (2) Where a direction is given to a utility, the amount of the costs fixed in accordance with subsection (1) is a debt due to the utility by the Territory.

CHILE

Law 18.778 which Establishes a Subsidy for the Payment of Consumption of Drinking Water and Sewerage Systems (1989)⁸⁷

The law lays down a subsidy scheme for the payment of water and sewerage services targeted to favour low-income households (Article 1). The law sets a maximum amount of water to subsidize which is 20 cubic meters of consumption for eligible families (Article 2). It further specifies that the subsidy will cover no less than 25% and no more than 85% of the charge for those 20 cubic meters (Article 2).

If there is surplus from the funds given to the relevant municipality to provide subsidies, such municipality may be authorised to use up to 85% of that surplus to finance drinking water and sewerage facilities and/or other investment projects aiming to benefit low-income sectors (article 8).

A subsidy may be granted for investment in rural potable water systems. The subsidy will be used to cover the difference between the costs of the investment and those costs financed by the users according to their respective payment capacity. The subsidy would be financed by allocations provided in the country budget for the Ministry of Public Works. The regional government determines the distribution of such subsidies among specific rural potable water systems (Article 10).

EUROPE

Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (2000)⁸⁸

This directive is included in the National Standards Section as European Directives have the force of national law. Under Article 24 of the Directive, Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 22 December 2003 and are to immediately inform the European Commission. This Directive may be considered in enacting or advocating for similar regional arrangements. It may also be considered in formulating national laws that govern regional or local authorities, with the distinction being made that the Directive gives significant deference to member States, which might not be appropriate in other contexts.

(1) Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such ...

Article 1: Purpose

The purpose of this Directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:

- (a) prevents further deterioration and protects and enhances the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems;
- (b) promotes sustainable water use based on a long-term protection of available water resources;

⁸⁷ LEY-18778, Ley que establece subsidio al pago de consumo de agua potable y servicio de alcantarillado de aguas servidas. Fecha Publicación: 02.02.1989, <http://www.bcn.cl/cgi-local/socket.cgi>.

⁸⁸ http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=32000L0060&model=guichett

- (c) aims at enhanced protection and improvement of the aquatic environment, inter alia, through specific measures for the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing-out of discharges, emissions and losses of the priority hazardous substances;
- (d) ensures the progressive reduction of pollution of groundwater and prevents its further pollution, and
- (e) contributes to mitigating the effects of floods and droughts and thereby contributes to:
 - the provision of the sufficient supply of good quality surface water and groundwater as needed for sustainable, balanced and equitable water use,
 - a significant reduction in pollution of groundwater,
 - the protection of territorial and marine waters, and
 - achieving the objectives of relevant international agreements, ...

Article 4: Environmental objectives

1. In making operational the programmes of measures specified in the river basin management plans:

(a) for surface waters

- (i) Member States shall implement the necessary measures to prevent deterioration of the status of all bodies of surface water, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8;
- (ii) Member States shall protect, enhance and restore all bodies of surface water, subject to the application of subparagraph (iii) for artificial and heavily modified bodies of water, with the aim of achieving good surface water status at the latest 15 years after the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8;
- (iii) Member States shall protect and enhance all artificial and heavily modified bodies of water, with the aim of achieving good ecological potential and good surface water chemical status at the latest 15 years from the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8;
- (iv) Member States shall implement the necessary measures in accordance with Article 16(1) and (8), with the aim of progressively reducing pollution from priority substances and ceasing or phasing out emissions, discharges and losses of priority hazardous substances without prejudice to the relevant international agreements referred to in Article 1 for the parties concerned;

(b) for groundwater

- (i) Member States shall implement the measures necessary to prevent or limit the input of pollutants into groundwater and to prevent the deterioration of the status of all bodies of groundwater, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8 of this Article and subject to the application of Article 11(3)(j);
- (ii) Member States shall protect, enhance and restore all bodies of groundwater, ensure a balance between abstraction and recharge of groundwater, with the aim of achieving good groundwater status at the latest 15 years after the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8 of this Article and subject to the application of Article 11(3)(j);

(iii) Member States shall implement the measures necessary to reverse any significant and sustained upward trend in the concentration of any pollutant resulting from the impact of human activity in order progressively to reduce pollution of groundwater. Measures to achieve trend reversal shall be implemented in accordance with paragraphs 2, 4 and 5 of Article 17, taking into account the applicable standards set out in relevant Community legislation, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8;

(c) for protected areas Member States shall achieve compliance with any standards and objectives at the latest 15 years after the date of entry into force of this Directive, unless otherwise specified in the Community legislation under which the individual protected areas have been established.

Article 5: Characteristics of the river basin district, review of the environmental impact of human activity and economic analysis of water use

1. Each Member State shall ensure that for each river basin district or for the portion of an international river basin district falling within its territory:

- an analysis of its characteristics,
- a review of the impact of human activity on the status of surface waters and on groundwater, and
- an economic analysis of water use is undertaken according to the technical specifications set out in Annexes II and III and that it is completed at the latest four years after the date of entry into force of this Directive.

2. The analyses and reviews mentioned under paragraph 1 shall be reviewed, and if necessary updated at the latest 13 years after the date of entry into force of this Directive and every six years thereafter.

Article 7: Waters used for the abstraction of drinking water

1. Member States shall identify, within each river basin district:

- all bodies of water used for the abstraction of water intended for human consumption providing more than 10 m³ a day as an average or serving more than 50 persons, and
- those bodies of water intended for such future use. Member States shall monitor, in accordance with Annex V, those bodies of water which according to Annex V, provide more than 100 m³ a day as an average.

2. For each body of water identified under paragraph 1, in addition to meeting the objectives of Article 4 in accordance with the requirements of this Directive, for surface water bodies including the quality standards established at Community level under Article 16, Member States shall ensure that under the water treatment regime applied, and in accordance with Community legislation, the resulting water will meet the requirements of Directive 80/778/EEC as amended by Directive 98/83/EC.

3. Member States shall ensure the necessary protection for the bodies of water identified with the aim of avoiding deterioration in their quality in order to reduce the level of purification treatment required in the production of drinking water. Member States may establish safeguard zones for those bodies of water.

Article 8: Monitoring of surface water status, groundwater status and protected areas

1. Member States shall ensure the establishment of programmes for the monitoring of water status in order to establish a coherent and comprehensive overview of water status within each river basin district:

- for surface waters such programmes shall cover:

- (i) the volume and level or rate of flow to the extent relevant for ecological and chemical status and ecological potential, and (ii) the ecological and chemical status and ecological potential;

- for groundwaters such programmes shall cover monitoring of the chemical and quantitative status,
- for protected areas the above programmes shall be supplemented by those specifications contained in Community legislation under which the individual protected areas have been established.

2. These programmes shall be operational at the latest six years after the date of entry into force of this Directive unless otherwise specified in the legislation concerned...

3. Technical specifications and standardised methods for analysis and monitoring of water status shall be laid down in accordance with the procedure laid down in Article 21.

Article 9: Recovery of costs for water services

1. Member States shall take account of the principle of recovery of the costs of water services, including environmental and resource costs, having regard to the economic analysis conducted according to Annex III, and in accordance in particular with the polluter pays principle. Member States shall ensure by 2010 that water-pricing policies provide adequate incentives for users to use water resources efficiently, and thereby contribute to the environmental objectives of this Directive, an adequate contribution of the different water uses, disaggregated into at least industry, households and agriculture, to the recovery of the costs of water services, based on the economic analysis conducted according to Annex III and taking account of the polluter pays principle. Member States may in so doing have regard to the social, environmental and economic effects of the recovery as well as the geographic and climatic conditions of the region or regions affected.

2. Member States shall report in the river basin management plans on the planned steps towards implementing paragraph 1 which will contribute to achieving the environmental objectives of this Directive and on the contribution made by the various water uses to the recovery of the costs of water services.

3. Nothing in this Article shall prevent the funding of particular preventive or remedial measures in order to achieve the objectives of this Directive...

Article 10: The combined approach for point and diffuse sources

1. Member States shall ensure that all discharges referred to in paragraph 2 into surface waters are controlled according to the combined approach set out in this Article.

2. Member States shall ensure the establishment and/or implementation of:

(a) the emission controls based on best available techniques, or

(b) the relevant emission limit values, or

(c) in the case of diffuse impacts the controls including, as appropriate, best environmental practices set out in:

- Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control(19),

- Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment(20),

- Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources(21),

- the Directives adopted pursuant to Article 16 of this Directive,

- the Directives listed in Annex IX,

- any other relevant Community legislation at the latest 12 years after the date of entry into force of this Directive, unless otherwise specified in the legislation concerned.

3. Where a quality objective or quality standard, whether established pursuant to this Directive, in the Directives listed in Annex IX, or pursuant to any other Community legislation, requires stricter conditions than those which would result from the application of paragraph 2, more stringent emission controls shall be set accordingly.

Article 11: Programme of measures

1. Each Member State shall ensure the establishment for each river basin district, or for the part of an international river basin district within its territory, of a programme of measures, taking account of the results of the analyses required under Article 5, in order to achieve the objectives established under Article 4. Such programmes of measures may make reference to measures following from legislation adopted at national level and covering the whole of the territory of a Member State. Where appropriate, a Member State may adopt measures applicable to all river basin districts and/or the portions of international river basin districts falling within its territory.

2. Each programme of measures shall include the “basic” measures specified in paragraph 3 and, where necessary, “supplementary” measures...

7. The programmes of measures shall be established at the latest nine years after the date of entry into force of this Directive and all the measures shall be made operational at the latest 12 years after that date.

8. The programmes of measures shall be reviewed, and if necessary updated at the latest 15 years after the date of entry into force of this Directive and every six years thereafter. Any new or revised measures established under an updated programme shall be made operational within three years of their establishment.

Article 13: River basin management plans

1. Member States shall ensure that a river basin management plan is produced for each river basin district lying entirely within their territory...

Article 14: Public information and consultation

1. Member States shall encourage the active involvement of all interested parties in the implementation of this Directive, in particular in the production, review and updating of the river basin management plans. Member States shall ensure that, for each river basin district, they publish and make available for comments to the public, including users:...

Article 16: Strategies against pollution of water

1. The European Parliament and the Council shall adopt specific measures against pollution of water by individual pollutants or groups of pollutants presenting a significant risk to or via the aquatic environment, including such risks to waters used for the abstraction of drinking water. For those pollutants measures shall be aimed at the progressive reduction and, for priority hazardous substances, as defined in Article 2(30), at the cessation or phasing-out of discharges, emissions and losses. Such measures shall be adopted acting on the proposals presented by the Commission in accordance with the procedures laid down in the Treaty.

Article 17: Strategies to prevent and control pollution of groundwater

1. The European Parliament and the Council shall adopt specific measures to prevent and control groundwater pollution. Such measures shall be aimed at achieving the objective of good groundwater chemical status in accordance with Article 4(1)(b) and shall be adopted, acting on the proposal presented within two years after the entry into force of this Directive, by the Commission in accordance with the procedures laid down in the Treaty...

Article 23: Penalties

Member States shall determine penalties applicable to breaches of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive.

FINLAND

Water Services Act (119/2001)⁸⁹

Section 1: Objective

(1) The objective of this Act is to ensure water services which provide a sufficient amount of impeccable household water with respect to health and otherwise as well as appropriate sewerage in terms of the protection of health and the environment.

Section 6: Organisation of Water Services

(1) The owner or occupier of a property is responsible for its water services as laid down in this Act and other law.

(2) When required due to the need of a relatively large number of inhabitants or health considerations or environmental protection, a municipality must make sure that appropriate measures are taken to establish a water supply plant to meet the need, to expand the area of operation or to otherwise secure the availability of sufficient water services.

(3) Before taking the measures referred to in subsection 2, the municipality must reserve an opportunity for property owners and occupiers in the area to be heard.

Section 14: Obligation of a water supply plant concerning the quality of household water

(1) A water supply plant must ensure that the household water supplied by the plant meets the quality requirements set out in the Act on Health Protection.

Section 15: Inspection obligation of a water supply plant

(1) A water supply plant is responsible for inspecting the quantity and quality of the raw water it uses and for loss of water in the plant network.

(2) The provisions laid down in subsection 1 also apply to the party supplying water to the water supply plant.

Section 16: Information obligation

(1) When requested, a water supply plant and its customer must provide each other with the necessary information relating to the connection to the water supply plant network and the management of water supply services.

(2) A water supply plant must provide sufficient information concerning the quality of household water supplied by the plant and level of wastewater purification and the composition of the charges collected for water services.

Section 18: General criteria for the charges

(1) The charges for water services must be such that they cover the investments and costs of the water supply plant in the long term. The charges may include only a minimum return on the capital.

(2) Charges must be reasonable and equitable for all users. The need to regulate the consumption of water, special use of water and exceptional quality or quantity of wastewater may be taken into account in the charges. As considered necessary, the charges must be such that they promote the sparing use of water and reduction in the amount of wastewater and prevent the entry of harmful substances into the sewers.

⁸⁹ <http://www.finlex.fi/pdf/saadkaan/E0010119.PDF>.

(3) Water services may be subsidised by municipal, national or Community funds. The subsidy must be taken into account when covering the costs as set out in subsection 1. The subsidies for water services are subject to other relevant provisions on such subsidies.

Section 19: Charges

(1) A water supply plant must collect charges for the use of water supply services. Charges are collected on the basis of the amount of water used by the property and the amount and quality of the wastewater to be disposed of.

(2) A plant may also collect a connection charge and a basic charge and other charges for the services supplied by the plant. The amounts of these charges may vary in different areas if this is necessary in terms of appropriate cost allocation or implementation of the polluter pays principle or other similar cause. The use of the property may also be taken into account when establishing the connection charge.

Section 20: Accounting of a municipal water supply plant

(1) The accounting of a municipal water supply plant must be separated from the accounting of the municipality and the plant must draw up separate financial statements for each accounting period...

Section 22: General supply conditions

(1) The general supply conditions for water services must be fair and equitable.

(2) The Consumer Ombudsman will control the compliance with the law of the general supply conditions in respect of consumer protection.

Section 25: Binding nature of the provisions

(1) No deviations from the provisions laid down in this Chapter may be made by contract to the detriment of the consumer. Unless otherwise provided below, the provisions laid down in this Chapter apply between the water supply plant and the customer unless otherwise agreed.

Section 26: Discontinuation of water supply service

(1) A water supply plant may discontinue the supply of water or disposal of wastewater, rainwater or drainage water from foundations if the customer has in an essential way neglected the payments referred to in section 19 or otherwise in an essential way breached the obligations based on the provisions or contract.

(2) A water supply plant may discontinue the supply of water or disposal of wastewater, rainwater or drainage water from foundations no less than five weeks from the first notification of the threat of discontinuation referred to in subsection 1 to the customer and if the neglect or breach of an obligation has not been corrected in time before the notified time of discontinuation. If an action which breaches the provisions or contract is such that it may cause danger or significant damage to the use of the plant or health or the environment, the supply of water or disposal of wastewater, rainwater or drainage water from foundations may be discontinued immediately.

(3) If the neglect of payment referred to in subsection 1 is due to financial difficulties caused by serious illness or unemployment or similar special cause through no fault of the customer and the customer has notified the water supply plant of such difficulties, the supply of water or disposal of wastewater, rainwater or drainage water from foundations may be discontinued no less than ten weeks from the first notification of the threat of discontinuation.

Section 28: Compensation for damage

(1) A water supply plant is obliged to compensate for damages due to an error in water services to a person or property intended for private use or consumption and mainly used for such purpose by the party suffering the damage. A condition included in a contract made before the damage was found which restricts the right of the party suffering the damage to compensation under this subsection is null and void.

(2) A water supply plant is obliged to compensate for financial loss to the customer due to an error in water services. A water supply plant is obliged to compensate for indirect damage only if the error or damage is caused by negligence of the plant...

NEW ZEALAND

New Zealand Local Government Act 2002, No. 84, 24 December 2002⁹⁰

Section 83: Special consultative procedure—

(1) Where this Act or any other enactment requires a local authority to use or adopt the special consultative procedure, that local authority must—

(a) prepare—

(i) a statement of proposal; and (ii) a summary of the information contained in the statement of proposal ...

(b) include the statement of proposal on the agenda for a meeting of the local authority; and

(c) make the statement of proposal available for public inspection at— (i) the principal public office of the local authority; and (ii) such other places as the local authority considers necessary in order to provide all ratepayers and residents of the district with reasonable access to that statement; and ...

(e) give public notice, and such other notice as the local authority considers appropriate, of the proposal and the consultation being undertaken; and

(f) include in the public notice a statement about how persons interested in the proposal— (i) may obtain the summary of information about the proposal; and (ii) may inspect the full proposal; and

(g) include in the public notice a statement of the period within which submissions on the proposal may be made to the local authority; and

(h) ensure that any person who makes a submission on the proposal within that period— (i) is sent a written notice acknowledging receipt of that person's submission; and (ii) is given a reasonable opportunity to be heard by the local authority (if that person so requests); and

(i) ensure that the notice given to a person under paragraph (h)(i) contains information— (i) advising that person of that person's opportunity to be heard; and

(ii) explaining how that person may exercise that person's opportunity to be heard; and

(j) ensure that, except as otherwise provided by Part 7 of the Local Government Official Information and Meetings Act 1987, every meeting at which submissions are heard or at which the local authority, community board, or committee deliberates on the proposal is open to the public; and

(k) subject to the Local Government Official Information and Meetings Act 1987, make all written submissions on the proposal available to the public.

