

Legal Resources for the Right to Water and Sanitation

International and National Standards -
2nd edition

**Right to Water and Sanitation Programme
CENTRE ON HOUSING RIGHTS AND EVICTIONS
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Source No. 8: LEGAL RESOURCES FOR THE RIGHT TO WATER AND SANITATION:
International and National Standards – 2nd edition

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2. INTRODUCTION TO THE RIGHT TO WATER AND SANITATION

Sources No. 8: Legal Resources for the Right to Water and Sanitation sets out the foundations for the right to water and sanitation in international and regional treaties and declarations as well as in national laws. It also highlights relevant decisions of international and national judicial and quasi-judicial bodies.

While it presents explicit references to the right to water and sanitation and/or State duties to provide such services, it also describes legal provisions that implicitly refer to access to water and sanitation 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 to water and sanitation by the relevant United Nations and regional governmental bodies.

Implementing the right to water and sanitation 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 the right to water and sanitation, but also surveys a selection of sources that obligate States to carry out measures that form key components of the right to water and sanitation.

The present second edition of *Sources No. 8 : Legal Resources for the Right to Water and Sanitation* is an updated and considerably broadened version of the 2004 guide. In addition, the book has undergone some structural changes in order to make it easier for lawyers, lawmakers and activists alike to find and identify laws and jurisprudence on specific components of the right to water and sanitation and compare these with relevant sources from other jurisdictions. For this purpose, the sections on domestic legislation and domestic case law have been classified according to the following thematic components of the right to water and sanitation: recognition and entitlements; allocation and availability; affordability; physical accessibility; non-discrimination and attention to marginalized and vulnerable groups; participation and access to information; monitoring and complaint procedures; water quality and quality of water and sanitation services; and international cooperation.

Another novelty is that the section on domestic legislation now also includes draft legislation and key policies.

The above classification is closely oriented at the thematic structure of COHRE's *Manual on the Right to Water and Sanitation*,¹ where readers can find additional and more detailed information on content, scope and ways for practical implementation of the various elements of the right to water and sanitation.

¹ Available for free download at: <http://www.cohre.org/manualrtws>.

Note that we are well aware of the fact that this survey of legal resources cannot possibly hope to be exhaustive. We strongly encourage all readers to point us to possible mistakes or omissions and to inform us about developments that may leave the information present in this book incomplete or outdated. We will see to include such amendments in the upcoming online version of the "Legal Resources for the Right to Water and Sanitation", which will be launched in spring 2008 and which will be updated on a regular basis.

The online version will be available at: www.cohre.org/legal_resources

2.1 Legal Foundations for the Right to Water and Sanitation

At the international level, the United Nations General Assembly recognised in the 1977 *Mar Del Plata Action Plan* 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."²

In the *Programme of Action of the International Conference on Population and Development, 1994* the 178 participating States explicitly recognised that all individuals have "the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and sanitation".³

The right to water has also been explicitly recognised in a number of legally binding international treaties, such as the *Convention on the Elimination of All Forms of Discrimination Against Women, 1979* (CEDAW), the *Convention on the Rights of the Child, 1989* (CRC) and the *African Charter on the Rights and Welfare of the Child, 1990*.

The United Nations Committee on Economic, Social and Cultural Rights (CESCR), a body of independent experts mandated by ECOSOC to interpret and monitor the implementation of the *International Covenant on Economic Social and Cultural Rights, 1966* (ICESCR)⁴, which is currently ratified by 157 States, in 2002 issued *General Comment No. 15: The Right to Water* (General Comment No. 15).⁵ While General Comments may not be binding in a strictly legal sense, they have the considerable weight of an authoritative interpretation of the Covenant.⁶ According to the Committee:

² See Subsection 4.4 below.

³ Programme of Action of the International Conference on Population and Development, Cairo, 1994, Chapter II, Principle 2.

⁴ The full text and list of ratifications is available at www.ohchr.org (Click on 'Your Human Rights' > 'What Are Human Rights' > 'International Human Rights Law').

⁵ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 15; The right to water* (Twenty-ninth session, 2002), U.N. Doc. E/C.12/2002/11 (2003),

⁶ The Committee on Economic, Social and Cultural Rights sought the authorisation of the United Nations Economic and Social Council (one of the 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 States 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* (Oxford: Clarendon Press, 1992), 473-508 at 494.

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.⁷

Thus, the right to water and sanitation can be held to be part of, derived from or implied under – whatever implied rights language one fancies – the right to an adequate standard of living, article 11(1) ICESCR. This is the central legal basis of this right. However, the right to water and sanitation is also inextricably linked to the rights to health, food and housing, included in articles 12(1) and 11(1) ICESCR. These rights are also provided for in a series of other international and regional treaties and declarations.⁸ The right to life, guaranteed under article 6(1) of the *International Covenant on Civil and Political Rights*, 1966 (ICCPR) can in certain narrowly defined situations be relevant with regard to access to water and sanitation.⁹

States that have not ratified the ICESCR are bound by a number of components of the right to water and sanitation which are reflected in other treaties that they may have ratified. They are also bound by aspects of the right to water and sanitation which have achieved the status of international customary law. In addition, key components of the right to water and sanitation, such as the obligation to refrain from measures that impede access to water and sanitation of civilians in wartime and to ensure 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, the right to water and sanitation has increasingly been recognised in constitutions, legislation and court decisions around the world (see Sections 5 and 7 below). In particular, the majority of water laws that have been adopted since the release of General Comment No. 15 and that are currently being drafted or under revision contain provisions on the

⁷ General Comment No. 15, para. 3. The full text is included in Subsection 6.1 below.

⁸ 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, see Subsection 4.5 below.

⁹ There is considerable agreement among human rights experts that the right to life would only cover such cases in which individuals that are in circumstances in which they completely depend on the provision of water and sanitation services by the State, such as detainees or illegal immigrants held in custody, lose their lives due to lack of access to safe water and basic sanitary facilities.

human rights dimension of access to water. In Uruguay, e.g., a 2004 referendum on a constitutional amendment regarding public ownership of water supply and water and sanitation provision was supported by nearly two thirds of the population. The Constitution of Uruguay now stipulates that “[a]ccess to drinking water and access to sanitation constitute fundamental human rights.”

In addition, a wide range of national legal sources contain State duties and entitlements of citizens in respect of access to water and sanitation (see Subsection 5.2 below).

2.2 Content of the Right to Water and Sanitation

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, food preparation, washing, and personal and domestic hygienic requirements.