(2) The period specified in the statement included under subsection (1)(g) must be a period of not less than 1 month beginning with the date of the first publication of the public notice...

⁹⁰ http://www.legislation.govt.nz/browse_vw.asp?content-set=pa_l_statutes.

Section 84: Special consultative procedure in relation to long-term council community plan

This Section applies the Procedure in Section 83, with a few distinctions, including, among others, that the statement of proposal must include a draft of the long-term council community plan. Another distinction is as follows:

(3) ... (d) in respect of a proposal to transfer ownership or control of a strategic asset from the local authority to any other person,— (i) a description of any accountability or monitoring arrangements to be used to assess the performance of that person and any other person in regard to the asset; and (ii) an assessment of whether there are any conflicts of interest arising from the proposed transfer of the control or ownership of the asset, and, if so, what they are and how they will be managed; and

(e) in respect of a proposal that the local authority assume or cease responsibility for an activity,— (i) an assessment of the possible effects on other current providers of the activity; and (ii) an assessment of whether there are any conflicts of interest arising from the proposal, and, if so, what they are and how they will be managed.

(4) A statement of proposal to which subsection (1) or subsection (2) applies must also contain a report from the local authority's auditor on—

(a) the extent to which the statement complies with the requirements of this Act; and

(b) the quality of the information and assumptions underlying the forecast information provided in the statement; and

(c) the extent to which the forecast information and proposed performance measures will provide an appropriate framework for the meaningful assessment of the actual levels of service provision...

Under Section 88, a local authority must also use a special consultative procedure in relation to any alteration in mode of delivery of significant activity, including a change from delivery of the activity by the local authority itself to delivery of the activity by a council-controlled organisation in which the local authority is a shareholder; or to delivery of the activity by another organisation or person.

Under Section 102 (4), a local authority is required to adopt a number of funding and financial policies, including a policy on partnerships between the local authority and the private sector.

Section 107: Policy on partnerships with private sector

(1) A policy adopted under section 102(4)(e)—

(a) must state the local authority's policies in respect of the commitment of local authority resources to partnerships between the local authority and the private sector; and

(b) must include—

(i) the circumstances (if any) in which the local authority will provide funding or other resources to any form of partnership with the private sector, whether by way of grant, loan, or investment, or by way of acting as a guarantor for any such partnership; and

(ii) what consultation the local authority will undertake in respect of any proposal to provide funding or other resources to any form of partnership with the private sector; and

(iii) what conditions, if any, the local authority will impose before providing funding or other resources to any form of partnership with the private sector; and

(iv) an outline of how risks associated with any such provision of funding or other resources are assessed and managed; and

- (v) an outline of the procedures by which any such provision of funding or other resources will be monitored and reported on to the local authority; and
- (vi) an outline of how the local authority will assess, monitor, and report on the extent to which community outcomes are furthered by any provision of funding or other resources or a partnership with the private sector...

Section 130: Obligation to maintain water services:

... (2) A local government organisation to which this section applies must continue to provide water services and maintain its capacity to meet its obligations under this subpart.

- (3) In order to fulfil the obligations under this subpart, a local government organisation must—
 - (a) not use assets of its water services as security for any purpose;
 - (b) not divest its ownership or other interest in a water service except to another local government organisation;
 - (c) not lose control of, sell, or otherwise dispose of, the significant infrastructure necessary for providing water services in its region or district, unless, in doing so, it retains its capacity to meet its obligations;
 - (d) not, in relation to a property to which it supplies water,—
 - (i) restrict the water supply unless section 193 applies; or
 - (ii) stop the water supply unless section 194 applies.

(4) This section—

- (a) does not prevent a local government organisation from transferring a water service to another local government organisation; and
- (b) does not override sections 131 to 137.

Section 136: Contracts relating to provision of water services

(1) Despite section 130(2), a local government organisation may enter into contracts for any aspect of the operation of all or part of a water service for a term not longer than 15 years.

(2) If a local government organisation enters into a contract under subsection (1), it must retain control over all matters relating to—

- (a) the pricing of water services; and
- (b) the management of water services; and
- (c) the development of policy related to the delivery of water services.

(3) This section does not limit contracts in relation to water services that are entered into solely between local government organisations.

Section 192: Wastage of water

A person who is supplied with reticulated water by, or on behalf of, a local authority must not waste the water or allow it to be wasted.

Section 193: Power to restrict water supply

(1) The water supply to a person's land or building may be restricted by a local government organisation in any manner it thinks fit if the person—

- (a) commits an offence against this subpart; or
- (b) fails or refuses to do anything required by this Part in respect of water, water pipes, waterworks, or water races; or

- (c) fails or refuses to do anything that he or she has undertaken or agreed to do in respect of the water supply to his or her land or building; or
- (d) refuses entry to, or obstructs, an enforcement officer under section 182.

(2) Restriction of the water supply under subsection (1) must not create unsanitary conditions in, or associated with, the land or building.

Section 194: Power to stop water services

A local government organisation may stop water services temporarily if that is necessary to enable the local government organisation—

(a) to undertake repairs to any part of a water service:

(b) to respond appropriately to a situation or an event that is or may become a nuisance or danger to public health.

SOUTH AFRICA

Water Services Act, 1997 (Act 108 of 1997)⁹¹

Preamble

RECOGNIZING the rights of access to basic water supply and basic sanitation necessary to ensure sufficient water and an environment not harmful to health or well-being ...

RECOGNISING that water supply services and sanitation services are often provided in monopolistic or near monopolistic circumstances and that the interests of consumers and the broader goals of public policy must be promoted; and

CONFIRMING the National Government's role as custodian of the nation's water resources;

Section 1: Definitions

In this Act, unless the context shows that another meaning is intended-

... basic sanitation means the prescribed minimum standard of services necessary for the safe, hygienic and adequate collection, removal, disposal or purification of human excreta, domestic waste-water and sewage from households, including informal households;

basic water supply means the prescribed minimum standard of water supply services necessary for the reliable supply of a sufficient quantity and quality of water to households, including informal households, to support life and personal hygiene; ...

⁹¹ <http://www-dwaf.pwv.gov.za/Documents/Legislature/wsag97.PDF>.

Section 3: Right of access to basic water supply and basic sanitation

- (1) Everyone has a right of access to basic water supply and basic sanitation.
- (2) Every water services institution must take reasonable measures to realise these rights.
- (3) Every water services authority must, in its water services development plan, provide for measures to realise these rights.
- (4) The rights mentioned in this section are subject to the limitations contained in this Act.

Section 4: Conditions for provision of water services

... (3) Procedures for the limitation or discontinuation of water services must-

- (a) be fair and equitable;
- (b) provide for reasonable notice of intention to limit or discontinue water services and for an opportunity to make representations, unless-
 - (i) other consumers would be prejudiced;
 - (ii) there is an emergency situation; or
 - (iii) the consumer has interfered with a limited or discontinued service; and
- (c) not result in a person being denied access to basic water services for non-payment, where that person proves, to the satisfaction of the relevant water services authority, that he or she is unable to pay for basic services ...

Section 5: Provision of basic water supply and basic sanitation to have preference

If the water services provided by a water services institution are unable to meet the requirements of all its existing consumers, it must give preference to the provision of basic water supply and basic sanitation to them.

Section 7: Industrial use of water

- ... (2) ... No person may dispose of industrial effluent in any manner other than that approved by the water services provider nominated by the water services authority having jurisdiction in the area in question ...
- (4) No approval given by a water services authority under this section relieves anyone from complying with any other law relating to-
 - (a) the use and conservation of water and water resources; or
 - (b) the disposal of effluent.

Section 9: Standards

- (1) The Minister may, from time to time, prescribe compulsory national standards relating to-
 - (a) the provision of water services;
 - (b) the quality of water taken from or discharged into any water services or water resource system;
 - (c) the effective and sustainable use of water resources for water services; ...
- (2) The standards prescribed under subsection (1) may differentiate between-
 - (a) different users of water services-, and
 - (b) different geographic areas, taking into account, among other factors, the socioeconomic and physical attributes of each area.
- (3) In prescribing standards under subsection (1), the Minister must consider-
 - (a) the need for everyone to have a reasonable quality of life;
 - (b) the need for equitable access to water services;
 - (c) the operational efficiency and economic viability of water services;

Section 10: Norms and standards for tariffs

(1) The Minister may, with the concurrence of the Minister of Finance, from time to time prescribe norms and standards in respect of tariffs for water services.

(2) These norms and standards may

(a) differentiate on an equitable basis between-

(i) different users of water services;

(ii) different types of water services; and

(iii) different geographic areas, taking into account, among other factors, the socioeconomic and physical attributes of each area;

(b) place limitations on surplus or profit.

(c) place limitations on the use of income generated by the recovery of charges; and

(d) provide for tariffs to be used to promote or achieve water conservation.

(3) In prescribing the norms and standards, the Minister must consider, among other factors-

(a) any national standards prescribed by him or her;

(b) social equity;

(c) the financial sustainability of the water services in the geographic area in question;

(d) the recovery of costs reasonably associated with providing the water services;

(e) the redemption period of any loans for the provision of water services;

(f) the need for a return on capital invested for the provision of water services; and

(g) the need to provide for drought and excess water availability.

(4) No water services institution may use a tariff which is substantially different from any prescribed norms and standards.

Section 11: Duty to provide access to water services

(1) Every water services authority has a duty to all consumers or potential consumers in its area of jurisdiction to progressively ensure efficient, affordable, economical and sustainable access to water services.

(2) This duty is subject to-

(a) the availability of resources;

(b) the need for an equitable allocation of resources to all consumers and potential consumers within the authority's area of jurisdiction;

(c) the need to regulate access to water services in an equitable way;

(d) the duty of consumers to pay reasonable charges, which must be in accordance with any prescribed norms and standards for tariffs for water services;

(e) the duty to conserve water resources;

(f) the nature, topography, zoning and situation of the land in question; and

(g) the right of the relevant water services authority to limit or discontinue the provision of water services if there is a failure to comply with reasonable conditions set for the provision of such services.

(3) In ensuring access to water services, a water services authority must take into account, among other factors-

(a) alternative ways of providing access to water services;

(b) the need for regional efficiency;

(c) the need to achieve benefit of scale;

(d) the need for low costs;

- (e) the requirements of equity; and
- (f) the availability of resources from neighbouring water services authorities.
- (4) A water services authority may not unreasonably refuse or fail to give access to water services to a consumer or potential consumer in its area of jurisdiction.
- (5) In emergency situations a water services authority must take reasonable steps to provide basic water supply and basic sanitation services to any person within its area of jurisdiction and may do so at the cost of that authority.
- (6) A water services authority may impose reasonable limitations on the use of water services.

Section 12: Duty to prepare draft water services development plan

- (1) Every water services authority must, within one year after the commencement of this Act-...
- (b) ... prepare-
 - (i) a draft water services development plan for its area of jurisdiction; and
 - (ii) a summary of that plan ...

Section 13: Contents of draft water services development plan

Every draft water services development plan must contain details- ...

- (i) of the number and location of persons to whom water services cannot be provided within the next five years, setting out-
 - (j) the reasons therefor; and
 - (k) the time frame within which it may reasonably be expected that a basic water supply and basic sanitation will be provided to those persons; and
 - (l) of existing and proposed water conservation, recycling and environmental protection measures.

Section 14: Draft water services development plan

- (1) A water services authority must-
 - (a) take reasonable steps to bring its draft water services development plan to the notice of its consumers, potential consumers, industrial users and water services institutions within its area of jurisdiction;
 - (b) invite public comment thereon to be submitted within a reasonable time; ...

Section 15: Adoption of development plan

- (1) A water services authority must consider all comments received by it before adopting a development plan.
- (2) A water services authority must, on request, report on the extent to which a specific comment has been taken into account or, if a comment was not taken into account, provide reasons therefor...
- (4) A copy of the development plan-
 - (a) must be available for inspection at the offices of the water services authority; and
 - (b) must be obtainable against payment of a nominal fee.

Section 18: Reporting on implementation of development plan

- (1) A water services authority must report on the implementation of its development plan during each financial year...
- (3) The water services authority must publicise a summary of its report.
- (4) A copy of the report and of its summary must be-
 - (a) available for inspection at the offices of the water services authority; and
 - (b) obtainable against payment of a nominal fee.

Section 19: Contracts and joint ventures with water services providers

... (2) A water services authority may only enter into a contract with a private sector water services provider after it has considered all known public sector water services providers which are willing and able to perform the relevant functions.

(3) Before entering into or renewing

(a) a contract with a water services provider; or

(b) a joint venture with another water services institution other than a public sector water services institution which will provide services within the joint venture at cost and without profit, the water services authority must publicly disclose its intention to do so.

(4) Any water services provider entering into a contract or joint venture with a water services authority must, before entering into such a contract or joint venture, disclose and provide information on

(a) any other interests it may have, which are ancillary to or associated with the relevant water services authority; and

(b) any rate of return on investment it will or may gain by entering into such a contract or joint venture.

(5) The Minister may, after consultation with the Minister for Provincial Affairs and Constitutional Development, prescribe-

(a) matters which must be regulated by a contract between a water services provider and a water services authority;

(b) compulsory provisions to be included in such a contract; and

(c) requirements for a joint venture between a water services authority and a water services institution, to ensure-

(i) that water services are provided on an efficient, equitable, cost-effective and sustainable basis;

(ii) that the terms of the contract are fair and equitable to the water services authority, the water services provider and the consumer; and

(iii) compliance with this Act...

Section 62: Monitoring of water services institutions

(1) The Minister and any relevant Province must monitor the performance of every water services institution in order to ensure-

(a) compliance with all applicable national standards prescribed under this Act;

(b) compliance with all norms and standards for tariffs prescribed under this Act; and

(c) compliance with every applicable development plan, policy statement or business plan adopted in terms of this Act...

Section 63: Intervention

(1) If a water services authority has not effectively performed any function imposed on it by or under this Act, the Minister may, in consultation with the Minister for Provincial Affairs and Constitutional Development, request the relevant Province to intervene in terms of section 139 of the Constitution.

(2) If, within a reasonable time after the request, the Province-

(a) has unjustifiably failed to intervene; or

(b) has intervened but has failed to do so effectively,

the Minister may assume responsibility for that function to the extent necessary-

- (i) to maintain essential national standards;
- (ii) to meet established minimum standards for providing services; or
- (iii) to prevent that Province from taking unreasonable action that is prejudicial to the interests of another province or the country as a whole...

Section 64: Powers of Minister

- (1) The Minister may after consultation with any relevant Province make grants and loans and give subsidies to a water services institution from funds-
- (a) appropriated by Parliament;
 - (b) contributed by individuals or non-governmental organisations; or
 - (c) contributed by other governments and governmental institutions.
- (2) In making any grant or loan or giving any subsidy, the Minister must consider-
- (a) the requirements of equity and transparency;
 - (b) the purpose of the grant, loan or subsidy;
 - (c) the main objects of this Act as set out in section 2; and
 - (d) the financial position of the applicant...

The Minister may also appoint a Water Services Committee when a water service authority having jurisdiction in an area is unable to supply water services effectively (Article 51). The Minister must consider nominations for the Committee made by members of the community served, and must have regard to the need for the Committee to be representative of the community in the area (Article 55). The Committee must invite comment from the community before setting conditions for provision of services (Article 54).

The Minister is required to ensure that there is a national information system on water services and to take reasonable steps to ensure that such information is provided in an accessible format. The public is entitled to reasonable access to such information (Article 67).

SOUTH AFRICA

National Water Act (1998)⁹²

Section 3: Public trusteeship of nation's water resources

- (1) As the public trustee of the nation's water resources the National Government, acting through the Minister, must ensure that water is protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, for the benefit of all persons and in accordance with its constitutional mandate.
- (2) Without limiting subsection (1), the Minister is ultimately responsible to ensure that water is allocated equitably and used beneficially in the public interest, while promoting environmental values.
- (3) The National Government, acting through the Minister, has the power to regulate the use, flow and control of all water in the Republic.

⁹² http://www.dwaf.gov.za/Documents/Legislature/nw_act/NWA.pdf.

Section 22: Permissible water use

- (1) A person may only use water –
- (a) without a licence -
 - (i) if that water use is permissible under Schedule 1;
 - (ii) if that water use is permissible as a continuation of an existing lawful use; or
 - (iii) if that water use is permissible in terms of a general authorisation ...
 - (b) if the water use is authorised by a licence under this Act; or
 - (c) if the responsible authority has dispensed with a licence requirement ...

Schedule 1: Permissible Uses of Water

- (1) A person may, subject to this Act -
- (a) take water for reasonable domestic use in that person's household, directly from any water resource to which that person has lawful access;
 - (b) take water for use on land owned or occupied by that person, for
 - (i) reasonable domestic use;
 - (ii) small gardening not for commercial purposes; and
 - (iii) the watering of animals (excluding feedlots) which graze on that land within the grazing capacity of that land, from any water resource which is situated on or forms a boundary of that land, if the use is not excessive in relation to the capacity of the water resource and the needs of other users;
 - (c) store and use run-off water from a roof;
 - (d) in emergency situations, take water from any water resource for human consumption or firefighting;

Section 26: Regulations on use of water

- (1) Subject to subsection (4), the Minister may make regulations -
- (a) limiting or restricting the purpose, manner or extent of water use;
 - (b) requiring that the use of water from a water resource be monitored, measured and recorded; ...
 - (h) prescribing waste standards which specify the quantity, quality and temperature of waste which may be discharged or deposited into or allowed to enter a water resource;
 - (i) prescribing the outcome or effect which must be achieved through management practices for the treatment of waste, or any class of waste, before it is discharged or deposited into or allowed to enter a water resource;
 - (j) requiring that waste discharged or deposited into or allowed to enter a water resource be monitored and analysed, and prescribing methods for such monitoring and analysis; ...
- (4) When making regulations, the Minister must take into account all relevant considerations, including the need to –
- (a) promote the economic and sustainable use of water;
 - (b) conserve and protect water resources or, instream and riparian habitat;
 - (c) prevent wasteful water use;
 - (d) facilitate the management of water use and waterworks;
 - (e) facilitate the monitoring of water use and water resources; and
 - (f) facilitate the imposition and recovery of charges.

Section 27: Considerations for issue of general authorisations and licences

(1) In issuing a general authorisation or licence a responsible authority must take into account all relevant factors, including -

- (a) existing lawful water uses;
- (b) the need to redress the results of past racial and gender discrimination;
- (c) efficient and beneficial use of water in the public interest;
- (d) the socio-economic impact - (i) of the water use or uses if authorised; or (ii) of the failure to authorise the water use or uses;
- (e) any catchment management strategy applicable to the relevant water resource;
- (f) the likely effect of the water use to be authorised on the water resource and on other water users;
- (g) the class and the resource quality objectives of the water resource; ...

Section 43: Compulsory licence applications

(1) If it is desirable that water use in respect of one or more water resources within a specific geographic area be licensed -

- (a) to achieve a fair allocation of water from a water resource ... - (i) which is under water stress; or (ii) when it is necessary to review prevailing water use to achieve equity in allocations;
- (b) to promote beneficial use of water in the public interest;
- (c) to facilitate efficient management of the water resource; or
- (d) to protect water resource quality, the responsible authority may issue a notice requiring persons to apply for licences for one or more types of water use ...

Section 56: Pricing strategy for water use charges

(1) The Minister may, with the concurrence of the Ministry of Finance, from time to time by notice in the *Gazette*, establish a pricing strategy for charges for any water use within the framework of existing relevant government policy...

(3) The pricing strategy may –

- (a) differentiate on an equitable basis between -
 - (i). different types of geographic areas;
 - (ii) different categories of water use; and
 - (iii) different water users; ...

(4) The pricing strategy may differentiate under subsection (3)(a) -

(a) in respect of different geographic areas, on the basis of -

- (i) socio-economic aspects within the area in question;
- (ii) the physical attributes of each area; and
- (iii) the demographic attributes of each area;

(b) in respect of different types of water uses, on the basis of -

- (i) the manner in which the water is taken, supplied, discharged or disposed of;
- (ii) whether the use is consumptive or non-consumptive;
- (iii) the assurance and reliability of supply and water quality;
- (iv) the effect of return flows on a water resource;
- (v) the extent of the benefit to be derived from the development of a new water resource;
- (vi) the class and resource quality objectives of the water resource in question; and
- (vii) the required quality of the water to be used; and

- (c) in respect of different water users, on the basis of -
 - (i) the extent of their water use;
 - (ii) the quantity of water returned by them to a water resource;
 - (iii) their economic circumstances; and
 - (iv) the statistical probability of the supply of water to them.

Section 61: Financial assistance by Minister

(1) The Minister may ... give financial assistance to any person for the purposes of this Act, including assistance for making licence applications, in the form of grants, loans or subsidies, which may be made subject to such conditions as the Minister may determine...

(3) Before giving any financial assistance, the Minister must take into account all relevant considerations, including

- (a) the need for equity;
- (b) the need for transparency;
- (c) the need for redressing the results of past racial and gender discrimination;
- (d) the purpose of the financial assistance;
- (e) the financial position of the recipient; and
- (f) the need for water resource protection...

Under Chapter 7 of the Act, the Minister may establish catchment management authorities to which water resource management may be delegated.

Section 81: Appointment of governing board of catchment management agency

(1) The members of a governing board of a catchment management agency must be appointed by the Minister who, in making such appointment, must do so with the object of achieving a balance among the interests of water users, potential water users, local and provincial government and environmental interest groups...

(10) After appointing members to the board the Minister may appoint additional members selected by the Minister in order to -

- (a) represent or reflect the interests identified by the advisory committee;
- (b) achieve sufficient gender representation;
- (c) achieve sufficient demographic representation;
- (d) achieve representation of the Department;
- (e) achieve representation of disadvantaged persons or communities which have been prejudiced by past racial and gender discrimination in relation to access to water; and
- (f) obtain the expertise necessary for the efficient exercise of the board's, powers and performance of its duties.

UNITED KINGDOM

Water Industry Act (1999)⁹³

Section 61: Disconnections for non-payment of charges

(1) Subject to the following provisions of this section, a water undertaker may disconnect a service pipe which for the purposes of providing a supply of water to any premises is connected with any water main of that undertaker, or may otherwise cut off a supply of water to any premises, if the occupier of the premises-

a) is liable (whether in his capacity as occupier or under any agreement with the undertaker) to pay charges due to the undertaker in respect of the supply of water to those premises; and

b) has failed to do so before the end of the period of seven days beginning with the day after he is served with notice requiring him to do so.

(1A) The power conferred by subsection (1) above is not exercisable in relation to premises specified in Schedule 4A.

Schedule 4A: Premises that are not to be disconnected for non-payment of charges

1. (1) Any dwelling which is occupied by a person as his only or principal home. ...

2. (1) Any house in multiple occupation which does not constitute a dwelling within the meaning of paragraph 1 above and in which any person has his only or principal home....

3. (1) Accommodation for the elderly in which a person has his only or principal home.

(2) In this paragraph “accommodation for the elderly” means residential accommodation to which sub-paragraph (3) or (4) below applies, but which is not a dwelling within the meaning of paragraph 1 above or a house in multiple occupation within the meaning of paragraph 2 above.

(3) This sub-paragraph applies to residential accommodation-

(a) which is particularly suitable, having regard to its location, size, design, heating systems and other features, for occupation by elderly persons,

(b) which it is the practice of the landlord to let for occupation by persons aged 60 or more, and

(c) where the services of a warden are provided.

(4) This sub-paragraph applies to any building or part of a building designed or adapted for use as residential accommodation for elderly persons.

4. A hospital ...

5. Premises used for the provision of medical services by a registered medical practitioner.

6. Premises used for the provision of dental services by a person who under the Dentists Act 1984 is permitted to practise dentistry ...

8. (1) A residential care home, nursing home or mental nursing home ...

9. - (1) A children’s home ...

10. A school ...

11. - (1) Premises used by an institution within the further education sector or an institution within the higher education sector for, or in connection with, the provision of education...

12. Premises used for the provision of day care for children by a person who is registered under section 71(1)(b) of the Children Act 1989 in respect of the premises.

13. - (1) A prison or detention centre....

⁹³ <http://www.hmso.gov.uk/acts/acts1999/19990009.htm#2> and <http://www.hmso.gov.uk/acts/en/99en09-b.htm>.

14. Premises occupied for the purposes of a police force.
15. Premises occupied for the purposes of a fire brigade
16. Premises occupied for the purposes of the provision of an ambulance service ...

Article 63A: Prohibition on the Use of Limiting Devices

(1) A water undertaker shall be guilty of an offence under this section if it uses a limiting device in relation to any premises specified in Schedule 4A to this Act, with the intention of enforcing payment of charges which are or may become due to the undertaker in respect of the supply of water to the premises.

(2) For the purposes of this section “a limiting device”, in relation to any premises, means any device or apparatus which-

- (a) is fitted to any pipe by which water is supplied to the premises or a part of the premises, whether that pipe belongs to the undertaker or to any other person, and
- (b) is designed to restrict the use which may be made of water supplied to the premises by the undertaker.

(3) An undertaker does not commit an offence under this section by disconnecting a service pipe to any premises or otherwise cutting off a supply of water to the premises.

(4) An undertaker guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Article 143A: Regulations as to Provisions to be included in charges schemes

(1) The provisions of any charges scheme under section 143 above must comply with any requirements prescribed by the Secretary of State by regulations.

(2) Without prejudice to the generality of subsection (1) above, regulations under this section may-

- a) prescribe items with respect to which a consumer is, or is not, to be liable to pay a charge; ...
- c) require alternative bases of charging to be made available to consumers; and
- d) require special provision, including exemption from specified charges, to be made for the purpose of assisting individuals who are or would be liable to pay any charges and who fall within any class of individuals appearing to the Secretary of State to require special provision.

(3) Regulations under this section imposing requirements for the purpose mentioned in subsection (2)(d) may-

- a) prescribe the classes of persons for whom special provision is to be made in relation to any premises by reference to matters such as age, ill-health or disability, the age, ill-health or disability of any of their dependants or of any other persons who have their homes in the premises, or their financial circumstances;
- b) make provision as to the method by which a person may establish his entitlement to assistance under the regulations; and
- c) make provision as to responsibility for costs incurred for the purpose of establishing that entitlement.

(4) The power to make regulations under this section may not be exercised for the purpose of limiting the total revenues of relevant undertakers from charges fixed by or in accordance with charges schemes.

VENEZUELA

Organic Law on the provision of potable water and sanitation services (2001)⁹⁴

Under the title ‘Subsidies Regime’ the Law dictates a broad system of principles and guidelines that should be implemented by the subsidies regulations. The law requires that regulations on subsidies should follow a number of general principles, which include, among others, to finance minimum necessary consumption for an average family,⁹⁵ and be focused on low-income families (Article 95).

The law further regulates different kinds of subsidies that could be granted, such as *direct or demand* subsidies, *offer* subsidies and *cross* subsidies (Articles 96 to 102).

Direct or demand subsidies are subsidies for the payment of the respective tariffs that are granted in favour of low payment capacity subscribers. The bill of each subscriber will expressly indicate the amount received as subsidy (Article 97). Offer subsidies are designed to totally or partially finance those investments envisaged by the service provider companies in their respective investments plans (Article 100). Cross-subsidies set a tariff at a price higher than that of the cost of the providing efficient services in order to contribute to financing costs of basic consumption of subscribers with a lower capacity to pay (Article 102).

The Law creates a public financing assistance fund for the promotion of investment in the water and sanitation sector. The law states that better financing conditions would be awarded to finance the expansion of water services provision to rural areas and informal settlements.

94 Ley Orgánica para la Prestación de los Servicios de Agua Potable y de Saneamiento, Fecha de la Sanción : 20/11/2001, <http://www.asambleanacional.gov.ve/ns2/leyes.asp?id=206>.

95 The law states that the regulations will define the term ‘minimum necessary consumption.’

6

DECISIONS & COMMENTS OF INTERNATIONAL BODIES

Human rights treaty monitoring bodies, made up of independent experts, have provided legal interpretations of the right to water in international and regional treaties. General Comments by UN treaty body committees are authoritative interpretations or elaborations on specific rights enumerated in an international treaty.⁹⁶ Such bodies monitor each State party's performance under a specified treaty at regular intervals and release concluding observations on the extent to which States have complied with their obligations over the regular reporting cycle. Where an individual complaints mechanism is available, international bodies can provide their views on whether a treaty has been infringed in response to an individual complaint.⁹⁷ The legal value of these documents is addressed in Section 3 (under Status of Various International Instruments).

Section 6.1 reproduces General Comment No. 15 on the Right to Water by the UN Committee on Economic, Social and Cultural Rights. Section 6.2 lists other General Comments by UN human rights treaty bodies that have referred to the right of all to safe drinking water. Section 6.3 lists the decisions of UN treaty bodies on individual country situations relating to the right to water. Section 6.4 includes decisions of regional treaty bodies on individual complaints relevant to the right to water.

6.1 GENERAL COMMENT NO 15 ON RIGHT TO WATER

UN Committee on Economic, Social and Cultural Rights:

General Comment No.15 on Right to Water⁹⁸

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

⁹⁶ For example, the Committee on Economic, Social and Cultural Rights sought the authorisation of the United Nations Economic and Social Council (one of primary UN Organs made up of member States), to develop General Comments, and received encouragement from the Council to "continue using that mechanism to develop a fuller appreciation of the obligations of State Parties under the Covenant." Economic and Social Council Resolution 1990/45, para. 10, quoted in Philip Alston, "The Committee on Economic, Social and Cultural Rights in Philip Alston, ed. *The United Nations and Human Rights* (Clarendon Press, Oxford, 1992), 473-508 at 494.

⁹⁷ Where domestic systems for redress have been exhausted, complaints can be made against States that have ratified the necessary Optional Protocol allowing individual complaints. Such mechanisms exist under the International Covenant on Civil and Political Rights, the Convention Against Torture, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Elimination of Racial Discrimination. Further information is available at the web-site of the High Commissioner for Human Rights (www.unhchr.ch) under the title 'Communications/Complaints Procedures' <http://www.unhchr.ch/html/menu2/complain.htm>. Regional complaint mechanisms are addressed at Section 6.4 below.

⁹⁸ This document is available on the web-site of the High Commissioner for Human Rights <http://www.unhchr.ch/html/menu2/6/gc15.doc>. Footnotes 86* to 114* are in the original General Comment.

water.⁹⁹ 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 1, (see General Comment No. 6 (1995)).¹⁰⁰ The right to water is also inextricably related to the right to the highest attainable standard of health (art. 12, para. 1)¹⁰¹ and the rights to adequate housing and adequate food (art. 11, para. 1).¹⁰² 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.¹⁰³ For instance, Article 14, paragraph 2, of the Convention on the Elimination of All Forms of Discrimination Against Women stipulates that States parties shall ensure to women the right to “enjoy adequate living conditions, particularly in relation to [...] water supply”. Article 24, paragraph 2, of the

99 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.

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

101 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.

102 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.

103 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.

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.¹⁰⁴

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)).¹⁰⁵ 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.¹⁰⁶

8. Environmental hygiene, as an aspect of the right to health under article 12, paragraph 2 (b), of the Covenant, encompasses taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions.¹⁰⁷ 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.¹⁰⁸

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.

¹⁰⁴ See also World Summit on Sustainable Development, Plan of Implementation 2002, paragraph 25 (c).

¹⁰⁵ This relates to both *availability* and to *accessibility* of the right to adequate food (see General Comment No. 12 (1999), paras. 12 and 13).

¹⁰⁶ 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”..

¹⁰⁷ See also para. 15, General Comment No. 14.

¹⁰⁸ 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.

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.¹⁰⁹

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:

(a) Availability. The water supply for each person must be sufficient and continuous for personal and domestic uses.¹¹⁰ These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.¹¹¹ The quantity of water available for each person should correspond to World Health Organization (WHO) guidelines.¹¹² 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.¹¹³ 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.¹¹⁴ All water facilities and services must be of sufficient quality, culturally appropriate and sensitive to gender, life-cycle and privacy requirements. Physical security should not be threatened during access to water facilities and services;

¹⁰⁹ 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.

¹¹⁰ "Continuous" means that the regularity of the water supply is sufficient for personal and domestic uses.

¹¹¹ 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.

¹¹² 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.

¹¹³ 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."

¹¹⁴ 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.

(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.¹¹⁵

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.

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;

¹¹⁵ See para. 48 of this General Comment.

- (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;¹¹⁶
- (h) Groups facing difficulties with physical access to water, such as older persons,[dz1] persons with disabilities, victims of natural disasters, persons living in disaster-prone areas, and those living in arid and semi-arid areas, or on small islands are provided with safe and sufficient water.

III. STATES PARTIES' OBLIGATIONS

General legal obligations

17. While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect. States parties have immediate obligations in relation to the 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.¹¹⁷ 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.

¹¹⁶ See arts. 20, 26, 29 and 46 of the third Geneva Convention of 12 August 1949; arts. 85, 89 and 127 of the fourth Geneva Convention of 12 August 1949; arts. 15 and 20, para. 2, United Nations Standard Minimum Rules for the Treatment of Prisoners, in *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.88.XIV.1).

¹¹⁷ See General Comment No. 3 (1990), para. 9.

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 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.¹¹⁸ 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.¹¹⁹

(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 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.

¹¹⁸ 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) at p.226, para. 25.

¹¹⁹ See arts. 54 and 56, Additional Protocol I to the Geneva Conventions (1977), art. 54, Additional Protocol II (1977), arts. 20 and 46 of the third Geneva Convention of 12 August 1949, and common article 3 of the Geneva Conventions of 12 August 1949.

26. The obligation to 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.¹²⁰ Such strategies and programmes may include: (a) reducing depletion of water resources through unsustainable extraction, diversion and damming; (b) reducing and eliminating contamination of watersheds and water-related eco-systems by substances such as radiation, harmful chemicals and human excreta; (c) monitoring water reserves; (d) ensuring that proposed developments do not interfere with access to adequate water; (e) assessing the impacts of actions that may impinge upon water availability and natural-ecosystems watersheds, such as climate changes, desertification and increased soil salinity, deforestation and loss of biodiversity;¹²¹ (f) increasing the efficient use of water by end-users; (g) reducing water wastage in its distribution; (h) response mechanisms for emergency situations; (i) and establishing competent institutions and appropriate institutional arrangements to carry out the strategies and programmes.