The General Comment further notes 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.¹⁰

The major components of the right to water and sanitation, and the State actions necessary to achieve them, are addressed in this Subsection. These are drawn primarily from General Comment No. 15 and the Guidelines for the Realization of the Right to Drinking Water Supply and Sanitation adopted by the UN Sub-Commission on the Promotion and Protection of Human Rights, which, taken together, provide the most detailed account of the right to water and sanitation 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.

Note that the term “sanitation” is not defined in General Comment No. 15 or in the Sub-Commission Guidelines. However, the description of the relevant entitlements and State obligations implies that the right to sanitation

¹⁰ See Subsection 6.1 below, General Comment No. 15, para. 6.

comprises, as a minimum, access to excreta disposal facilities (thus a toilet or adequate latrine) which can effectively prevent human, animal and insect contact with excreta, and which ensure privacy and protect dignity, along with associated services such as sewerage or latrine exhaustion. The criterion of “conducive to the protection of public health and the environment” in the Sub-Commission Guidelines further indicates that wastewater drainage channels are required for situations where piped water, but not sewerage, is available in urban and peri-urban areas. It also implies that wastewater and excreta needs to be treated or disposed of in a manner that avoids threats to public health and damage to ecosystems.

2.3 Obligations Related to the Right to Water and Sanitation

In 2004, the UN Sub-Commission on the Promotion and Protection of Human Rights, an expert body that would advise the UN Human Rights Council, produced an analysis of the legal basis and implications of the right to water and sanitation¹¹ and in 2006 adopted Guidelines for the Realization of the Right to Drinking Water Supply and Sanitation (Sub-Commission Guidelines).¹² The Sub-Commission Guidelines are consistent with General Comment No. 15, but include clearer statements defining sanitation as a right in conjunction with access to water, as well as its components.

General Comment No. 15 and the Sub-Commission Guidelines, taken together, explain that the right to water and sanitation includes the following key components:

Sufficient water: Water supply for each person that is regular and sufficient for personal and domestic uses, which normally include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene. as corresponding to World Health Organisation (WHO) guidelines.¹³ This will normally constitute 50-100 litres daily per person, and an absolute minimum of 20 litres.¹⁴ These standards can be helpful in designing legally enforceable rights and developing indicators for the right to water. In the *Menores Comunidad Paynemil* case from Argentina, 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 (see Section 7 below; also see Manual on the RTWS, Chapter 7: Water availability, allocation and sustainability).

¹¹ Sub-Commission on the Promotion and Protection of Human Rights, *Final report of the Special Rapporteur 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*, 14 July 2004, E/CN.4/Sub.2/2004/20. The Sub-Commission was replaced in 2007 by the Human Rights Council Advisory Committee.

¹² United Nations Sub-Commission on the Promotion and Protection of Human Rights, Res. 2006/10, Promotion of the realization of the right to drinking water and sanitation, 24 August 2006, UN Doc. A/HRC/Sub.1/58/L11, adopting the *Draft Guidelines for the realization of the right to drinking water and sanitation* (2005), UN Doc. E/CN.4/Sub.2/2005/25.

¹³ WHO Guidelines for Drinking Water Quality (available at: http://www.who.int/water_sanitation_health/dwq/gdwq3/en/).

¹⁴ Guy Howard and Jamie Bartram, *Domestic Water Quantity, Service Level and Health* (Geneva: World Health Organization, 2003).

Quality: According to General Comment No. 15, the water required for personal and domestic uses must be "safe, therefore free from micro-organisms, chemical substances and radiological *hazards* that constitute a threat to a person's health."¹⁵ It must further be of an acceptable colour, odour and taste (see also Manual, Chapter 8: Water quality and hygiene). Sanitation services must be adequate to fulfil the requirements for health, dignity and privacy of all people, including groups with special needs such as women and people with disabilities, and to effectively protect and maintain the quality of water supplies.

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 (see Subsection 5.2 below; see also Manual on RTWS, Chapter 8: Water Quality and Hygiene).

Accessible water and sanitation: Water and sanitation facilities must be within safe physical reach, in or near each house, educational institution or workplace. Water and sanitation facilities should be in a safe location and address the needs of different groups, in particular women, whose physical security when collecting water or using sanitation facilities needs to be ensured. The absolute minimum quantity of water per person normally requires that the water source be within 1 kilometre, or about 30 minutes collection time. The South African *Water Services Act*, for example, stipulates that water service authorities have a duty 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. Under this Act, if a water service authority is unable to meet all the requirements of its customers, it is required to give preference to the provision of basic water supply and sanitation to them (see Subsection 5.2 below; see also Manual on the RTWS, Chapter 9: Physical accessibility of water and sanitation).

Affordable water and sanitation: Water and sanitation services must be affordable to all. The direct and indirect costs of securing water and sanitation should not reduce a person's capacity to acquire other essential goods, such as food, housing, education and health care. This normally means that water and sanitation services need to be subsidised for poor communities. In cases of people or communities living in extreme poverty, affordability can mean that services must be provided free of charge (see also Manual on RTWS, Chapter 10: Affordability and financing).

The *Plan of Implementation of the 2002 World Summit on Sustainable Development* indicates that cost-recovery objectives in the water field should not become a barrier to access by poor people (see Subsection 4.5

¹⁵ General Comment No 15, para. 12. b. The General Comment further refers States parties to the World Health Organization Guidelines for Drinking Water Quality (available at: http://www.who.int/water_sanitation_health/dwq/gdwq3/en/.) in order to define parameters for water quality.

below).¹⁶ A number of national laws apply to affordability. For example, the *Australian Utilities Act* included in Subsection 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 Subsection 5.2 establish special funds to subsidise water use by low-income families (see Subsection ??? below; see also Manual on RTWS, Chapter 10: Affordability and financing of water and sanitation).

Allocation and Availability: Domestic water uses account for less than ten per cent¹⁷ of total global water use, the balance being used by industry and agriculture. Of this already limited amount, only a small proportion is for essential domestic uses such as drinking, washing (clothes and personal hygiene), cooking and personal sanitation; in fact, only a few regions of a few countries actually have insufficient water resources to satisfy everybody's essential domestic needs. The problem is that, unlike prescribed by the right to water and sanitation, in practice essential domestic uses are not always prioritised in relation to other uses, such as agriculture or industry. Even recreational uses such as water for golf courses may be given higher priority than the basic needs of marginalized groups.