29. Ensuring that everyone has access to adequate sanitation is not only fundamental for human dignity and privacy, but is one of the principal mechanisms for protecting the quality of drinking water supplies and resources.¹²² 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

¹²⁰ 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.

¹²¹ See the Convention on Biological Diversity, the Convention to Combat Desertification, the United Nations Framework Convention on Climate Change, and subsequent protocols.

¹²² 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.”

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.¹²³

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.¹²⁴ Water should never be used as an instrument of political and economic pressure. In this regard, the Committee recalls its position, stated in its General Comment No. 8 (1997), on the relationship between economic sanctions and respect for economic, social and cultural rights.

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

¹²³ 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.

¹²⁴ 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.

- (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 liv-

ing 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.¹²⁵ This includes, inter alia: (i) failure to enact or enforce laws to prevent the contamination and inequitable extraction of water; (ii) failure to effectively regulate and control water services providers; (iv) failure to protect water distribution systems (e.g., piped networks and wells) from interference, damage and destruction; and

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

¹²⁵ See para. 23 for a definition of "third parties".

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.¹²⁶ 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).¹²⁷ The Committee notes that the right has been constitutionally entrenched by a number of States and has been subject to litigation before national courts. All victims of violations of the right to water should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition. National ombudsmen, human rights commissions, and similar institutions should be permitted to address violations of the right.

¹²⁶ 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.

¹²⁷ 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".

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. 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.

6.2 OTHER COMMENTS OF UNITED NATIONS COMMITTEES

A. Additional General Comments of UN Committee on Economic, Social & Cultural Rights

General Comment No.4 - Right to Adequate Housing¹²⁸

8 ... “(b) *Availability of services, materials, facilities and infrastructure.* An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services”

General Comment No. 5 - Persons with disabilities¹²⁹

1. The central importance of the International Covenant on Economic, Social and Cultural Rights in relation to the human rights of persons with disabilities has frequently been underlined by the international community. Thus a 1992 review by the Secretary-General of the implementation of the World Programme of Action concerning Disabled Persons and the United Nations Decade of Disabled Persons concluded that “disability is closely linked to economic and social factors” and that “conditions of living in large parts of the world are so desperate that the provision of basic needs for all - food, *water*, shelter, health protection and education - must form the cornerstone of national programmes.” Even in countries which have a relatively high standard of living, persons with disabilities are very often denied the opportunity to enjoy the full range of economic, social and cultural rights recognized in the Covenant.

General Comment No. 6 - The economic, social and cultural rights of older persons¹³⁰

4. In 1982 the World Assembly on Ageing adopted the Vienna International Plan of Action on Ageing. This important document was endorsed by the General Assembly and is a very useful guide, for it details the measures that should be taken by Member States to safeguard the rights of older persons within the context of the rights proclaimed by the International Covenants on Human Rights. It contains 62 recommendations, many of which are of direct relevance to the Covenant.

5. In 1991 the General Assembly adopted the United Nations Principles for Older Persons which, because of their programmatic nature, is also an important document in the present context. 3/ It is divided into five sections which correlate closely to the rights recognized in the Covenant. “Independence” includes access to adequate food, water, shelter, clothing and health care. To these basic rights are added the opportunity to remunerated work and access to education and training.

32. Of the United Nations Principles for Older Persons, principle 1, which stands at the beginning of the section relating to the independence of older persons, provides that: “Older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help”. The Committee attaches great importance to this principle, which demands for older persons the rights contained in article 11 of the Covenant.

¹²⁸ The Right to Adequate Housing: 13/12/91. CESCR General Comment 4, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/469f4d91a9378221c12563ed0053547e?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e?Opendocument).

¹²⁹ Persons with disabilities: 09/12/94. CESCR General comment 5, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/482a0aced8049067c12563ed005acf9e?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/482a0aced8049067c12563ed005acf9e?Opendocument).

¹³⁰ The economic, social and cultural rights of older persons: 08/12/95. CESCR General comment 6, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/482a0aced8049067c12563ed005acf9e?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/482a0aced8049067c12563ed005acf9e?Opendocument).

General Comment No.8 - Economic Sanctions¹³¹

3 ... While the impact of sanctions varies from one case to another, the Committee is aware that they almost have a dramatic impact on the rights recognized in the Covenant. Thus, for example, they often cause significant disruption in the distribution of food, pharmaceuticals and sanitation supplies, jeopardise the quality of food and the availability of clean drinking water, severely interfere with the functioning of basic health and education systems, and undermine the right to work.

5. ... Moreover, the exemptions [in sanctions regimes] are very limited in scope. They do not address, for example, the question of access to primary education, nor do they provide for repairs to infrastructures which are essential to provide clean water, adequate health care etc.

12. ... these rights must be taken fully into account when designing an appropriate sanctions regime ...

General Comment No. 13 - Right to Education¹³²

6(a) ... [F]unctioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State Party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, *sanitation facilities for both sexes, safe drinking water*, trained teachers receiving domestically competitive salaries, teaching materials, and so on ...

General Comment No. 14 - The right to the highest attainable standard of health¹³³

11. The Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.

12(a) Availability - functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party. The precise nature of the facilities, goods and services will vary depending on numerous factors, including the State party's development level. They will include, however, the underlying determinants of health, such as *safe and potable drinking water* and *adequate sanitation facilities*, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the WHO Action Programme on Essential Drugs.

12(b) ... [H]ealth facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS. Accessibility also implies that medical services and underlying determinants of health, such as *safe and potable water* and *adequate sanitation facilities*, are within safe physical reach, including in rural areas ...

¹³¹ *The Relationship between economic sanctions and respect for economic, social and cultural rights*: 12/12/97. CESCR General Comment 8, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/974080d2db3ec66d802565c5003b2f57?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/974080d2db3ec66d802565c5003b2f57?Opendocument).

¹³² *The right to education*: 09/12/99. CESCR General Comment 13, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/ae1a0b126d068e868025683c003c8b3b?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/ae1a0b126d068e868025683c003c8b3b?Opendocument).

¹³³ *The right to the highest attainable standard of health*: 11/09/2000. CESCR General Comment 14, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/40d009901358boe2c125691500509obe?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/40d009901358boe2c125691500509obe?Opendocument).

12(d) Quality. As well as being culturally acceptable, health facilities, goods and services must also be scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.

15. The improvement of all aspects of environmental and industrial hygiene” (art. 12.2(b)) comprises, *inter alia*, preventive measures in respect of occupational accidents and diseases; the requirement to ensure an adequate supply of safe and *potable water* and *basic sanitation*; the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact on human health.

34. In particular, States are under the obligation to respect the right to health ... States should also refrain from unlawfully polluting air, water and soil, e.g. through industrial waste from State-owned facilities, from using or testing nuclear, biological or chemical weapons if such testing results in the release of substances harmful to human health, and from limiting access to health services as a punitive measure, e.g. during armed conflicts in violation of international humanitarian law.

36. The obligation to *fulfil* requires States Parties, *inter alia*, to give sufficient recognition to the right to health in the national political and legal systems, preferably by way of legislative implementation and to adopt a national health policy with a detailed plan for realizing the right to health. States must ensure provision of health care, including immunization programmes against the major infectious diseases, and ensure equal access for all to the underlying determinants of health, such as nutritiously safe food and potable drinking water, basic sanitation and adequate housing and living conditions..... States are also required to adopt measures against environmental and occupational health hazards and against any other threat as demonstrated by epidemiological data. For this purpose they should formulate and implement national policies aimed at reducing and eliminating pollution of air, water and soil, including pollution by heavy metals such as lead from gasoline.

40. States parties have a joint and individual responsibility, in accordance with the Charter of the United Nations and relevant resolutions of the United Nations General Assembly and of the World Health Assembly, to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons. Each State should contribute to this task to the maximum of its capacities. Priority in the provision of international medical aid, distribution and management of resources, such as safe and potable water, food and medical supplies, and financial aid should be given to the most vulnerable or marginalized groups of the population. Moreover, given that some diseases are easily transmissible beyond the frontiers of a State, the international community has a collective responsibility to address this problem. The economically developed States parties have a special responsibility and interest to assist the poorer developing States in this regard.

43. Accordingly, in the Committee’s view, these core obligations include at least the following obligations: ... (c) To ensure access to basic shelter, housing and *sanitation*, and *an adequate supply of safe and potable water...*

51. 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 health by third parties. This category includes such omissions as the ... failure to enact or enforce laws to prevent the pollution of water, air and soil by extractive and manufacturing industries.

B. UN Human Rights Committee

General Comment 6 - Right to Life¹³⁴

5. Moreover, the Committee has noted that the right to life has been too often narrowly interpreted. The expression “inherent right to life” cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.

6.3 DECISIONS OF INTERNATIONAL COURTS AND COMMITTEES

This section lists excerpts of Concluding Observations relevant to the right to water adopted by the UN Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Elimination of Racial Discrimination (CERD). The Concluding Observations are adopted following a review of each country’s report under, respectively the *International Covenant on Economic, Social and Cultural Rights* and the *International Convention on the Elimination of All Forms of Racial Discrimination*.¹³⁵

The Concluding Observations shed light on some of the key concerns that the CESCR has expressed regarding the realisation of the right to water. These include, in particular, imbalances in the supply of water between urban and rural areas and between indigenous and non-indigenous peoples, State failure to especially ensure the supply of water for vulnerable groups such as children, neglect of deprived urban areas, restrictions on the ability of persons living under occupation to have access to water, as well as cases where large segments of the population remain without safe drinking water. State actions that have been commended by the CESCR, such as the inclusion of squatter communities in a State’s water supply systems.

A. United Nations Committee on Economic, Social and Cultural Rights: Concluding Observations

1. Azerbaijan 1997

23. The Committee expresses its alarm over the prolonged decline in the standards of living. This is evident in the rising level of poverty, the large proportion of the population living without safe drinking water, the lack of affordable housing, the decline in agricultural production due to the inefficiencies of the *privatization* process of State farms and the consequent inadequacies in food production and distribution, the declining quality of medical care and the declining number of persons receiving medical care. The Committee seeks information on measures being taken or envisaged for the protection of vulnerable groups, including children who do not have a family, single parents, and unemployed persons.

37. The Committee recommends that the Government address as a matter of utmost urgency the basic needs of the population, including safe drinking *water*, food, affordable housing and health care. The Committee requests detailed information on measures being taken or envisaged for the protection of vulnerable groups, including especially children who do not have a family, single parents, the unemployed, and women who are victims of crimes of violence.

¹³³ The right to life: 30/04/82. CCPR General Comment 6, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/84ab9690ccd81fc7c12563ed0046fae3?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/84ab9690ccd81fc7c12563ed0046fae3?Opendocument).

¹³⁴ The use that may be made of Concluding Observations is further addressed in Section 3.

Concluding observations of the Committee on Economic, Social and Cultural Rights: Azerbaijan. 22/12/97. E/C.12/1/Add.20.

2. Bolivia 2001

13. The Committee is deeply concerned about the extent of poverty in Bolivia. According to UNDP figures, 88.8 per cent of all households in Bolivia have an income below the poverty line. Moreover, 90 per cent of these households are in rural areas. This situation is reflected in indicators such as infant mortality, life expectancy, literacy, and access to sanitation, potable *water* and health-care services. In this regard, the Committee deplores the highly uneven distribution of wealth in Bolivia.

Concluding Observations of the Committee on Economic, Social and Cultural Rights: Bolivia. 21/05/2001. E/C.12/1/Add.60

3. Cameroon 1999

22. The Committee regrets the lack of access to potable water for large sectors of society, especially in rural areas where only 27 per cent of the population have access to safe water (within reasonable reach), while 47 per cent of the urban population have such access.

40. The Committee calls upon the State party to make safe drinking water accessible to the entire population.

Concluding Observations of the Committee on Economic, Social and Cultural Rights: Cameroon. 08/12/99. E/C.12/1/Add.40.

4. Canada 1998

17. The Committee is greatly concerned at the gross disparity between Aboriginal people and the majority of Canadians with respect to the enjoyment of Covenant rights. There has been little or no progress in the alleviation of social and economic deprivation among Aboriginal people. In particular, the Committee is deeply concerned at the shortage of adequate housing, the endemic mass unemployment and the high rate of suicide, especially among youth, in the Aboriginal communities. Another concern is the failure to provide safe and adequate drinking *water* to Aboriginal communities on reserves. The delegation of the State Party conceded that almost a quarter of Aboriginal household dwellings required major repairs and lacked basic amenities.

Concluding observations of the Committee on Economic, Social and Cultural Rights: Canada. 10/12/98. E/C.12/1/Add.31.

5. China (Hong Kong) 2001

6. The Committee commends HKSAR for its efforts to provide adequate housing for Hong Kong residents. In particular, the Committee notes with appreciation that:

(a) The old temporary housing accommodations have been demolished and their occupants adequately housed in interim housing while waiting to be permanently housed;

(b) The Government provides interim housing for evicted squatters, victims of domestic violence and families separated by divorce; and

(c) Self-built structures in squatter communities erected before 1982, and therefore protected by the relevant housing policy, have been provided in most cases with basic services including *water*, sanitation and access to roads, with a view to improving the living conditions of the residents.

Concluding observations of the Committee on Economic, Social and Cultural Rights (Hong Kong): China. 21/05/2001. E/C.12/1/Add.58

6. Colombia 1995

200. The Committee also considers that the Colombian Government should:

(a) improve the training of “community mothers” and regularize their work situation, treating them for all purposes as workers in the employ of a third party;

(b) combat the practice of non-utilization of budget items earmarked for social expenditure in the State’s overall budget and ensure that such appropriations are used for the purposes for which they were budgeted;

(c) improve the supply of housing, especially low-cost housing for the benefit of the poorest sectors, in urban areas and also in rural areas, and allocate resources to provide the entire population with drinking-*water* and *sewerage* services.

Concluding observations of the Committee on Economic, Social and Cultural Rights: Colombia. 12/12/96. E/C.12/1995/12; E/1996/12.

7. Congo 2000

15. The Committee notes with appreciation that at the request of the Government, specialized agencies such as the Food and Agriculture Organization of the United Nations (FAO), the International Labour Organization (ILO), the World Health Organization (WHO), the World Bank and the International Monetary Fund (IMF), as well as the Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Development Programme (UNDP), are assisting the Republic of the Congo in addressing its innumerable problems, as follows:

(a) In 1998, the IMF decided to provide the Congo with a special post-conflict recovery credit of US\$ 10 million; the IMF also indicated that health, education and social spending were at the top of the expenditure priority list;

(b) WHO has undertaken a number of humanitarian activities relating, *inter alia*, to the following: emergency epidemiological surveillance in the 21 areas with internally displaced persons in Brazzaville; technical support for *water* and sanitation and for the provision of essential medicines; and technical support for and provision of safe blood supplies;

(c) FAO is presently carrying out four operational projects in the Congo, of which three are technical cooperation programmes funded by FAO, relating to the provision of urgent agricultural inputs, rehabilitation of agricultural statistical systems and supporting legislation on the fauna. The fourth project is concerned with the provision of urgent agricultural inputs and support for coordination, funded by the Government of Sweden.

21. The Committee expresses its grave concern regarding the decline of the standard of health in the Congo. The AIDS epidemic is taking a heavy toll on the country, while the ongoing financial crisis has resulted in a serious shortage of funds for public health services, and for improving the water and sanitation infrastructure in urban

areas. The war has caused serious damage to health facilities in Brazzaville. According to a joint study by WHO and UNAIDS, some 100,000 Congolese, including over 5,000 children, were affected by HIV at the beginning of 1997. More than 80,000 people are thought to have died from AIDS, with 11,000 deaths reported in 1997 alone. Some 45,000 children are said to have lost either their mother or both parents as a result of the epidemic.

Concluding observations of the Committee on Economic, Social and Cultural Rights: Congo 23/05/2000. E/C.12/1/Add.45.

8. Dominican Republic 1994

11. It therefore expresses its serious concern at the nature and magnitude of the problems relating to forced evictions and calls upon the Government of the Dominican Republic to take urgent measures to promote full respect for the right to adequate housing. In this regard, the Committee notes that whenever an inhabited dwelling is either demolished or its inhabitants evicted, the Government is under an obligation to ensure that adequate alternative housing is provided. In this context “adequacy” requires relocation within a reasonable distance from the original site, and in a setting which has access to essential services such as water, electricity, drainage and garbage removal. Similarly, persons who are housed in conditions which threaten their life and health should, to the maximum of available resources, be adequately rehoused.

24. In order to achieve progressively the right to housing, the Government is requested to undertake, to the maximum of available resources, the provision of basic services (*water*, electricity, drainage, sanitation, refuse disposal, etc.) to dwellings and ensure that public housing is provided to those groups of society with the greatest need. It should also seek to ensure that such measures are undertaken with full respect for the law.

Concluding observations of the Committee on Economic, Social and Cultural Rights: Dominican Republic. 19/12/94. E/C.12/1994/15.

9. Dominican Republic 1996

24. The Committee expresses its concern about the issue of limited access to safe drinking *water* for the rural population and those living in deprived urban areas, the higher incidence of infant mortality in certain socio-economic groups, the deplorable situation of persons with disabilities, the prevalence of endemic diseases, the problem of the inadequacy of social welfare and security, the persisting housing shortage and the inadequacy of access to health care.

Concluding observations of the Committee on Economic, Social and Cultural Rights: Dominican Republic. 06/12/96. E/C.12/1/Add.6

10. Dominican Republic 1997

23. Although the Committee welcomes the drafting of a plan by the National Council for Urban Affairs to ensure access to safe drinking *water*, it notes that this plan is limited to urban areas and that much remains to be done in order to ensure such access for the rural population and for all those living in deprived urban areas. In this regard, the Committee recalls the concerns it expressed in the past (E/C.12/1/Add.6, para. 24).

35. The Committee also urges the Government to adopt positive measures to improve the living conditions in the *bateyes*. To this end, the Committee recommends that the legal status of the *bateyes* be modified and their relationships with municipalities be improved, and that sugar cane companies be required to provide inhabitants of the *bateyes* with basic facilities, such as water and electricity, and with health and social services.

40. The Committee calls on the Government to pursue and intensify its efforts to ensure that safe drinking *water* is made available to the rural population and all those living in deprived urban areas.

Concluding observations of the Committee on Economic, Social and Cultural Rights: Dominican Republic. 12/12/97. E/C.12/1/Add.16.

11. El Salvador 1996

33. The Committee recommends that the construction of low-income housing for the poorest sectors of Salvadoran society be intensified in urban and in rural areas and that a greater effort be made to provide sanitation and drinking *water* supplies for the entire population.

Concluding observations of the Committee on Economic, Social and Cultural Rights: El Salvador. 28/05/96. E/C.12/1/Add.4

12. Guatemala 1996

21. The Committee expresses its concern about the issue of low access to safe *water* for the rural population, the higher incidence of infant mortality within certain socio-economic groups, the situation of persons with disabilities, the prevalence of endemic diseases, the problem of the inadequacy of social welfare and security, the persisting housing shortage and the inadequacy of access to health care. The Committee is of the view that this general situation, affecting the most vulnerable in Guatemalan society, deprives them of their full enjoyment of the economic, social and cultural rights provided for in the Covenant.

Concluding observations of the Committee on Economic, Social and Cultural Rights: Guatemala. 28/05/96. E/C.12/1/Add.3

13. Guinea 1996

21. Regarding the right to health proclaimed in article 12, the Committee refers to the information provided by The Economist Intelligence Unit in 1994-1995, and notes that only 13 per cent of the population have access to medical services. Furthermore, only 55 per cent have access to drinking *water*, a situation that is made even worse by onchocercosis, or “river blindness”. The Guinean life expectancy of 45 years is one of the lowest in Africa. The Committee notes that women and children are particularly affected by the precarious health situation.

Review of the implementation of CESCR: Guinea. 28/05/96. E/C.12/1/Add.5

14. Iraq 1997

21. The Committee notes with concern that, according to a survey conducted in 1995 by government agencies with the support of UNICEF, 50 per cent of the rural population in the central/southern part of Iraq had no access to potable water supplies. This figure increases to 90 per cent in the southern governorate of Thigar. In this respect, the Committee stresses that this situation does not conform with the provisions of article 11 of the Covenant on the right of the population to an adequate standard of living.

22. With respect to article 12 of the Covenant, the Committee notes with concern that, with the destruction of parts of the infrastructure in Iraq, the non-availability of safe drinking *water* has led to widespread contaminated *water* and related health problems, such as *water*-borne and diarrhoeal diseases and cholera. The Committee also notes with concern that, due to food shortages and the resulting restrictions on its distribution, and to the non-availability of certain medicines, medical equipment and other articles of personal hygiene in Iraq, the stan-

standard of physical health of the Iraqi population is declining at a rapid pace. It notes in particular that certain diseases, previously eradicated from Iraq, have reappeared, such as typhoid, infantile paralysis, tetanus, viral hepatitis, Giarda, German measles, kala-azar, undulant fever, haemorrhagic fever, croup, whooping cough, rickets, scabies, hydrocysts and rabies.

36. The Committee recommends that every effort be made by the Government to ensure, through the development of adequate infrastructure in all parts of the country, access to potable water by the population as a whole, especially in the rural areas.

Concluding observations of the Committee on Economic, Social and Cultural Rights: Iraq. 12/12/97. E/C.12/1/Add.17

15. Israel 2001

13. The Committee expresses its deep concern about the State party's continuing gross violations of economic, social and cultural rights in the occupied territories, especially the severe measures adopted by the State party to restrict the movement of civilians between points within and outside the occupied territories, severing their access to food, *water*, health care, education and work. The Committee is particularly concerned that on frequent occasions, the State party's closure policy has prevented civilians from reaching medical services and that emergency situations have ended at times in death at checkpoints. The Committee is alarmed over reports that the Israeli security forces have turned back supply missions of the International Committee of the Red Cross and the United Nations Relief and Works Agency for Palestine Refugees in the Near East attempting to deliver food, *water* and medical relief to affected areas.

Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel. 31/08/2001. E/C.12/1/Add.69

16. Kyrgyzstan 2000

21. The Committee is concerned that the right to adequate housing is hampered in Kyrgyzstan by the decrease in housing construction, the lack of living space for rural migrants arriving in cities, and the insufficient provision of sanitation and potable *water*.

Concluding Observations of the Committee on Economic, Social and Cultural Rights: Kyrgyzstan. 01/09/2000. E/C.12/1/Add.49

17. Mali 1994

13. Regarding the right to health enshrined in Article 12 of the Covenant, the Committee is concerned that child, infant and maternal mortality rates in Mali are still among the highest in the world. Thus, almost one in five children under the age of five dies each year. Approximately 1,000 deliveries per 100,000 births result in the death of the mother. Diarrhoea, malaria and acute respiratory infections, aggravated by malnutrition, alone account for more than 40 per cent of deaths. AIDS is spreading rapidly. With regard to *water* and sanitation, the average rate of access to water country-wide is about 50 per cent, but as low as 4 per cent in the difficult terrain of the north of the country. The overall rate of access to sanitation facilities is estimated at approximately 15 per cent. The geographical distribution of health services and personnel continues to show a heavy urban bias.

Review of the implementation of CESCR: Mali. 21/12/94. E/C.12/1994/17

18. Mexico 1994

9. The Committee is also concerned at the fact that a large segment of the population of Mexico have to endure inadequate living and housing conditions, without access to basic services such as sewage and potable *water*.

Concluding observations of the Committee on Economic, Social and Cultural Rights: Mexico. 05/01/94. E/C.12/1993/16

19. Mexico 1999

27. The Committee regrets the lack of a satisfactory response to its previous concluding observations, as well as to the written and oral questions put to the delegation, concerning forced evictions. The Committee to date has not received a satisfactory answer to its queries about the extent of the problem and the measures taken by the Government to protect all citizens against forced evictions. Moreover, the Committee remains concerned about the housing shortage and the unsatisfactory condition of a high percentage of the housing stock, especially in rural areas where a significant number of dwellings lack electricity, adequate sewage disposal and piped *water*.

Concluding Observations of the Committee on Economic, Social and Cultural Rights: Mexico. 08/12/99

20. Morocco 2000

26. The Committee is concerned about the disparities in the standard of living between rural and urban areas, insofar as the former have considerably less access to clean drinking *water*, sanitary facilities and electricity.

50. The Committee reiterates the recommendation it made in 1994 (E/C.12/1994/5, para. 18), which strongly encourages the State party to take measures to reduce the disparities that exist between the rural and urban areas, *inter alia*, by improving access to *water*, electricity and sanitary facilities in the rural areas.

Concluding Observations of the Committee on Economic, Social and Cultural Rights: Morocco. 01/12/2000. E/C.12/1/Add.55

21. Nepal 2001

27. The Committee notes with regret that 29 per cent of the population has no access to safe *water*, 90 per cent has no access to health services and 84 per cent has no access to sanitation.

60. The Committee recommends that the State party ensure that projects involving *privatization of water* supply provide for continued, assured and affordable access to water by local communities, indigenous people, and the most disadvantaged and marginalized groups of society.

Concluding Observations of the Committee on Economic, Social and Cultural Rights: Nepal. 24/09/2001. E/C.12/1/Add.66

22. Nigeria 1998

27. The Committee is appalled at the great number of homeless people and notes with concern the acute housing problem in Nigeria where decent housing is scarce and relatively expensive. The urban poor, especially women and children, are forced to live in make-shift cheap dumps or shelters in appalling and degrading conditions representing both physical and mental illnesses hazards. Safe treated pipe-borne water is available to about fifty percent of urban dwellers but only to 30 percent of rural inhabitants. By and large only 39 percent of Nigeria's population has adequate access to clean drinking *water*.

23. Panama 1995

25. The housing shortage is unanimously recognized, both by the Government and by non-governmental organizations and international agencies. According to sources, it stands at between 200,000 and 250,000 dwellings. For example, an article in the newspaper *La Prensa* of 14 October 1994 reports the need for 240,000 dwellings, 60 per cent of these in Panama City and Colón. The Ministry of Housing, for its part, estimates that, in 1993, there was a shortage of 195,244 dwellings, 48 per cent of that amount in the province of Panama.

26. The average number of occupants per dwelling is 4.4 for the entire territory and 24 per cent of dwellings have only one room. Conditions of habitability are often quite dramatic: 18.5 per cent of dwellings have dirt floors, 16.3 per cent have no drinking *water* and these figures are higher in the poorest provinces in the country (Bocas del Toro, Chiriquí, San Blas and Veraguas). Health services are lacking in 44 per cent of cases and electricity is also in short supply. In many districts, access roads are nearly impracticable and workplaces and schools are far away from dwellings.

36. A total of 1,250 hectares in the Pacific sector and 450 hectares in the Atlantic sector are thus to be removed from the public domain by 31 December 1999. IDB granted the Republic of Panama a loan of \$8.5 million to give ARI support for the preparation of studies for the improved use of resources which have been or are to be restored, for the preservation of the Canal basin and for the formulation of a metropolitan plan for the development of Panama City and Colón. The planning of zones which have been or are to be restored has the following three components:

The Canal, administered by the Canal Commission;

Property on the banks of the Canal, mainly military bases;

The *water* catchment system.

48. Within San Miguelito, which covers a very large area, there are some relatively comfortable housing zones and others which remain very precarious. This is the case with the Santa Librada community, which the mission visited. This community has a population of some 3,000, including 500 children, and is suffering from three main problems: the lack of drinking *water*, the lack of an access road to serve the dwellings and the lack of a school. The Government is considering a project, to be financed by an FES loan. But the essential problem, here as in many other communities, is that of the legalization of the ownership of the land. Great uncertainty exists concerning the price of the land. The Ministry of Housing informed the mission that titles of ownership would be issued this year. Loans are granted at an interest rate of 8 per cent, which is still very high in relation to the normal rate charged by banks (9 per cent).

55. In the first community, which has not been completed, there are about 300 families who have no title of ownership. They are encountering several problems: non-existence of titles of ownership, difficulties with water and electricity, the price of land.

58. The bombardments and the acts of destruction or arson that occurred in the days following the invasion affected about 20,000 persons. The most stricken district was that of El Chorrillo, where several blocks of apart-

ments were totally destroyed, as a result of which their inhabitants were forced to seek alternative accommodation, often at a great distance from their former dwelling. Other buildings suffered severe damage, which has not yet been repaired: leaking *water* pipes, malfunctioning lifts, the deteriorating condition of toilets and communal areas of buildings, etc.

Concluding observations: report on the technical assistance mission: Panama. 20/06/95. E/C.12/1995/8

24. Panama 2001

12. Notwithstanding the absence of legal discrimination and the rights granted to indigenous communities by the Constitution, the Committee is deeply concerned about the persisting disadvantage faced in practice by members of indigenous communities in Panama, and in particular about the marked disparities in the levels of poverty and literacy and access to *water*, employment, health, education and other basic social services. The Committee is also concerned that the issue of land rights of indigenous peoples has not been resolved in many cases and that their land rights are threatened by mining and cattle ranching activities which have been undertaken with the approval of the State party and have resulted in the displacement of indigenous peoples from their traditional ancestral and agricultural lands.

28. The Committee reiterates its recommendation encouraging the State party to consider ratifying the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). It urges the State party to pay particular attention to improving poverty and literacy rates and access to *water*, employment, health, education and other basic social services for indigenous peoples. The Committee recommends that the issue of land rights of indigenous peoples be fully resolved so as to avoid their coming under threat by mining and cattle ranching activities that result in their displacement from their traditional ancestral and agricultural lands.

Concluding Observations of the Committee on Economic, Social and Cultural Rights: Panama. 24/09/2001. E/C.12/1/Add.64

25. Russian Federation 1997

25. The Committee is alarmed at the extent of the environmental problems in the State party and that industrial leakage of harmful waste products is such a severe problem in some regions that they could be correctly declared as environmental disaster areas. It is also very concerned that there has been a curtailment of funds to modernize an out-of-date water delivery system which adversely affects the access of the population to clean *water*.

38. The Committee is of the view that the question of an acceptable and adequate food supply is also linked to questions relating to a seriously polluted environment and the lack of investment in infrastructure for the maintenance and improvement of the *water* supply. It recommends that the State party examine these linkages and take appropriate action to clean up the environment and prevent enterprises from engaging in further pollution, especially that which contaminates the food chain. The Committee also recommends that the maintenance and improvement of the *water* supply system be undertaken as a matter of priority. The Committee further recommends that vigorous action be taken against enterprises which have been found to have imported contaminated food.

Concluding observations of the Committee on Economic, Social and Cultural Rights: Russian Federation. 20/05/97. E/C.12/1/Add.13

26. Senegal 2001

55. The Committee calls upon the State party to make safe drinking *water* accessible to the entire population and to combat the problems of malnutrition, especially among children, hygiene and *water*-related diseases.

Concluding Observations of the Committee on Economic, Social and Cultural Rights: Senegal. 24/09/2001. E/C.12/1/Add.62

27. Solomon Islands 1999

22. The Committee notes that infant mortality remains a major cause of concern, in spite of the commendable health policies of the Government of Solomon Islands which have drastically decreased the mortality rate of children under the age of 5. According to a 1996 WHO publication, the infant mortality rate is estimated at 26.8 deaths per 1,000 live births, while, according to a 1997 UNDP and UNFPA joint report, the maternal mortality rate is as high as 550 deaths per 100,000 live births. The Committee is concerned about the low percentage of the population with access to adequate sanitation (only 9 per cent of the rural population) and to safe drinking *water* available in the home or within reasonable access (63 per cent of the entire population), as indicated in a 1996 WHO publication. The Committee recalls that the lack of adequate sanitation facilities directly adds to the severe malaria problem affecting more than one third of the population.

Review of the implementation of CESCR: Solomon Islands. 14/05/99. E/C.12/1/Add.33

28. Syrian Arab Republic 2001

6. The Committee welcomes the State party's efforts to address the acute problem of *water* shortage, as well as its efforts to enhance public awareness of this problem.

Concluding Observations of the Committee on Economic, Social and Cultural Rights: Syrian Arab Republic. 24/09/2001. E/C.12/1/Add.63

29. Tunisia

8. The Committee notes with satisfaction the efforts being made in the area of environmental protection, including in the framework of the Ninth Economic and Social Development Plan (1997-2001). It notes the increased budget for this purpose in the Ninth Plan which will be used, *inter alia*, for the development of equipment to combat pollution, for better management of waste, for the use of waste *water* in agricultural production and for combating desertification.

Concluding observations of the Committee on Economic, Social and Cultural Rights: Tunisia. 14/05/99. E/C.12/1/Add.36

30. Uruguay

12. The Committee also considers that it has not been given enough information on access to health, drinking *water*, care and education by minority groups living in Uruguay, as well as access by such groups to various types of employment, *inter alia* in the public service.

Concluding observations of the Committee on Economic, Social and Cultural Rights: Uruguay. 30/05/94. E/C.12/1994/3

B. United Nations Committee on the Elimination of Racial Discrimination: Concluding Observations

26. St Vincent & the Grenadines

24. The Committee also notes with concern that the cost of food and rent has risen considerably higher than the general consumer price index between 1990 and 1995 and that, according to information received, 10.8 per cent of all households derive their domestic *water* supply from springs, rivers, streams and other communal catchments.

Review of the implementation of CERD: Saint Vincent and the Grenadines. 02/12/97. E/C.12/1/Add.21.

6.4 DECISIONS OF REGIONAL COURTS AND BODIES

African Commission on Human and Peoples' Rights

*OMCT et al v. Zaïre, Communications 25/89, 47/90, 56/91 and 100/93*¹³⁵

4. Communication 100/93 is submitted by the Union Interafricaine des Droits de l'Homme and dated 20 March 1993. It makes allegations of torture, executions, arrests, detention, unfair trials, restrictions on freedom of association and freedom of the press. It also alleges that public finances were mismanaged: that the failure of the Government to provide *basic services* was degrading; that there was a shortage of medicine; that the universities and secondary schools had been closed for two years; that freedom of movement was violated; and that ethnic hatred was incited by the official media...

47. Article 16 of the African Charter states that every individual shall have the right to enjoy the best attainable state of physical and mental health, and that State Parties should take the necessary measures to protect the health of their people. The failure of the Government to provide basic services such as safe drinking *water* and electricity and the shortage of medicine as alleged in communication 100/93 constitutes a violation of Article 16.

*The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria, Communication 155/96*¹³⁶

2. The Communication alleges that the oil consortium has exploited oil reserves in Ogoniland with no regard for the health or environment of the local communities, disposing toxic wastes into the environment and local waterways in violation of applicable international environmental standards. The consortium also neglected and/or failed to maintain its facilities causing numerous avoidable spills in the proximity of villages. The resulting contamination of *water*, soil and air has had serious short and long-term health impacts, including skin infections, gastrointestinal and respiratory ailments, and increased risk of cancers, and neurological and reproductive problems...