In addition, availability of a sufficient quantity of safe water is becoming an increasingly problematic issue in the provision of water services. Of particular relevance is the sustainability of existing water sources, which is often threatened by degradation of water catchment areas, as well as over-exploitation and contamination of water sources. These challenges lead to water scarcity, with utilities resorting to rationing, people losing access to traditional water sources, water tables falling and costs of water increasing.

As a result, ensuring availability of water in order to meet the right to water and sanitation requires both greater prioritisation of essential domestic uses and a significant improvement in water resource management (see Subsection ??? below; see also Manual on RTWS, Chapter 7: Water availability, allocation and sustainability).

Non-Discrimination: A crucial component of the right to water and sanitation is that everybody is ensured access to water and sanitation, including the most vulnerable or marginalised groups, without discrimination. The principle of non-discrimination, which is a fundamental human right in itself and is included in all international human rights conventions, prohibits distinction, exclusion, restriction or preference, which

¹⁶ See Subsection 4.4. below, *Johannesburg Plan of Implementation of the World Summit on Sustainable Development*, Art. 26 (b).

¹⁷ Igor Shiklomanov, 'World Water Resources And Their Use a joint SHI/UNESCO Product', 1999. <http://webworld.unesco.org/water/ihp/db/shiklomanov/>. According to the 2006 Human Development Report, "Household water requirements represent a tiny fraction of water use, usually less than 5% of the total, ..." (UNDP, *Beyond scarcity: Power, poverty and the global water crisis*, 2006, p. 18).

COMMENT: Why not use this one??

is based on any ground (e.g. race, colour, sex, language, health status, sexual orientation, religion, political or other opinion, national or social origin, property, birth or other status) that differentiates without legitimate reason.

However, non-discrimination entails more than mere avoidance of active discrimination against particular groups. It also includes proactive measures to ensure that the particular needs of vulnerable or marginalised groups, such as women, persons with illnesses (e.g. HIV/AIDS), people living in informal settlements, excluded minorities, older people or people with disabilities are being addressed.

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 which are available for water and sanitation 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.¹⁸

Provisions in human rights treaties and international declarations, listed in Subsections 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 (see Subsection 5.2 below; see also Manual on the RTWS, Chapter 5: Non-discrimination and attention to vulnerable and marginalised groups).

Participation and access to information: Everyone has a right and a responsibility to participate in the realisation of the right to water and sanitation. However, poor people and members of vulnerable or marginalised groups are frequently excluded from decision-making regarding water and sanitation, and hence their needs are seldom prioritised. This results in their inequitable access to water and sanitation facilities and services. Information regarding how to access water and sanitation services is often not readily publicly available in an easy to understand format. Where services are provided, the lack of adequate participation can lead to inappropriate technical solutions, prohibitive financial costs or unrealistic payment options.

The right to water and sanitation, in common with all other human rights, includes the right to have access to information and to be able to participate in decision-making. Thus, it provides that all persons must be given a

¹⁸ General Comment No. 15, paras. 13 and 16, provides a comprehensive list of relevant groups and their particular needs.

genuine opportunity to access information and to influence and enhance policy formulation and implementation in the water and sanitation sector (; see Subsection ??? below; see also Manual on RTWS, Chapter 6: Participation and access to information).

Duties to Respect, Protect and Fulfil the Right to Water and Sanitation

The State is required to move as expeditiously as possible towards the full realisation of the right to water and sanitation, 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 and sanitation.

The State has a duty to *respect* the right to water and sanitation by refraining from interfering with any person's existing access to water and sanitation. Examples of such action include limiting access or destroying water service or sanitation 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 access to the minimum essential amount of water and basic sanitation.

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

The State has a duty to *protect* the right to water and sanitation by ensuring that third parties do not interfere with any person's access to water and sanitation, such as through pollution or inequitable extraction of water. Where the private sector controls water supply and sanitation services, the State is required to provide for regulation and establish independent monitoring, genuine public participation and penalties for non-compliance in order to ensure that equal, affordable and physical access to sufficient, safe and acceptable water and basic sanitation is maintained for all.

National laws from Australia, Finland, New Zealand, South Africa and United Kingdom in Subsection 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 demonstrates where courts have intervened to restrict cases of pollution of drinking water sources by oil extraction processes (see Section 7 below).

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

The State is bound to ensure that local authorities and the private sector are obligated to expand access to water and sanitation, and are provided with the necessary resources and tools to do so (see Subsection ??? below; see also Manual on RTWS, Chapter 2: Overview of the Human Right to Water and Sanitation).

International Obligations¹⁹

States are required to engage in international cooperation and assistance in order to achieve universal realization of the right to water and sanitation. This entails, first of all, that States are obliged to *respect* the enjoyment of the right to water in other countries by refraining from actions that interfere, directly or indirectly, with the realization of the right to water and sanitation in other countries, for example sanctions that restrict the supply of water or the provision of goods and services essential for securing the right to water and sanitation.²⁰

States must *protect* the right to water and sanitation in other countries, such as by regulating the actions of corporations headquartered in their jurisdiction. States must help *fulfil* the right to water and sanitation 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 and sanitation 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 in developing countries (see Subsection 4.5 below).

The 1997 *UN Convention on the Law of the Non-Navigational Uses of International Watercourses* (see Subsection 4.3 below) sets out international duties relating to shared watercourses (see also Manual on RTWS, Chapter 11: International Cooperation).

¹⁹ See General Comment No. 15, paras. 30-36.

²⁰ General Comment No. 8, addressed in Subsection 6.2, provides further details on this obligation in respect of sanctions.

Accountability

Each State should ensure that persons whose right to water and sanitation has been denied have access to effective judicial, administrative or other appropriate remedies at the national level, and should be entitled to adequate reparation. The cases from, inter alia, France, Brazil and South Africa in Section 7 below indicate the manner in which courts have addressed disconnections of water supply. The cases from Argentina, Pakistan and India in Section 7 below demonstrate the use of the courts to address situations of pollution of drinking water supplies (see Subsection 7.? – Allocation and Availability below; see also Manual on RTWS, Chapter 4: Roles of key actors, Sections 4.4 and 4.1.12).

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 and sanitation 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 sanitation, and if that right is to be fully achieved for all, their contributions to ensuring safe, sufficient, accessible and affordable water and basic sanitation will be essential.

3. HOW TO USE SOURCES 8

In many sectors of society, particularly those that have rarely benefited in practical terms from human rights laws, there is often a degree of scepticism as to the potential of such laws to promote and guarantee social justice. At first sight such views seem entirely reasonable, given the cynical disregard frequently displayed by governments towards their obligations under human rights law. There remain significant obstacles to promoting issues of equality, social justice, and protection of the rights of the poor and marginalised.

Nevertheless, COHRE's experience in working directly with groups in many countries, with the aim of 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 much wider applicability and impact than is commonly assumed. The power of the law in its wider sense does not end at the doorstep to the court-house.

The law, international law in particular, is a solid basis for holding governments accountable for protecting the full spectrum of human rights of everyone, and for promoting national legislative, policy and other initiatives which comply fully with the international standards that States themselves have freely accepted.

Sources No. 8 demonstrates that there is significant recognition of the right to water and sanitation in international and regional standards as well as in the domestic legal orders of many countries. The existence of the legal right to water and sanitation, 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, non-governmental organisations, lawyers, researchers, academics and others seeking to ensure the eventual fulfilment of this right. This 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 sanitation, and initiatives, at all levels, for the adoption of new, better and more specific legislation and standards on the right to water and sanitation.

This guide is intended for everyone - including laypersons, educators, human rights lawyers and other advocates, as well as international and national policy-makers - with an interest in advocating and implementing the right to water and sanitation. The relevant provisions of international, regional and national standards have been excerpted and appear below in Sections 4 – 7. Where the texts of such standards are not readily available, COHRE has provided annotations.

In the legal excerpts, specific references to the right to water and sanitation or a specific entitlement to water, either explicit or implicit, are printed in bold italic type.

Below are some suggestions for general uses of this guide:

1. The general statements of law and principle regarding the right to water and sanitation can be used to inform individuals and groups of their rights, and to inform governments, politicians, policy-makers and officials of inter-governmental organisations of their obligations. The resources in this guide can also be used to interpret specific provisions such as those incorporated in national legislation and policy measures.
2. The international and national standards included in this guide can be used as models in formulating legislative provisions, as well as regulations and policy measures, in accordance with international law. The standards in this guide can also be used for comparative analyses with the aim of evaluating existing or proposed legal standards and provisions. Thus, these standards can be used as models to amend and strengthen existing laws.
3. Human rights practitioners and other advocates can use this guide as a basis to press governments, international institutions and others to respect, protect and fulfil the right to water and sanitation, and thereby meet their obligations under international law.
4. This guide can be used as a comprehensive research tool for those who desire to delve deeper into the topic of the right to water and sanitation.
5. The legal resources on the right to water and sanitation included in this guide can be publicised in all forms of media.
6. This guide can be used in litigating for the right to water and sanitation, particularly where a State's courts directly apply international standards, or use them to interpret national law. Comparative national law and jurisprudence can be used to demonstrate to courts that the right to water and sanitation is recognised in other jurisdictions around the world, that it is capable of judicial enforcement by domestic courts and provide concrete examples of how that can be done.

In addition to these general uses, this guide can be useful in undertaking more specific activities in the following categories: distribution, translation and documentation; legal uses; utilising the United Nations and regional organisations; political and strategic uses; campaigning and networking uses; and academic and educational uses. These categories are explained in greater detail in the following paragraphs.

Many of the specific uses of this guide indicated below may necessitate acquisition of the full texts of the legal instruments from which relevant provisions have been excerpted. For that reason, citations are provided

where relevant. COHRE can also provide the documents listed throughout the guide: please visit our website, www.cohre.org/water, for more information. United Nations documents can be obtained from the UN information office in your country. Human rights documents can be obtained from the website of the Office of the UN High Commissioner for Human Rights, www.ohchr.org.

Distribution, Translation and Documentation

The legal standards and provisions included in Sources No. 8 can be widely publicised and distributed at all levels of society, in order to gain wider public recognition for, and awareness of, these important documents.

The legal texts in this guide can be translated for inclusion in user-friendly leaflets, brochures and booklets intended 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.

Consider establishing a housing rights and water rights documentation centre in your country. COHRE's entire *Sources* series could be provided to such a Centre.

Legal Uses

The legal texts included in this guide can be used to propose new national legislation, to enforce the right to water and sanitation through litigation and to amend existing laws to ensure that they are consistent with international human rights law and relevant international environmental, humanitarian, criminal and labour law.²¹

In many countries, the courts directly apply international law in their decisions or interpret national law such that it conforms to international law as far as possible. Laws and judgements from other countries often have persuasive value in legal cases. The standards in this guide can be used in litigation to enforce standards for the right to water and sanitation, where these are provided for in a national system. They can also be used to monitor the extent to which national and sub-national water laws, 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 and sanitation issues.

²¹ The challenges of enforcing such decisions, of determining and deploying effective strategies in economic, social and cultural rights litigation, and of making the link between litigation and social mobilisation are addressed in the COHRE publication: *Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies* (Geneva: COHRE, 2003), www.cohre.org/litigation.

Utilising the United Nations and Regional Organisations

Governments and civil society can use the texts included in Section 4 below as a basis for preparing reports to relevant UN or other human rights bodies charged with monitoring implementation of, and compliance with, States' international human rights obligations.²² Where a particular UN or regional mechanism permits individual complaints,²³ individuals or groups whose right to water and sanitation has been violated can petition such a body to review the case and provide its decision to the State. The texts can also be used as a foundation on which to develop stronger international standards with respect to the right to water and sanitation. In particular, it is necessary to work to ensure that international agreements that deal with environmental and economic issues related to water are designed and implemented in a manner consistent with the right to water and sanitation.

Political and Strategic Uses

The human rights standards in this guide should be used to promote human rights approaches to water governance. 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 in your country. The governments should be encouraged to respond to and respect these standards and provisions. In particular, they should be made aware that these texts establish legal obligations to develop new policies or laws in order to further the standards embodied in them. The governments should also be made aware that it is their role to encourage the UN and regional organisations to develop further standards and norms with respect to the right to water and sanitation.

The legal texts in this guide should also be brought to the attention of policy-makers and political parties in each State. It is useful to provide the texts to the government departments that address legal and justice matters. It is particularly important to provide these texts to government agencies that implement government policy on social services, water and sanitation, education, housing, the environment, finance, trade and health, insofar as they relate to the right to water and sanitation.

Campaigning and Networking Uses

²² See also COHRE, *Manual on the Right to Water and Sanitation*, 2008, available for free download at: http://www.cohre.org/view_page.php?page_id=265.

²³ 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 *International Convention on the Elimination of All Forms of Racial Discrimination*. Further information is available on the website of the High Commissioner for Human Rights, www.unhchr.ch, under the title 'Communications/Complaints Procedures', <http://www.unhchr.ch/html/menu2/complain.htm>. Further information on making complaints can be found at www.cohre.org/litigation.