4. The Communication alleges that the Government has neither monitored operations of the oil companies nor required safety measures that are standard procedure within the industry. The Government has withheld from Ogoni Communities information on the dangers created by oil activities. Ogoni Communities have not been involved in the decisions affecting the development of Ogoniland.

5. The Government has not required oil companies or its own agencies to produce basic health and environmental impact studies regarding hazardous operations and materials relating to oil production, despite the obvious health and environmental crisis in Ogoniland. The government has even refused to permit scientists and environ-

¹³⁵ Paras 4, 47, 48 (English Version)

¹³⁶ <http://www.cesr.org/text%20files/Final%20Decision%20on%20the%20ECOSOC%20matter.doc>.

mental organisations from entering Ogoniland to undertake such studies. The government has also ignored the concerns of Ogoni Communities regarding oil development, and has responded to protests with massive violence and executions of Ogoni leaders.

9. ... The government has participated in irresponsible oil development that has poisoned much of the soil and *water* upon which Ogoni farming and fishing depended... The destruction of farmlands, rivers, crops and animals has created malnutrition and starvation among certain Ogoni Communities...

The Commission accepted these claims on the basis that the State had not responded to the Commission request for a response to the complain, with the exception of a message from a new government that came to power that admitted to the atrocities carried out by the previous government (paras 40, 42).

44. Internationally accepted ideas of the various obligations engendered by human rights indicate that all rights—both civil and political rights and social and economic—generate at least four levels of duties for a State that undertakes to adhere to a rights regime, namely the duty to **respect, protect, promote, and fulfil these rights**. These obligations universally apply to all rights and entail a combination of negative and positive duties. As a human rights instrument, the African Charter is not alien to these concepts and the order in which they are dealt with here is chosen as a matter of convenience and in no way should it imply the priority accorded to them. Each layer of obligation is equally relevant to the rights in question.

52. The right to a general satisfactory environment, as guaranteed under Article 24 of the African Charter or the right to a healthy environment, as it is widely known, therefore imposes clear obligations upon a government. It requires the State to take reasonable and other measures to prevent pollution and ecological degradation, to promote *conservation*, and to secure an ecologically sustainable development and use of *natural resources* ... The right to enjoy the best attainable state of physical and mental health enunciated in Article 16(1) of the African Charter and the right to a general satisfactory environment favourable to development (Article 16(3)) already noted obligate governments to desist from directly threatening the health and environment of their citizens. The State is under an obligation to respect the just noted rights and this entails largely non-interventionist conduct from the State for example, not from carrying out, sponsoring or tolerating any practice, policy or legal measures violating the integrity of the individual.

53. Government compliance with the spirit of Articles 16 and 24 of the African Charter must also include ordering or at least permitting independent scientific monitoring of threatened environments, requiring and publicising environmental and social impact studies prior to any major industrial development, undertaking appropriate monitoring and providing information to those communities exposed to hazardous materials and activities and providing meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities.

54. Undoubtedly and admittedly, the government of Nigeria, through NNPC has the right to produce oil, the income from which will be used to fulfill the economic and social rights of Nigerians. But the care that should have been taken as outlined in the preceding paragraph and which would have protected the rights of the victims of the violations complained of was not taken. To exacerbate the situation, the security forces of the government engaged in conduct in violation of the rights of the Ogonis by attacking, burning and destroying several Ogoni villages and homes...

57. Governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetrated by private parties ... This duty calls for positive action on part of governments in fulfilling their obligation under human rights instruments.

66. The government's treatment of the Ogonis has violated all three minimum duties of the right to food. The government has destroyed food sources through its security forces and State Oil Company; has allowed private oil companies to destroy food sources; and, through terror, has created significant obstacles to Ogoni communities trying to feed themselves. The Nigerian government has again fallen short of what is expected of it as under the provisions of the African Charter and international human rights standards, and hence, is in violation of the right to food of the Ogonis.

68. ... International law and human rights must be responsive to African circumstances. Clearly, collective rights, environmental rights, and economic and social rights are essential elements of human rights in Africa. The African Commission will apply any of the diverse rights contained in the African Charter. It welcomes this opportunity to make clear that there is no right in the African Charter that cannot be made effective...

69. For the above reasons, the Commission,

Finds the Federal Republic of Nigeria in violation of Articles 2, 4, 14, 16, 18(1), 21 and 24 of the African Charter on Human and Peoples' Rights;

Appeals to the government of the Federal Republic of Nigeria to ensure protection of the *environment, health* and livelihood of the people of Ogoniland by:

- Stopping all attacks on Ogoni communities and leaders by the Rivers State Internal Securities Task Force and permitting citizens and independent investigators free access to the territory;
Conducting an investigation into the human rights violations described above and prosecuting officials of the security forces, NNPC and relevant agencies involved in human rights violations;
- Ensuring adequate compensation to victims of the human rights violations, including relief and resettlement assistance to victims of government sponsored raids, and undertaking a comprehensive cleanup of lands and rivers damaged by oil operations;
- Ensuring that appropriate environmental and social impact assessments are prepared for any future oil development and that the safe operation of any further oil development is guaranteed through effective and independent oversight bodies for the petroleum industry; and
- Providing information on health and environmental risks and meaningful access to regulatory and decision-making bodies to communities likely to be affected by oil operations.

Urges the government of the Federal Republic of Nigeria to keep the African Commission informed of the outcome of the work of -:

- The Federal Ministry of Environment which was established to address environmental and environment related issues prevalent in Nigeria, and as a matter of priority, in the Niger Delta area including the Ogoni land;
- The Niger Delta Development Commission (NDDC) enacted into law to address the environmental and other social related problems in the Niger Delta area and other oil producing areas of Nigeria; and
- The Judicial Commission of Inquiry inaugurated to investigate the issues of human rights violations.

7

DECISIONS OF NATIONAL COURTS

National jurisprudence on the right to water is important in interpreting national constitutions, national legislative standards and international standards and applying them to concrete cases of deprivation or denial of access to water. As the standards in human rights treaties and national constitutions are general and set out principles rather than specific entitlements, the attitude of the courts may often be the defining factor in determining whether there is effective redress for those denied or deprived access to water.

The decisions below indicate that a diverse range of courts, including those from developed and developing countries and those operating within common and civil law systems, have held that there is a legally enforceable right of access to water. Thus, for example, courts in Argentina, Brazil and South Africa, reversed disconnections of water supplies. The *Menores Comunidad Paynemil and Valentina Norte Colony* cases from Argentina have required States to address pollution of drinking water sources. The Argentinean cases required the State to provide a set quantity of water per person daily as interim relief. In the Indian case of *F.K. Hussain v. Union of India*, the Court considered opposing views regarding the impact of a government agency's plans to dig wells on a set of islands on water quality. Under its jurisdiction to protect the right to life, the Court required that the agency's plans be referred to a competent Ministry for review.

The *Grootboom* case from South Africa addresses the obligations of States to progressively fulfil a socio-economic right. The Court describes the manner in which a State's policies may be reviewed by a Court on the basis their 'reasonableness,' and stated that these obligations apply to all socio-economic rights, including water. In *Grootboom*, the Court focused on whether the State's housing policy made provision for persons whose housing needs were the most desperate. The Indian Supreme Court case of *Municipal Council Ratlam v Vardhichand and others* also addressed the obligations of States to ensure adequate sanitation facilities.

In most cases, such judicial decisions will be implemented by the State, or at least have a strong influence on its policy making.¹³⁷ The decisions below may be persuasive for judges in other jurisdictions who may be concerned about their ability or mandate to address right to water issues.

ARGENTINA

Menores Comunidad Paynemil s/accion de amparo, Expte. 311-CA-1997. Sala II. Cámara de Apelaciones en lo Civil, Neuquen, 19 May, 1997.

This case related to an oil company's pollution of water utilised by an indigenous community, the Paynemil Mapuche Community in Neuquen, Argentina. The company, originally state-owned, had commenced operations in 1970, but had increased activities after being privatised in 1990. In October 1995, members of the community discovered that the plant was polluting their water supply. Together with a University Institute, they complained to six different local authorities the potential heavy metal pollution of the aquifers from which the Paynemil

¹³⁷ The challenges of enforcement of such decisions, effective strategies in economic, social and cultural rights litigation and the link between litigation and social mobilisation is addressed in the following COHRE publication: *Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies* (Centre on Housing Rights and Evictions, Geneva, 2003), available at www.cohre.org/litigation.

Community was extracting drinking water, presenting studies showing the inappropriateness for drinking of the water extracted by different inhabitants. In November 1996 local authorities ordered health studies in order to establish the level of lead in the blood, and of mercury in the urine of the population, focusing the attention especially on the children. This study showed many children with high levels of one or both metals.

In an official document dated December 1996, public agents in the Provincial Ministry of Health communicated their concern to the Health Minister. In their statements they recognized the bad quality of the water in terms of consumption, and the impossibility or inappropriateness of using traditional disinfection methods such as boiling or others to neutralize the pollutant agents. They recommended that the Minister intervene in order to provide water for the Community.

In March 1997, the Children's Public Defender, filed an "amparo writ" against the Government, arguing that the Province had neglected to fulfil its obligation to protect and guarantee the good state of health of the population. The court of first instance accepted the Public Defender's arguments and ordered the Provincial Executive Power to:

- i) provide – within two days notice of the decision – 250 litres of drinking water for inhabitant per day,
- ii) ensure within 45 days the provision of drinking water to the affected people by any appropriate means,
- iii) set up – within 7 days – a procedure to determine whether the health of the population was damaged by the existence of heavy metals, and in such a case, to provide the necessary treatments, and
- iv) take steps to preserve the environment from pollution.

In May 19, 1997, the Provincial Court of Appeals confirmed in all its terms the above-mentioned decision. Both courts based their decisions on the fact that the Government had not taken any reasonable measure to tackle the pollution problem that seriously affected the health of the Paynemil even though it was well informed about the situation. The Court of Appeals stated: "even though the Government has performed some activities as to the pollution situation, in fact there has been a failure in adopting timely measures according with the gravity of the problem."

The Court of Appeals noted that due to the serious consequences that the pollution of water brings about, any delay in providing resources, and in adopting those steps necessary to reverse the present situation constituted an illegal omission violating the constitutional rights to health and to a safe environment.

Postscript: According to information provided to COHRE, the Government is providing free mineral water to the Community houses every week in drums and for irrigation in tanks. A drinking water plant has been build, but there is a dispute between the community and the Government over the quality of the water treated, and a study on water quality is being carried out. The Government has not fulfilled any of the other measures ordered in the decision. There is no special treatment provided for the children affected, and no measure has been taken to restore the ecosystem and clean the soil and water contaminated. The Public Defender has presented the case before the Inter-American Commission on Human Rights arguing a violation of Articles 19 (children's rights), 4 (right to life) and 8 and 25 (effective judicial protection) of the Inter-American Convention on Human Rights, which will be considered if necessary once the remedies in Argentina are exhausted.

Valentina Norte Colony, Defensoría de Menores N° 3 c/Poder Ejecutivo Municipal s/acción de amparo. Expte. 46-99. Acuerdo 5 del Tribunal Superior de Justicia. Neuquen, 2 March 1999.

The Children's Public Defender of the Province of Neuquen brought a case on behalf of the children of the rural community of Valentina Norte who were drinking water contaminated by oil.

The court of first instance ordered the government to supply a hundred litres of drinkable water to each child and to each member of their families, and to ensure that the less well-off would be able to store the water received in good conditions. The Court further specified that this measure should be satisfied within 48 hours, and that it should be implemented until a definite solution for the contamination of the underground water had been found and undertaken.

However, in the context of a later procedure, initiated by the plaintiff to cause the government to comply with the decision, the same court modified its previous decision reducing the amount of water ordered to be provided, and limited the beneficiaries of the provision to those families that were legally settled in the colony. In this last aspect the Court accepted the Government's argument that providing water to those who lack legal title to reside in the area would constitute an indirect way to promote or recognize illegal occupations or settlements.

But, the new decision was then appealed by the Public Defender and modified by the Supreme Court of the Province of Neuquen. The Supreme Court upheld the first of the two decisions. The Supreme Court based part of its arguments on the provisions of the UN Convention on the Rights of the Child, and on the "pro homine" and "erga omnes" general principles that should guide any interpretation of human rights provisions. Significantly, the Supreme Court further specified that the provision of water should be granted to all the children and their families whether or not they were entitled to reside upon or occupy the land.

Quevedo Miguel Angel y otros c/Aguas Cordobesas S.A. Amparo Cordoba, City, Juez Sustituta de Primera Instancia y 51 Nominación en lo Civil y Comercial de la Ciudad de Córdoba (Civil and Commercial First Instance Court). April 8, 2002

The water supply of a group of 19 low income and indigent families living in the City of Cordoba was disconnected by a water service company on grounds of non-payment. The families sued the water service company arguing that the disconnection was illegal, that the company failed to comply with its regulatory obligation to provide 50 daily litres of water regardless as to whether payment was provided, and that even that minimum supply obligation was too low. In this last respect the families requested the court to oblige the company to provide at least 200 litres of water daily per family.

The Judge rejected the argument that the power of the company to cut or restrict the supply of water on the grounds of non-payment was illegal, but recognised that the contractual obligation to provide a minimum of 50 litres of water in all circumstances was clearly insufficient for a standard family and therefore required the company to provide a minimum of 200 litres per household.

In the decision the Judge firstly addressed the importance of the question before the Court in order to consider whether it could be heard under an special expedited procedure called an 'amparo' action. The Judge declared that the provision of water is of vital importance and that its' absence has numerous implications for the health of the population, especially for the poor. The Judge described the many illnesses that the absence of water and adequate sanitation might bring about and on those bases decided to hear this case under the amparo procedure.

On the question about the possibility to restrict the provision of water as a result of non-payment the Judge considered the terms of the concession contract, and concluded that “from the profitable character of that contract follows the obligation of the consumers to pay the correspondent tariff, [there] not being among the regulations any element from which to conclude that the provision of water should be free of charge”.

After establishing that the Company had the right to ‘reduce’ (rather than cut) the provision of potable water to the users that fail to pay their tariffs, the Judge stated : “...[T]he provision of a minimum quantity of potable water ... because of its public utility (service) character must be guaranteed to all the individuals.”

The Judge noted; “[T]he Cordoba Constitution recognizes in Article 66.2 that water, soil and air are vital elements for human beings, and elements of special protection in the Province.” She further indicated that Provincial Law N° 8835 established that “every person in the Province has the right to receive on a regular basis adequate public benefits and services of sufficient quality to meet their needs.” On the basis of these provisions the Judge found that it is “... uncontested that the Provincial State is responsible for providing potable water services to all citizens because it is an essential service.”

The Judge also held that “... the Argentinean National Constitution places a legal obligation on public authorities to provide for the good quality and efficiency of the public utilities (services).” The Judge stated that such obligation implies that the main role of the State is to contribute to the amelioration of the quality of life and dignity of the inhabitants by means of assuring the satisfaction of their essential needs:

“Were the State to fail to provide adequate public utilities at the required quality and quantity, at low cost and with regulated tariffs taking into account the situation of the less well-off, the State would be not only violating the very principles that justify the reasons of its existence (ensuring the general well-being and promoting the common good), but also Constitutional norms that regulate its functions – such as article 42 of the National Constitution that expressly obliges the State to ensure the existence of adequate and efficient public utilities services and to effectively regulate and control them.”

After making reference to the critical economic and social situation that the poor face in Argentina, the Judge held that the provision of 50 litres of water per household – the guaranteed amount established in the concession regulatory framework - “is not enough to meet the needs of a standard family because such minimum amount can not guarantee basic conditions of hygiene and health for the family members.”

Therefore the Judge ordered the Company to guarantee the plaintiffs a minimum daily consumption of 200 litres of potable water per family. The Judge added that the Company was obliged to comply with this order. However, this did not preclude the possibility of it reaching a compensatory agreement with the responsible State authorities to be compensated for the costs of meeting this obligation.

BELGIUM¹³⁸

Arrêt n°36/98, 1 April 1998, Commune de Wemmel, Moniteur belge, 24/4/98

The Court of Arbitration recognized the right of everyone to a minimum supply of drinking water using Article 23 of the Constitution (the right to the protection of a healthy environment).¹³⁹

¹³⁸ <http://www.arbitrage.be/public/f/1998/1998-036f.pdf>

¹³⁹ From Henri Smets, ‘Le Droit à l’eau’ *Rapport de l’Académie de l’eau* 2002, http://www.oieau.fr/academie/gege/DroitAlEau_01.PDF.

BRAZIL

Bill of Review 0208625-3, Special Jurisdiction Appellate Court, Paraná

The water supply of a resident in Londrina, Paraná, was disconnected. An injunction allowing reconnection during legal proceedings was denied by a lower court. On appeal, the highest court in the Brazilian state of Paraná determined that the water supply should be immediately re-established. The decision was taken based on the petitioner's constitutional rights, human rights and consumer rights. The Superior Court of Justice had previously stated that it is illegal to discontinue the supply of basic services, even in the event of default.¹⁴⁰ It was held that the supplier must use other own means to collect delayed payments.¹⁴¹ There was a risk that irreversible damage could result from discontinuance of the water supply.