The human right to water and sanitation can be used as a key element in campaigns to highlight the injustice of denying people access to water and sanitation. The fact that the right to water and sanitation is a legally binding standard can be used to bolster political arguments; advocates can use it in forming coalitions in a timely manner to promote access to water and sanitation services. The right to water and sanitation, as defined in General Comment No. 15 and the Sub-Commission Guidelines, includes clearly defined and realisable 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 and sanitation is internationally recognised – by both developed and developing countries – can be used to counter the frequently-heard claim that access to water and sanitation is invariably a privilege.

These texts should be brought to the attention of non-governmental organisations, inter-governmental agencies and all other entities dealing with water and sanitation issues. The texts should be used to ensure that procedures for access to water and sanitation in each State comply with international standards. If a particular State has ratified a relevant treaty, advocates should argue that that State is bound to fulfil its obligations pursuant to that treaty.²⁴ If a State has not ratified a particular treaty, a campaign for ratification may increase awareness of the importance and value of the rights and norms incorporated in that treaty, while helping to bind the State to those norms.

Academic and Educational Uses

The legal resources in this guide can be sent to research institutes and universities in each State or region. These institutions can be requested to provide commentary on the legal standards as well as their suggestions for their further development. To this end, legal activists, academics and scholars should be encouraged to carry out detailed research on the extent to which existing legal standards and policies protect the right to water and sanitation, 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 instruments that are legally binding upon the Governments that have ratified or acceded to them, thus becoming States Parties. Governments that have signed but not yet ratified a particular Covenant, Convention or Treaty are not legally bound to enforce that instrument, but *are* under an obligation not to undertake activities that violate its object and purpose. If

²⁴ To find out which States have ratified the main human rights treaties, see the report available at <http://www.unhchr.ch/pdf/report.pdf>. The most up-to-date information on the ratification status of a particular human rights treaty or protocol is often available on the website of the relevant monitoring body. See, e.g., the information provided under the heading 'Recent Ratifications' on the website of the Committee, <http://www.ohchr.org/english/bodies/cescr/index.htm>.

your Government is a State Party to any of the Covenants, Conventions or Treaties listed in this guide, it has legal obligations to implement the provisions of that instrument. Governments that have ratified such instruments are also bound in relation to their voting in international organisations of 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 in most circumstances do not entail obligations that are legally binding upon 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. However, they can be used to help interpret international treaties and national Constitutional and legislative provisions. Declarations and resolutions may also provide evidence of overall trends in the development of international customary law. In some instances, norms or principles of law expressed in non-binding instruments may acquire the status of international customary law, which *is* legally binding upon States, if that particular norm or legal principle is consistently considered by a large majority of States to constitute a legally binding norm. One notable example is the Universal Declaration of Human Rights, where many, if not most of its provisions, have acquired such legal status.

General Comments and General Recommendations:

'General Comments and General Recommendations' are official interpretations or elaborations of 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 bodies, composed of independent experts elected by UN Member States, to monitor the implementation of specific covenants, conventions, or treaties. General Comments and General Recommendations, while not legally binding in a narrow sense, carry the considerable weight of authoritative interpretations of these treaties.²⁵

Concluding Observations

'Concluding Observations' are adopted by UN human rights treaty-monitoring bodies. They are State-specific, are released after each review or examination of a State, and are an evaluation of the extent to which the State is implementing and complying with its obligations under the human rights treaty in question. States Parties are expected to address the Committee's concerns and apply these recommendations before the next evaluation is due. Though there are no formal mechanisms to enforce Concluding Observations, treaty bodies may include 'follow-up' mechanisms in their work. There are opportunities for significant participation of non-

²⁵ See note 2 above.

governmental organisations (NGOs) in the reporting process, including the possibility of challenging the State's official report. Concluding Observations have been used effectively by some NGOs to campaign at the national level, and to expose inconsistencies between the position a State has taken in the UN system and the position it has 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 in 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, the OAU)*, an inter-governmental organisation comprised of all 53 African States.

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, as well as an increasing number of countries in Eastern Europe and the former Soviet Union. At present, there are 47 member Governments represented at 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 other bodies that are composed of independent experts acting in their personal capacity. For the most part, resolutions are not considered to be legally binding. Resolutions are, however, considered to constitute persuasive views on international law and often affirm principles of customary international law 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 achievement of the resolution's 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 by the international community constitutes a significant political pledge towards a particular aim.

4. INTERNATIONAL LEGAL STANDARDS

International treaties and declarations provide significant support for the right to water and sanitation. A number of human rights treaties explicitly or implicitly recognise and guarantee access to water and sanitation 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 and sanitation. A number of treaties set out specific State obligations that governments are required to fulfil in order to effectively guarantee the human right to water and sanitation.

Subsection 4.1 includes provisions from human rights treaties that provide the basis for the recognition, content and interpretation of the human right to water and sanitation.²⁶ Subsection 4.2 covers provisions of international humanitarian and criminal law treaties that refer to access to water and sanitation. Subsection 4.3 includes provisions from international environmental and labour treaties. Subsection 4.4 covers international declarations that refer explicitly or implicitly to the right to water and sanitation. Subsection 4.5 comprises treaties and declarations on the right to water and sanitation and on water governance that apply only to specific regions.

Throughout this section, a distinction is made between explicit and implicit references to the right to water and sanitation. It should be noted that, whereas it is easier to demonstrate the existence of the right to water and sanitation in treaties that explicitly recognise that right, in legal terms an explicit provision is not necessarily of a higher status than an implicit one. The legal force of treaties is addressed in Section 3 above, in the paragraphs that explain the terminology. In the legal excerpts below, specific references to the right to water and sanitation or a specific entitlement to water, either explicit or implicit, are printed in ***bold italic type***.

4.1 International Human Rights Law Treaties

A number of human rights treaties explicitly recognise elements of the right to water and sanitation, including 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 and sanitation is also implicitly included in Article 11.1 of the *International Covenant on Economic Social and Cultural Rights* recognizing “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”.²⁷ Article 11.1 ICESCR constitutes the most important legal basis for the right to water and sanitation since the Covenant is universally applicable both *ratione personae*

²⁶ Subsection 6.3 lists Concluding Observations by treaty-monitoring bodies that apply these treaties to specific country situations.

²⁷ See Subsection 6.1 below, General Comment No. 15 on the Right to Water, para. 3.

and *ratione loci*, i.e. it has no geographical limitations and does not exclude any groups or people.

Many other human rights treaties contain implicit references to the right to water and sanitation, since they recognise 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 implicit references consist in the fact that access to sufficient, safe and affordable water and adequate sanitation is an essential component of each of these rights. This point is recognised by General Comments of the UN Committee on Economic, Social and Cultural Rights which interpret each of these human rights (see Subsections 6.1 and 6.2 below).

This subsection 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 grounds, which also requires the State to take measures to ensure substantively equal treatment for each person in its water and sanitation policies and programmes.²⁸

Explicit Provisions

Convention on the Rights of the Child, 1989²⁹

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health...

2. States 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; ...

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

²⁸ See paras. 13-16 of General Comment No. 15.

²⁹ At: <http://www.unhchr.ch/html/menu3/b/k2crc.htm>.

Convention on the Elimination of All Forms of Discrimination against Women, 1979³⁰

Article 14 (2)

States 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.

Convention on the Rights of Persons with Disabilities, 2006³¹

Article 28 - Adequate standard of living and social protection

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

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

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

Implicit Provisions

International Covenant on Civil and Political Rights, 1966³²

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.

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.³³

³⁰ At: <http://www.unhchr.ch/html/menu3/b/e1cedaw.htm>.

³¹ The Convention is not yet in force. It was opened for signature on 30 March 2007 and has thus far been signed by 117 and ratified by 7 states. The Convention requires 20 ratifications to enter into force. Available at: <http://www.un.org/esa/socdev/enable/documents/tccconve.pdf>.

³² http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

³³ See the interpretation of this article by UN Human Rights Committee, Subsection 6.2 below.

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, 1966³⁴

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 States Parties to the present Covenant recognize the right of everyone to an **adequate standard of living** for himself and his family, **including adequate food, clothing and housing** and to 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.³⁵

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**.³⁶

³⁴ http://www.unhchr.ch/html/menu3/b/a_ceschr.htm

³⁵ See the interpretation of this article by UN Committee on Economic, Social and Cultural Rights, Subsections 6.1 and 6.2 below.

³⁶ *Ibid.*

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, 1965³⁷

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.

³⁷ http://www.unhchr.ch/html/menu3/b/d_icerd.htm

4.2 International Humanitarian and Criminal Law Treaties³⁸

International humanitarian law treaties, which govern the actions of States and other actors in times of war or occupation, set out obligations to respect and ensure access to water for prisoners of war, interned persons and the civilian population. These requirements indicate the 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 *Rome Statute of the International Criminal Court* would cover acts such as the deprivation of water supply to civilians as a means of warfare.³⁹

Explicit Provisions

Geneva Convention (III) relative to the Treatment of Prisoners of War, 1949⁴⁰

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 29

The Detaining Power shall be bound to take all **sanitary measures** necessary to ensure the cleanliness and healthfulness of camps and to prevent epidemics.

Prisoners of war shall have for their use, day and night, conveniences which conform to the rules of **hygiene** and are maintained in a constant state of cleanliness. In any camps in which women prisoners of war are accommodated, separate conveniences shall be provided for them.

Also, apart from the baths and showers with which the camps shall be furnished, prisoners of war shall be provided with sufficient **water** and soap for their personal

³⁸ 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.

³⁹ Note: Israel has ratified the Geneva Conventions, but has neither signed nor ratified the additional protocols I and II of 1977. It is therefore necessary to check which elements of the additional protocols are considered customary law. See Jean-Marie Henckaerts, "Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict," 87 *International Review of the Red Cross* Number 857 (March 2005). Israel signed but did not ratify the Rome Statute of the International Criminal Court.

⁴⁰ <http://www.unhcr.ch/html/menu3/b/91.htm>.

toilet and for washing their personal laundry; the necessary installations, facilities and time shall be granted them for that purpose.

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, 1949⁴¹

Article 33

No protected person may be punished for an offence he or she has not personally committed. **Collective penalties** and likewise all measures of intimidation or of terrorism are prohibited.

Pillage is prohibited.

Reprisals against protected persons and their property are prohibited.

Article 85

The Detaining Power is bound to take all necessary and possible measures to ensure that protected persons shall, from the outset of their internment, be accommodated in buildings or quarters which afford every possible safeguard as regards **hygiene** and health, ...

...

Internees shall have for their use, day and night, **sanitary conveniences** which conform to the rules of hygiene, and are constantly maintained in a state of cleanliness. They shall be provided with sufficient **water** and soap for their daily personal toilet and for washing their personal laundry; installations and facilities necessary for this purpose shall be granted to them. Showers or baths shall also be available. The necessary time shall be set aside for washing and for cleaning.

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.

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,

⁴¹At:

<http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5;>
<http://www.unhchr.ch/html/menu3/b/92.htm>.

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), 1977⁴²

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), 1977⁴³

Article 5: Persons whose liberty has been restricted

1. In addition to the provisions of Article 4, the following provisions shall be respected as a minimum with regard to persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained:
 - (a) The wounded and the sick shall be treated in accordance with Article 7;
 - (b) The persons referred to in this paragraph shall, to the same extent as the local civilian population, be provided with food and **drinking water** and be afforded safeguards as regards health and hygiene and protection against the rigours of the climate and the dangers of the armed conflict;

⁴² <http://www.unhchr.ch/html/menu3/b/93.htm>

⁴³ At: <http://www.fao.org/righttofood/kc/downloads/vl/docs/AH391.pdf>;
<http://www.unhchr.ch/html/menu3/b/94.htm>.

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.**

Implicit Provisions

Geneva Conventions (I-IV) – Common Article 3⁴⁴

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, 1949⁴⁵

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....

⁴⁴ 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/intlnst.htm> under 'Humanitarian Law.'

⁴⁵ <http://www.unhchr.ch/html/menu3/b/91.htm>.

Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949⁴⁶

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 who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so, unless their departure is contrary to the national interests of the State] shall be carried out in satisfactory conditions as regards safety, **hygiene, sanitation** and food....

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 **relief schemes** 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....⁴⁷

⁴⁶ <http://www.unhchr.ch/html/menu3/b/92.htm>.

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....

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**....

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 1), 1977⁴⁸

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....

⁴⁷ Article 60 also provides that the occupying State shall 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 Power.

⁴⁸ <http://www.unhcr.ch/html/menu3/b/93.htm>.

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), 1977⁴⁹

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.⁵⁰

Rome Statute of the International Criminal Court, 17 July 1998⁵¹

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; ...