The Court took into consideration the vulnerability of one of the dwellers in the house, who was sick. They found that such considerations must prevail over the legality of the discontinuity of the water supply. Applying the Consumers Defence Code, Brazilian jurisprudence considers it illegal to interrupt the water supply even if the consumer defaults on payments. The Code forbids exposure of users to shameful situations. Damages were awarded on the basis that since a basic service must be continuously supplied, the consumer has the right to recovery.

INDIA

India has a significant body of jurisprudence under Article 21 (Protection of Life and Personal Liberty) of the Constitution which has addressed a broad range of socio-economic rights as aspects of the right to life.

Municipal Council Ratlam v Vardhichand and others, AIR 1980 SC 1622

The residents of a locality brought a case to require their Municipality to construct drainpipes with the flow of water to address a sanitation problem caused by open sewers and public excretions. The Municipality pleaded lack of finances as the primary cause of disability to carry out its duties.

The Magistrate gave directions to the Municipality to draft a plan within six months for removing nuisance. The High Court approved the order of the Magistrate, to which the Municipality further appealed to the Supreme Court. The issue was whether a Court could compel a statutory body to carry out its duties to the community by constructing sanitation facilities.

The Supreme Court upheld the order of the High Court and directed the Municipality to take immediate action within its statutory powers to construct a sufficient number of public latrines, provide water supply and scavenging services, to construct drains, cesspools and to provide basic amenities to the public. The Court stated that a responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot escape its principal duty by pleading financial inability.

Subhash Kumar v State of Bihar, (AIR 1991 SC 420), Supreme Court of India.

“[The] right to life is a fundamental right under Article 21 of the Constitution and it includes right of enjoyment of pollution-free water, air for full enjoyment of life ...[and that] if anything endangers or impairs that quality of life, in derogation of laws, a citizen has a right to have recourse to Art. 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.”

140 (1 Turma - Recurso especial 430.812)

142 (Superior Court of Justice – RESP 122812 – ES – 26.03.2001).

***F.K. Hussain v. Union of India*, O.P. 2741/1988 (1990.02.26).**

*This case related to a government agency's plans to dig wells on a set of islands, known as Lakshadweep isles. In addressing this issue, the court held that the right to potable water was a component of the right to life (at para. 7).*¹⁴³

2.... According to petitioners, ground water resources in these islands are limited. Potable water is in short supply, and large-scale withdrawals with electric or mechanical pumps can deplete the water sources, causing seepage or intrusion of saline water from the surrounding Arabian Sea. The administration has evolved a scheme to augment water supply, by digging wells and by drawing water from those existing wells to meet increasing needs. This, petitioners say, would upset the fresh water equilibrium leading to salinity in the available water resources. Pursuant to a scheme recommended by the Kerala Public Health Engineering Department, the administration is said to have taken this decision to extract ground water by using pumps. Action of the administration amounts to an invasion of the rights under Art 21, say petitioners and they seek to restrain the administration from implementing the scheme, by the issuance of appropriate writs of directions.

3. Referring to the data available, petitioners submit that only 0.6 to 0.75 metres deep of ground water is available in the islands. The potential recharge is available and if ground water is withdrawn, hydraulic head will be lowered and water lens, penetrated by saline water causing diminution of potable water. Pristine form of hand withdrawal of water from wells alone will sustain the water resources, and the digging of radial wells would disturb the water equilibrium, according to them. They base their submission on observations made by the Central Ground Water Board, the Indian Council of Agricultural Research, the Central Public Health Engineering and Environment Department and other expert bodies.

4. ... In answer, the respondents submit that with the growing need for more water, it is not possible to content with the available sources of supply. It is further submitted that low environmental sanitary conditions and prevalence of water borne diseases make it necessary to introduce a scheme of protected water supply. The available water is of bad quality and purification is necessary, according to respondents. They further submit that infiltration galleries/pumps will be located only at shallow depths and that water will only be skimmed from the surface of available resources, guarding against excessive withdrawals. Water will be skimmed to collector wells, and from there pumped to distribution outlets. It is submitted that there will be no direct pumping, that the bottom of wells will be plugged, and that pumping would be restricted to half an hour, followed by a break for 2 1/2 hours, thus ensuring against excessive withdrawals. This method would not jeopardize fresh water equilibrium, and respondents rely on a Project Report of the National Environmental Engineering Research Institute, shortly called 'NEERI', and on another Report by the Centre for Earth Science Studies, shortly called 'CESS', to support their connection.

5. By orders C.M.P. 5736/87 in O.P. 9736/86, this court directed the Central Ground Water Board to investigate into the various aspects raised in the writ petition, and submit a Report...

6. Some of the findings of the team are:

1. Extractable ground water potential is around 0.23 MCM, of which the present draft is around 0.18 MCM.
2. Salt water intrusion is observed around pumping centers and that salt water fresh water interface was moving inland wherever pumping was more. Hence pumping of ground water should be stopped by legislation
3. The ground water level and quality should be continuously monitored...

¹⁴³ <http://www.elaw.org/resources/text.asp?ID=1126>.

7. They therefore suggested other means of augmenting water supply, mainly by harvesting rain water, desalination and reverse osmosis. More or less similar are the recommendations and findings of the 'NEERI', 'CESS' and the other agencies, relied on by the respondents. Thus, largely there is consensus between these agencies. All the agencies agreed that existing ground water resources are limited, that excessive withdrawals will upset fresh water equilibrium, leading to salinity and diminution of potable water, and that new sources must be identified for augmentation. The sources indicated by all agencies are similar and they are – harvesting of rain water, desalination and reverse osmosis... How and how much of ground water can be extracted is thus the issue to be determined. The question arises in an area, where administrative and technical aspects come into sharp focus. The Executive Government has onerous responsibilities in the matter of providing civic amenities. The Technocrat too has his role to play, in view of the impact the matter has on environmental and hydrogeological concerns. There must be an effective and wholesome interdisciplinary interaction. At once, the administrative agency cannot be permitted to function in this manner as to make inroads, into the fundamental right under Art. 21. The right to life is much more than the right to an animal existence and its attributes are many fold, as life itself. A prioritization of human needs and a new value system has been recognized in these areas. The right to sweet water, and the right to free air, are attributes of the right to life, for, these are the basic elements which sustain life itself.

8. Consistent with these diverse concerns, a methodology has to be evolved for extraction of ground water. As already indicated, over exploitation of water resources has to be contained...

11. Consistent with natural constraints, a scheme, viable technically and meeting the requirements as nearly as possible has to be evolved. With changes in the way of life, even a basically conventional society, may go in for modern means and make use of pumps to draw water from private wells. Restrictions, comprehending the total situation, will be necessary, even in the shape of statutory regulations. Safeguards must be evolved to stop withdrawal of ground water at a cut off level, to impose restrictions and introduce a system of effective monitoring at all levels. To decide on the modalities the matter should receive a final look, at the hands of the competent Ministry of Science and Technology and the Ministry of Environment.

12. The Scheme as envisaged shall not be implemented until it gets the final green signal from the aforesaid agencies. I say so, because some of the suggestions indicated by the administration in its counter affidavit do not seem to be satisfactory. For example, to protect equilibrium, the Administration has suggested plugging of the bottom of wells. If plugging is done recharge potential will be limited. These matters will be considered by the aforesaid Ministries and the Ministries will issue such directions as they consider appropriate, informed as they are of the technical aspects. If considered necessary, statutory regulations should be made and a responsible agency set up for monitoring the functioning of the system set up. The respondents will refer the matter to the Ministries aforesaid...

SOUTH AFRICA

Government of the Republic of South Africa and others v. Grootboom and others, 2001 (1) SA 46 (CC), South African Constitutional Court.¹⁴⁴

3. The group of people with whom we are concerned in these proceedings lived in appalling conditions, decided to move out and illegally occupied someone else's land. They were evicted and left homeless. The root cause of their problems is the intolerable conditions under which they were living while waiting in the queue for their turn to be allocated low-cost housing. They are the people whose constitutional rights have to be determined in this case...

¹⁴⁴ http://www.concourt.gov.za/judgment.php?case_id=11987.

4. Mrs Irene Grootboom and the other respondents were rendered homeless as a result of their eviction from their informal homes situated on private land earmarked for formal low-cost housing...

11. The respondents went and sheltered on the Wallacedene sports field under such temporary structures as they could muster. Within a week the winter rains started and the plastic sheeting they had erected afforded scant protection...

19. The key constitutional provisions at issue in this case are s 26 and s 28(1)(c). Section 26 provides:

- (1) Everyone has the right to have access to adequate housing.
- (2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.’...

These rights need to be considered in the context of the cluster of socio-economic rights enshrined in the Constitution. They entrench the right of access to land, to adequate housing and to health care, food, water and social security. They also protect the rights of the child and the right to education...

24. The right of access to adequate housing cannot be seen in isolation. There is a close relationship between it and the other socio-economic rights. Socio-economic rights must all be read together in the setting of the Constitution as a whole. The State is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing. Their interconnectedness needs to be taken into account in interpreting the socio-economic rights, and, in particular, in determining whether the State has met its obligations in terms of them...

35. The right delineated in s 26(1) is a right of ‘access to adequate housing’ as distinct from the right to adequate housing encapsulated in the Covenant. This difference is significant. It recognises that housing entails more than bricks and mortar. It requires available land, appropriate services such as the provision of water and the removal of sewage and the financing of all of these, including the building of the house.

38. ... The extent of the State’s obligation is defined by three key elements that are considered separately: (a) the obligation to ‘take reasonable legislative and other measures’; (b) ‘to achieve the progressive realisation’ of the right; and (c) ‘within available resources.’

39. What constitutes reasonable legislative and other measures must be determined in the light of the fact that the Constitution creates different spheres of government: national government, provincial government and local government... In the case of housing, it is a function shared by both national and provincial government. Local governments have an important obligation to ensure that services are provided in a sustainable manner to the communities they govern. A reasonable program therefore must clearly allocate responsibilities and tasks to the different spheres of government and ensure that the appropriate financial and human resources are available.

40. Thus, a co-ordinated State housing program must be a comprehensive one determined by all three spheres of government in consultation with each other as contemplated by chap 3 of the Constitution... Each sphere of government must accept responsibility for the implementation of particular parts of the program but the national sphere of government must assume responsibility for ensuring that laws, policies, programs and strategies are adequate

to meet the State's s 26 obligations. In particular, the national framework, if there is one, must be designed so that these obligations can be met. It should be emphasised that national government bears an important responsibility in relation to the allocation of national revenue to the provinces and local government on an equitable basis. Furthermore, national and provincial government must ensure that executive obligations imposed by the housing legislation are met

41. The measures must establish a coherent public housing program directed towards the progressive realisation of the right of access to adequate housing within the State's available means. The program must be capable of facilitating the realisation of the right. The precise contours and content of the measures to be adopted are primarily a matter for the Legislature and the Executive. They must, however, ensure that the measures they adopt are reasonable ... A court considering reasonableness will not enquire whether other more desirable or favourable measures could have been adopted, or whether public money could have been better spent. The question would be whether the measures that have been adopted are reasonable...

42. The State is required to take reasonable legislative and other measures. Legislative measures by themselves are not likely to constitute constitutional compliance. Mere legislation is not enough. The State is obliged to act to achieve the intended result, and the legislative measures will invariably have to be supported by appropriate, well-directed policies and programs implemented by the Executive. These policies and programs must be reasonable both in their conception and their implementation...

43. ... The program must be balanced and flexible and make appropriate provision for attention to housing crises and to short, medium and long term needs. A program that excludes a significant segment of society cannot be said to be reasonable...

44. ... A society must seek to ensure that the basic necessities of life are provided to all if it is to be a society based on human dignity, freedom and equality. To be reasonable, measures cannot leave out of account the degree and extent G of the denial of the right they endeavour to realise. Those whose needs are the most urgent and whose ability to enjoy all rights therefore is most in peril, must not be ignored by the measures aimed at achieving realisation of the right. It may not be sufficient to meet the test of reasonableness to show that the measures are capable of achieving a statistical advance in the realisation of the right...

45. [*Discussing 'progressive realisation'*]... The phrase is taken from international law and art 2.1 of the Covenant in particular. The committee has helpfully analysed this requirement in the context of housing as follows:

“Nevertheless, the fact that realisation over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realisation of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the *raison d'être*, of the Covenant which is to establish clear obligations for State parties in respect of the full realisation of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.”

...The meaning ascribed to the phrase is in harmony with the context in which the phrase is used in our Constitution and there is no reason not to accept that it bears the same meaning in the Constitution as in the document from which it was so clearly derived.

The Court then provides a description of the State's housing programme and provides the following evaluation:

52. The definition of housing development as well as the general principles that are set out do not contemplate the provision of housing that falls short of the definition of housing development in the Act. In other words there is no express provision to facilitate access to temporary relief for people who have no access to land, no roof over their heads, for people who are living in intolerable conditions and for people who are in crisis because of natural disasters such as floods and fires, or because their homes are under threat of demolition. These are people in desperate need. Their immediate need can be met by relief short of housing which fulfils the requisite standards of durability, habitability and stability encompassed by the definition of housing development in the Act.

53. What has been done in execution of this program is a major achievement. Large sums of money have been spent and a significant number of houses have been built...

64. ...The housing development policy as set out in the Act is in itself laudable. It has medium and long-term objectives that cannot be criticised. But the question is whether a housing program that leaves out of account the immediate amelioration of the circumstances of those in crisis can meet the test of reasonableness established by the section.

65. The absence of this component may have been acceptable if the nationwide housing program would result in affordable houses for most people within a reasonably short time. However, the scale of the problem is such that this simply cannot happen. Each individual housing project could be expected to take years and the provision of houses for all in the area of the municipality and in the Cape Metro is likely to take a long time indeed. The desperate will be consigned to their fate for the foreseeable future unless some temporary measures exist as an integral part of the nationwide housing program. Housing authorities are understandably unable to say when housing will become available to these desperate people. The result is that people in desperate need are left without any form of assistance with no end in sight...

66. The national government bears the overall responsibility for ensuring that the State complies with the obligations imposed upon it by s 26. The nationwide housing program falls short of obligations imposed upon national government to the extent that it fails to recognise that the State must provide for relief for those in desperate need. They are not to be ignored in the interests of an overall program focussed on medium and long-term objectives. It is essential that a reasonable part of the national housing budget be devoted to this, but the precise allocation is for national government to decide in the first instance.

68. Effective implementation requires at least adequate budgetary support by national government. This, in turn, requires recognition of the obligation to meet immediate needs in the nationwide housing program. Recognition of such needs in the nationwide housing program requires it to plan, budget and monitor the fulfilment of immediate needs and the management of crises. This must ensure that a significant number of desperate people in need are afforded relief, though not all of them need receive it immediately. Such planning too will require proper co-operation between the different spheres of government.

93. This case shows the desperation of hundreds of thousands of people living in deplorable conditions throughout the country. The Constitution obliges the State to act positively to ameliorate these conditions. The obligation is to provide access to housing, health-care, sufficient food and water, and social security to those unable to support themselves and their dependants. The State must also foster conditions to enable citizens to gain access to land on an equitable basis. Those in need have a corresponding right to demand that this be done.

94. I am conscious that it is an extremely difficult task for the State to meet these obligations in the conditions that prevail in our country. This is recognised by the Constitution which expressly provides that the State is not obliged to go beyond available resources or to realise these rights immediately. I stress however, that despite all these qualifications, these are rights, and the Constitution obliges the State to give effect to them. This is an obligation that Courts can, and in appropriate circumstances, must enforce.

95. Neither s 26 nor s 28 entitles the respondents to claim shelter or housing immediately upon demand ... However, s 26 does oblige the State to devise and implement a coherent, co-ordinated program designed to meet its s 26 obligations. The program that has been adopted and was in force in the Cape Metro at the time that this application was brought fell short of the obligations imposed upon the State by s 26(2) in that it failed to provide for any form of relief to those desperately in need of access to housing.

99....'It is declared that:

(a) Section 26(2) of the Constitution requires the State to devise and implement within its available resources a comprehensive and co-ordinated program progressively to realise the right of access to adequate housing.

(b) The program must include reasonable measures such as, but not necessarily limited to, those contemplated in the Accelerated Managed Land Settlement Program, to provide relief for people who have no access to land, no roof over their heads, and who are living in intolerable conditions or crisis situations.

(c) As at the date of the launch of this application, the State housing program in the area of the Cape Metropolitan Council fell short of compliance with the requirements in para (b), in that it failed to make reasonable provision within its available resources for people in the Cape Metropolitan area with no access to land, no roof over their heads, and who were living in intolerable conditions or crisis situations.'

Note: The decision includes an extensive discussion of the right of every child to shelter (under Article 28 (1) (c)) and on the application of the International Covenant on Economic, Social and Cultural Rights to this case, including the issue of determining minimum core obligations.

Residents of Bon Vista Mansions v. Southern Metropolitan Local Council, High Court of South Africa (Witwatersrand Local Division), Case No: 01/12312, 2001.

A Local Council disconnected the water supply to a block of flats. A local resident, Mr. Ngobeni, brought a suit on behalf of himself and fellow residents requesting interim relief for the Court to restore their water supply immediately while the case was being dealt with by the court. This case was heard four days after the disconnection. The Court was faced with the Council's argument that Mr. Ngobeni had not secured proper formal authority to represent other residents of the flats.