2. For the purposes of paragraph 1: ...

(b) "Extermination" 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: ...

⁴⁹ <http://www.unhchr.ch/html/menu3/b/94.htm>.

⁵⁰ Article 18 also provides that the relief schemes shall be undertaken subject to the consent of the State Party concerned.

⁵¹ <http://www.un.org/law/icc/statute/romefra.htm>.

(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 numerous provisions that correspond to obligations contained in the right to water and sanitation. The right to water and sanitation requires States to assess the impacts of actions that may impinge upon water availability, natural ecosystems and watersheds, such as climate change, desertification and loss of biodiversity.⁵² 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 in restoring 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 implementing the right to water and sanitation, the standards incorporated in General Comment No. 15 and the Sub-Commission Guidelines should be used to supplement environmental conventions, for example, by requiring States to take steps to the maximum of their available resources to ensure access to water.

The right to water and sanitation as defined in General Comment No. 15 also obligates States to refrain from actions that interfere with the right to water and sanitation in other countries.⁵³ This obligation is also reflected, in more detail, in the 1997 *UN Convention on the Law of the Non-Navigational Uses of International Watercourses* ("the 1997 Watercourse Convention"), which requires, for example, that States prevent the causing of significant harm to other watercourse States. The 1997 *Watercourse Convention* further requires States to take account of the population dependent on the watercourse, and the social and economic needs in each watercourse State concerned. Furthermore, where States are in a dispute over the uses of a shared watercourse, they are required to give special regard to vital human needs. In addressing issues of international water management, it is therefore necessary to take account of both General Comment No. 15 and the 1997 *Watercourse Convention*.

Implicit Provisions

United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994⁵⁵

⁵² See Subsection 6.1 below, General Comment No. 15, para. 28.

⁵³ See Subsection 6.1 below, General Comment No. 15, para. 31.

⁵⁴ <http://www.biodiv.org/convention/articles.asp>.

⁵⁵ <http://www.unccd.int/convention/text/convention.php>

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.

Article 10: National Action Programmes

2. 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...

(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; ...

UN Convention on the Law of the Non-Navigational Uses of International Watercourses, 1997⁵⁶

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.

⁵⁶ <http://www.un.org/law/ilc/texts/nnavfra.htm>. The Convention is not yet in force. However, it is generally accepted that most of its substantive provisions, including the rules on equitable utilization and the prohibition to cause significant harm, are part of the international customary law governing the non-navigational uses of international watercourses.

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**.

In regard to Article 10.2 of the Convention, the Statement of Understanding issued by States negotiating the Convention states: "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.*⁵⁷

*The International Law Association's Berlin Rules on Water Resources (2004)*⁵⁸ in Article 2(20) clarify that "Vital human' needs means waters used for immediate human survival, including drinking, cooking, and sanitary needs, as well as water needed for the immediate sustenance of a household."

Article 14 of the same Rules further states that "[i]n determining an equitable and reasonable use, States shall first allocate waters to satisfy vital human needs. No other use or category of uses shall have an inherent preference over any other use or category of uses."

Article 17 finally recognizes the right to water:

"1. Every individual has a right of access to sufficient, safe, acceptable, physically accessible, and affordable water to meet that individual's vital human needs.

2. States shall ensure the implementation of the right of access to water on a non-discriminatory basis.

3. States shall progressively realize the right of access to water by:

a. Refraining from interfering directly or indirectly with the enjoyment of the right;

b. Preventing third parties from interfering with the enjoyment of the right;

c. Taking measures to facilitate individuals access to water, such as defining and en-forcing appropriate legal rights of access to and use of water; and

d. Providing water or the means for obtaining water when individuals are unable, through reasons beyond their control, to access water through their own efforts.

4. States shall monitor and review periodically, through a participatory and transparent process, the realization of the right of access to water."

Occupational Health Services Convention, 1985 (No. 161)⁵⁹

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)⁶⁰

Article 2

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

2. Such action shall include measures for: ...

⁵⁷ Report of the Sixth Committee convening as the Working Group of the Whole, UN Doc. A/51/869 of 11 April 1997, para. 8, <http://www.un.org/law/watere.htm> .

⁵⁸ International Law Association, Water Resources Committee, Fourth Report, 2004, available at: <http://www.ila-hq.org/pdf/Water%20Resources/Final%20Report%202004.pdf>.

⁵⁹At: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C161>.

⁶⁰At: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>.

(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.

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.

*As of January 2008, the Occupational Health Convention had been ratified by 26 countries, while the Indigenous and Tribal Peoples Convention had been ratified by 19 countries.*⁶¹

⁶¹ Ratification status for ILO Conventions can be checked at :
<http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN>.

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 other legislative provisions. They may be seen as 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 *Programme of Action 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 of Human Rights*, elements of which are commonly considered to constitute international customary law, includes a number of implicit references to the right to water and sanitation. > MORE!!!

Declarations on environment, development and sustainable development also include provisions that correspond to obligations regarding the right to water and sanitation. These declarations require States to carry out a number of actions, including:

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

Explicit Provisions

Mar del Plata Action Plan, United Nations Water Conference, 1977⁶²

II. Community Water Supply

The United Nations Water Conference, ...

Considering that:

(a) 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;

⁶² Report of the United Nations Water Conference, Mar del Plata, 14-25 March 1977, U.N. Doc. E/Conf.70/29 (1977), at pp. 66-67.

(b) It is universally recognized that the availability to man of that resource is essential both for life and his full development, both as an individual and as an integral part of society; ...

Recommends:

(a) That where human needs have not yet been satisfied, national development policies and plans should **give priority to the supplying of drinking water for the entire population and to the final disposal of waste water**; ...

General Assembly Resolution 54/175, The right to development, 2000⁶³

12. *Reaffirms* that, in the full realization of the right to development, *inter alia*:
(a) The rights to food and **clean water** are fundamental human rights and their promotion constitutes a moral imperative both for national Governments and for the international community; ...

This text was adopted with the support of all developing countries. It follows Resolution 46/91 of 16 December 1991 and the Declaration on the Right to Development (Resolution 41/128 of 04 December 1986) under which States shall ensure notably the "equality of opportunity for all in their access to basic resources." Drinking water is obviously one of these basic resources.

Programme of Action of the International Conference on Population and Development, Cairo, 1994⁶⁴

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, 1992⁶⁵

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

⁶³ At: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/A.RES.54.175.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/A.RES.54.175.En?Opendocument).