5. First, it was contended that the identity of the Applicant was not clear. It was contended that either the application should have been brought by a number of the residents in their own names, or the applicant should have annexed a resolution authorising him to bring these proceedings on behalf of other residents.

6. I do not consider that there is any substance in this point. It is clear from the papers that Mr Ngobeni, the deponent, is a resident of the premises. He alleges that he brings the application on behalf of 'The residents of Bon Vista'; he states that a meeting of residents was held at which they authorised him to do so; and he annexes a list of names which is clearly intended to reflect the names of residents.

7. The Council correctly pointed out that it had received very short notice of these proceedings, 3? hours before the matter was heard. However, this matter was inherently urgent. It involved a basic and essential service, namely the provision of water, which in turn also involves the provision of sewerage services. The absence of these services could have serious health consequences, both for the Applicants and for the other residents of the city. The weekend was looming. Under the circumstances, counsel was correct not to make much of the short notice.

11. Section 27(1)(a) of the Constitution provides that everyone has the right of access to water. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right. In terms of section 7, the state must 'respect, protect, promote and fulfil' the rights in the Bill of Rights.

12. The Council is an organ of state, and plainly bears the duties set out in section 7.

13. Each of the words used in section 7 has a particular meaning. For example, in this matter we were not concerned - at least at this stage - with the duty on the Council to 'fulfil' the right of access to water. That plainly involves a positive duty to provide access to water services, in the manner required by section 27(2). However, for the reasons set out below, this matter does relate very directly to the duty to 'respect' the right of access to water...

15. International law is particularly helpful in interpreting the Bill of Rights where the Constitution uses language which is similar to that which has been used in international instruments. The jurisprudence of the International Covenant on Economic, Social and Cultural Rights, which is plainly the model for parts of our Bill of Rights, is an example of this. It assists in understanding the nature of the duties placed on the state (including the Council) by section 7 of the Constitution.

16. In his analysis of the Covenant, Craven describes the content of the duty to 'respect' a right as follows: in order to 'respect' a right, the state must refrain from action which would serve to deprive individuals of their rights.

17. This analysis is supported by the United Nations Committee on Economic, Social and Cultural Rights, which has issued General Comments on the International Covenant on Economic, Social and Cultural Rights. The General Comments have authoritative status under international law.¹⁴⁵

18. In its General Comment 12, issued in 1999, the Committee explained the duty to 'respect' rights of access as follows, in relation to the right to food:

¹⁴⁵ The Court refers in its footnotes to M. Craven, *The International Covenant on Economic, Social and Cultural Rights* (Clarendon, Oxford, 1995) at p. 110 and Grootboom decision, at paras. 27 to 32.

“The obligation to respect existing access to adequate food requires State parties not to take any measures that result in preventing such access.”¹⁴⁶

19. In similar vein, Liebenberg has written that a violation of the duty to ‘respect’ a right ‘arises when the state, through legislative or administrative conduct, deprives people of the access they enjoy to socio-economic rights.’¹⁴⁷

20. On the facts of this case, the Applicants had existing access to water before the Council disconnected the supply. The act of disconnecting the supply was prima facie in breach of the Council’s constitutional duty to respect the right of access to water, in that it deprived the Applicants of existing access. In accordance with what is sometimes called the two-stage approach, that places a burden or an onus on the Council to justify the breach.”

The Court further also addressed the application of the South African Water Services Act (see above Chapter 5.2) to the requirement of notice and redress mechanisms related to disconnections of water:

26. I was advised by ... [the Council] ... that when a consumer is in arrears in respect of payments for water services, the account sent out by the Council contains a standard printed section informing him or her that if the arrears are not paid, the service will be discontinued. Again, it is not necessary to decide whether such notices comply with the requirements of the Act. Without deciding the matter, however, I must express my doubts about whether such a standard notice, if it does not inform the consumer of his or her statutory right to make representations, meets the requirements of the Act. The right is not likely to have real meaning unless the service provider informs consumers of its existence, which it could easily do. A genuine opportunity to make representations is particularly important in the light of the provision that water supply may not be discontinued if it results in a person being denied access to basic water services for non-payment, where that person proves, to the satisfaction of the relevant water services authority, that he or she is unable to pay for basic services.”¹⁴⁸

27. The effect of section 27(1)(a) (read with section 7) of the Constitution, and of section 4 of the Water Services Act is as follows:

27.1 If a local authority disconnects an existing water supply to consumers, this is prima facie a breach of its constitutional duty to respect the right of (existing) access to water, and requires constitutional justification.

27.2 The Water Services Act requires that:

1 the water service provider must set conditions which deal with the circumstances under which water services may be discontinued, and the procedures for discontinuing water services.

2 those conditions and procedures must meet the requirements of section 4(3) of the Act. In particular, the procedures must be ‘fair and equitable’. In the context of a case such as this, they must provide for reasonable notice of termination and for an opportunity to make representations. They must not result in a person being denied access to basic water services for non-payment where that person proves, to the satisfaction of the water services authority, that he or she is unable to pay for basic services.

¹⁴⁶ The Court refers to *General Comment 12: The right to adequate food* (1999), para 15. Available at <http://www.unhcr.ch/tbs/doc.nsf>. The Court notes that the relevance of the General Comments of the Committee is described in Grootboom at the passage cited above.

¹⁴⁷ The reference in the judgement is to S. Liebenberg ‘Socio-economic rights’ in A. Chaskalson and others (eds) *Constitutional Law of South Africa* at 41-28

¹⁴⁸ The Court refers to the American case of *Memphis Light, Gas & Water Division v Craft* 436 US 1 (1978) at 15 and 22, where it was held that the requirements of due process placed such a duty on the provider of essential services, even though there was no specific statutory provision requiring an opportunity to make representations.

28. That is a demanding set of requirements. One would assume that the Constitution-makers and Parliament imposed such demanding requirements because of the potentially serious human and health consequences of terminating water services...

29. That being the case, in my view the onus rested on the Council to show either that it had not discontinued the water supply (which did not appear to be its case), or that it had legally valid grounds for doing so, and had acted in compliance with the Constitution and the Act This should not be a difficult onus for the Council to discharge, if in fact it acted lawfully. One assumes that the Council does not assert a right to disconnect people's water supply without good cause, or without following fair procedures. If that assumption is correct, the Council should have no difficulty in proving the reason for termination, and what procedure it followed in disconnecting the water supply. That reason, and those procedures, can then be tested against the Constitution and the Act.

30. What is clear is that at this stage of this case, the Council has not produced evidence to show that its actions met the requirements of the Constitution and the Act. It may well be able to do so in due course. On the facts as they stood at the hearing of the application for an interim interdict, however, the Applicants had proved that the Council had discontinued their water supply. They averred, in effect, that there was no valid reason for this - although as [the Council] pointed out, their allegation that they had honoured their obligations to pay for water was couched in somewhat bald and sweeping terms.

31. That being the case, in my view the onus rested on the Council to show either that it had not discontinued the water supply (which did not appear to be its case), or that it had legally valid grounds for doing so, and had acted in compliance with the Constitution and the Act.

32. [The Council] contended that it would not be correct to hold that there was any such onus on the Council. However, having regard to the constitutional and statutory provisions, I hold that there was such an onus. This should not be a difficult onus for the Council to discharge, if in fact it acted lawfully. One assumes that the Council does not assert a right to disconnect people's water supply without good cause, or without following fair procedures.¹⁴⁹ If that assumption is correct, the Council should have no difficulty in proving the reason for termination, and what procedure it followed in disconnecting the water supply. That reason, and those procedures, can then be tested against the Constitution and the Act. At the time when I heard the application for an interim interdict, the Council had not yet put up evidence to attempt to discharge that onus.

33. Under the circumstances, the Applicants had shown at least a prima facie right to a continuing supply of water. That right was being infringed in that they had been deprived of access to water, and the deprivation was continuing. They had no other satisfactory remedy. And as [the Council] fairly conceded, the balance of convenience weighed heavily in their favour. That being so, they satisfied the requirements for the granting of an interim interdict.

34. I therefore exercised my discretion to grant an interim order in terms of which the Council was ordered to restore the water supply to Bon Vista Mansions, where the Applicants live...

¹⁴⁹ The Court also indicates in a footnote: "Given that the termination of water services appears to be administrative action, the Council would in any event be obliged by section 36 of the Constitution to act in a manner which is lawful, reasonable, and procedurally fair."

Highveldridge Residents Concerned Party v. Highveldridge Transitional Local Council and Others, Transvaal Provincial Division, Case No. 28521/2001, 17 May 2002.

A resident of Lebohang Township representing a voluntary association of residents brought a case against the Local Council, the mayor and town clerk of the Council and the Minister of Health, alleging that water supply had been cut, and requested that water supply be re-connected. As the association was not properly incorporated and did not clearly list its members, save for a list of 28 people, the Court considered whether the association had standing to bring the case. The Court took account of Article 38 (b) and 38 (e) of the South African Constitution, which allows a case relating to the Bill of Rights to be brought by an association acting in the interests of its members, or anyone acting on behalf of another person who cannot act in their own name.

24. Bearing in mind the expanded standing provided for by s. 38 and the way in which the latter has been explained and implemented in previous judgements, I am of the view that the restrictions placed by the common law on the legal standing of voluntary associations cannot and should not apply without qualification to voluntary associations seeking to invoke s. 38 to seek redress, in the event of rights in the Bill of Rights having allegedly been infringed or threatened. To restrict voluntary associations in the way they are restricted by way of the common-law requirements, particularly when rights enshrined in the Bill of Rights are at stake, would be incompatible with various principles contained in, and which by necessary implications underpin the Constitution. Those principles include, *inter alia*, the constitutional norms of accountability, responsiveness and openness on which the constitutional state is founded. It would equally be contrary to the ideal of a vibrant and thriving civil society which actively participates in the evolvment and development and a rights culture pursuant to the rights enshrined in the Bill of Rights. To hold otherwise would, in my view, be to disregard the interests of 'the poorest in our society' who are often not in a position where legal advice is readily accessible and who are more often than not, dependant upon action taken by informally structured associations of civil society so that legitimate issues may be addressed on their behalf. It will also be contrary to the basic values of human dignity, equality and freedom which underlie the spirit, purpose and objects of the Bill of Rights.

27. ... From the papers it is evident that the people affected by the alleged discontinuation of the water supply are mostly indigent and are unable to individually pursue their claims because of that fact. They are effectively unable to act in their own name...

32. From the facts it is furthermore evident that there exists a well-grounded apprehension of irreparable harm to the applicant and the people in whose interest it acts, if the interim relief is not granted...

33. It is evident from the facts that the applicant has no other satisfactory remedy, particularly in view of the history of this matter. In assessing the balance of convenience and when exercising my discretion in that regard, I am of the view that the balance of convenience favours the granting of interim relief; the simple fact of the matter is that any pecuniary losses that the respondent might suffer cannot outweigh human need (and possibly even human suffering) which will probably occur due to a lack of fresh water in what appears to be, on the probabilities, numerous households on the Lebohang Township.

40. The following order is made:

1 The applicant is granted leave to act as representative in the interest of its members as well as on behalf of all such other inhabitants of the Lebohang Township whose water supply was terminated...

[The Court specified conditions that the applicant association provide a list of names, identity numbers and addresses of all its members, give notice to all its members in the Township of the proceedings, and that all who did not specify that they did not want to be part of the court case would be bound by the decision].

4 The first, second and third respondents are ordered to reinstate the water supply to all the households as are indicated in ... *[the applicant's papers]* ... with immediate effect and pending the finalisation of the matter.

8

RECOMMENDATIONS FROM INTERNATIONAL EXPERTS

The Recommendations of international experts generally do not have official legal value. However, they can be influential in debates preceding the adoptions of a law or standard. A number of the recommendations below have influenced subsequent official documents. These recommendations also have persuasive value in the implementation of international and national standards by governments and courts.

The Dublin Statement on Water and Sustainable Development, 1992¹⁵⁰

Principle No. 1

Fresh water is a finite and vulnerable resource, essential to sustain life, development and the environment. Since water sustains life, effective management of water resources demands a holistic approach, linking social and economic development with protection of natural ecosystems. Effective management links land and water uses across the whole of a catchment area or groundwater aquifer.

Principle No. 2

Water development and management should be based on a participatory approach, involving users, planners and policy-makers on all levels. The participatory approach involves raising awareness of the importance of water among policy-makers and the general public. It means that decisions are taken at the lowest appropriate level, with full public consultation and involvement of users in the planning and implementation of water projects.

Principle No. 3

Women play a central part in the provision, management and safeguarding of water. This pivotal role of women as providers and users of water and guardians of the living environment has seldom been reflected in institutional arrangements for the development and management of water resources. Acceptance and implementation of this principle requires positive policies to address women's specific needs and to equip and empower women to participate at all levels in water resources programmes, including decision-making and implementation, in ways defined by them.

Principle No. 4

Water has an economic value in all its competing uses and should be recognized as an economic good. Within this principle, it is vital to recognize first the basic right of all human beings to have access to clean water and sanitation at an affordable price. Past failure to recognize the economic value of water has led to wasteful and environmentally damaging uses of the resource. Managing water as an economic good is an important way of achieving efficient and equitable use, and of encouraging conservation and protection of water resources.

Declaration of Amsterdam (Second International Water Tribunal), 1992

Article 1

All members of present and future generations have the fundamental right to a sustainable livelihood including the availability of water in sufficient quantity and quality.

¹⁵⁰ <http://www.gdrc.org/uem/water/dublin-statement.html>.

Article 2

1. Each individual human being, collectivity and entity which has an interest in a water resource has the fundamental right to have that interest taken into account , and accounted for, when decisions are taken with respect to activities that in any way may affect that interest.
2. Each individual human being, collectivity and entity which has an interest in a water resource has the right to effective participation in decision making processes concerning activities that may in any way affect that water resource.

Article 3

1. Each individual human being, collectivity and entity that intends to undertake an activity which may in any way involve a water resource has the duty to ensure that such an activity does not affect the fundamental rights protected by this Declaration.
2. Each individual human being, collectivity and entity that intends to undertake an activity which may in any way involve a water resource shall adopt a precautionary approach.

Draft Principles on Human Rights and the Environment (UN Sub-Commission on Prevention of Discrimination and Protection of Minorities), 1994¹⁵¹

2. All persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, economic, political and social rights are universal, interdependent and indivisible.
4. All persons have the right to an environment adequate to meet equitably the needs of present generations and that does not impair the rights of future generations to meet equitably their needs.
6. All persons have the right to protection and preservation of the air, soil, water, sea-ice, flora and fauna, and the essential processes and area necessary to maintain the biological diversity and ecosystems.
7. All persons have the right to the highest attainable standard of health free from environmental harm.
10. All persons have the right to adequate housing, land tenure and living conditions in a secure, healthy and ecologically sound environment.

Brazzaville Declaration of the Africa 2000 Initiative for Water and Sanitation, 1996¹⁵²

This Declaration represents a statement by policy-makers of African governments, NGOs and external agencies.

We have, therefore, resolved to direct solutions to the continent's critical water supply and sanitation problems. We will do so through the adoption of four complementary approaches....

¹⁵¹ <http://heiwwww.unige.ch/humanrts/demo/1994min.html>

¹⁵² <http://www.afro.who.int/wsh/af2000/declaration.html>

2. Mobilize local skills and resources, and enhance them where necessary, in order to:

- implement appropriate affordable solutions,
- ensure optimum use of community management and local resources,
- improve the efficiency and effectiveness of investments,
- increase sustainability

3. Ensure that water and sanitation partnerships for health and development involve;

- communities, local governments, non-governmental organizations and the private sector in concerted efforts to address common problems and prevent wasteful duplication,
- governments who will coordinate water supply and sanitation programmes through interministerial cooperation which takes full advantage of the capabilities of all potential partners.

Resolution on the Right to Water, European Council on Environmental Law, 2000¹⁵³

1. Each person has the right to water in sufficient quantity and quality for his life and health.
2. Public authorities must adopt the necessary measures to favour the access to water for all and exert control over the actions of the diverse bodies, public or private, operating in water service management.
3. In each collectivity responsible for the service of water, the costs of the service must be apportioned so that each person can enjoy the right to water.
4. In the exercise of their activities, economic actors and individuals must respect the right to water.

RECOMMENDS that public authorities ensure that drinking water is appropriately priced by the bodies responsible for the service thereof so that this good can continue to be affordable to each person.

RECOMMENDS that a significant part of development aid be used for the supply of drinking water and waste water treatment in poorly equipped countries.

¹⁵³ 28 April 2000.

9

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The Right to Water Programme advocates for the development of international human rights standards on water and sanitation. It promotes the implementation of the right to water in national legislation and policies as well as in international agreements through publications, training workshops and legal and policy advice. The programme works with national and local groups to monitor and oppose violations of the right to water, including through assistance with the use of national and international complaints mechanisms and by carrying out fact-finding missions and media advocacy.

Legal Resources for the Right to Water: International and National Standards (Sources No. 8) compiles and describes international, regional and national legal provisions and case law that give effect to the human right to water. It addresses the human right to water in its complete form, entitling all persons to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. Sources No. 8 serves as a training manual to provide governments, international organisations and civil society with the legal resources necessary to determine the content of the right to water. It indicates how the right to water may be implemented in national Constitutions and laws and protected by national courts as well as by international and regional human rights treaty bodies.



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