⁶⁴ At: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. The 177 Programme of Action was adopted by the 177 participating States by consensus.

⁶⁵ At: <http://www.un.org/esa/sustdev/agenda21.htm>.

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.

Final Document of the 14th Summit Conference of the Non-Aligned Movement, Havana, Cuba, 11–16 September 2006⁶⁶ NEW

Water

224. The Heads of State or Government, stressed the need to assist developing countries in their efforts to prepare, integrated water resources management and water efficiency plans as part of their national development strategies and to provide access to safe drinking water and basic sanitation in accordance with the Millennium Declaration and the Johannesburg Plan of Implementation, including halving by 2015 of the proportion of people who are unable to reach or afford safe drinking water and who do not have access to basic sanitation.

225. The Heads of State or Government stressed the need to 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.

226. The Heads of State or Government recalled what was agreed by the UN Committee on Economic, Social and Cultural Rights in November 2002, recognised the importance of water as a vital and finite natural resource, which has an economic, social and environmental function, and **acknowledged the right to water for all**.

227. The Heads of State or Government emphasised the need to 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.

The Cuba Summit Conference was attended by all 118 member States of the Non-Aligned Movement (NAM). The Final Document of the Heads of State or Government was endorsed unanimously.

See also the Final Document of the Ministerial Meeting of the Coordinating Bureau of the Non-Aligned Movement, Putrajaya, Malaysia, 27-30 May 2006, at paras 184-187, where the Ministers of Foreign Affairs of the 118 NAM member States issued the exact same statements.⁶⁷

Implicit Provisions

⁶⁶ Available at: <http://www.reformtheun.org/index.php?module=uploads&func=download&fileId=1767>.

⁶⁷ Available at: [http://www.un.int/belarus/diversity/MMCOB\(FinalDocument\).pdf](http://www.un.int/belarus/diversity/MMCOB(FinalDocument).pdf).

Universal Declaration of Human Rights 1948⁶⁸

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.

.

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 ... and necessary social services...

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, 1972⁶⁹

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 for present and future generations....

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.

⁶⁸ At: <http://www.un.org/Overview/rights.html>.

⁶⁹ At: <http://www.unep.org/Documents/Default.asp?DocumentID=97>.

⁷⁰ At: http://www.who.int/hpr/NPH/docs/declaration_almaata.pdf.

Declaration on Social Progress and Development, General Assembly Resolution 2542 (XXIV), 1969⁷¹

OBJECTIVES

Social progress and development shall aim at the continuous raising of the material and spiritual standards of living of all members of society, with respect for and in compliance with human rights and fundamental freedoms, through the attainment of the following main goals:

Article 10

...

(f) The provision for all, particularly persons in low income groups and large families, of **adequate housing** and **community services**.

United Nations Principles for Older Persons, 1991⁷³

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.

Standard Minimum Rules for the Treatment of Prisoners, 1955⁷⁴ NEW

Personal hygiene

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.

Food

20. (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

(2) Drinking water shall be available to every prisoner whenever he needs it.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990⁷⁵ NEW

34. **Sanitary installations** should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

37. Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible,

⁷¹ Available at: http://www.unhchr.ch/html/menu3/b/m_progre.htm.

⁷² At: <http://www.un.org/documents/ga/res/35/a35r18e.pdf>.

⁷³ At: <http://www.un.org/esa/socdev/iyop/iyoppop.htm>.

⁷⁴ At: <http://www1.umn.edu/humanrts/instree/g1smr.htm>;
www.unhchr.ch/html/menu3/b/h_comp34.htm.

⁷⁵ At: <http://www.un.org/documents/ga/res/45/a45r113.htm>.

religious and cultural requirements. ***Clean drinking water should be available to every juvenile at any time.***

Guiding Principles on Internal Displacement, 1998⁷⁶

Principle 18

1. All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
 - (a) Essential food and potable water; ...
 - (d) Essential medical services and sanitation.
3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Rio Declaration on Environment and Development, UN Conference on Environment and Development, 1992⁷⁷

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, 1992⁷⁸

Chapter 18

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.

18.8. 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

⁷⁶At: <http://www1.umn.edu/humanrts/instreet/GuidingPrinciplesonInternalDisplacement.htm>;
<http://www.unhcr.ch/html/menu2/7/b/principles.htm>.

⁷⁷ At: <http://www.unep.org/Documents/Default.asp?DocumentID=78&ArticleID=1163>.

⁷⁸ At: <http://www.un.org/esa/sustdev/agenda21.htm>.

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.

Habitat Agenda, UN Habitat II conference, Istanbul, 1996⁷⁹

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:

(b) Adopt measures to prevent and control air, **water** and soil pollution ...

(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; ...

Johannesburg Plan of Implementation of the World Summit on Sustainable Development, 2002⁸⁰

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

⁷⁹ <http://www.unhabitat.org/unchs/english/hagenda/>.

⁸⁰ http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POIToc.htm.

sanitation infrastructure and services development, ensuring that such infrastructure and services meet the needs of the poor and are gender-sensitive;

(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**;

Commission on Human Rights, Human Rights Resolution 2005/24⁸¹

17. *Affirms* that access to a sufficient amount of **safe, clean water** for personal and domestic use ... is fundamental to the realization of the right of everyone to the enjoyment of the highest attainable standard of health.

⁸¹ Available at: http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2005-24.doc.

This resolution was adopted by a 50-to-1 vote (the United States voting against), with no parties abstaining.

Commission on Human Rights, Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Human Rights Resolution 2005/15⁸²

Preamble

The Commission on Human Rights,

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and the Vienna Declaration and Programme of Action, particularly on the question of the human rights of everyone to life, the enjoyment of the highest attainable standard of physical and mental health and other human rights affected by the illicit movement and dumping of toxic and dangerous products, including the **rights to clean water**, food, adequate housing and work, ...

4. *Reaffirms* that illicit traffic in and dumping of toxic and dangerous products and wastes constitute a serious threat to human rights, including the right to life, the enjoyment of the highest attainable standard of physical and mental health and other human rights affected by the illicit movement and dumping of toxic and dangerous products, including the **rights to clean water**, food, adequate housing and work; ...

9. *Urges* the international community and the relevant United Nations bodies, in particular the United Nations Environment Programme and the secretariat for the Basel Convention, to continue to give appropriate support to developing countries, upon their request, in their efforts to implement the provisions of existing international and regional instruments controlling the transboundary movement and dumping of toxic and dangerous products and wastes in order to protect and promote human rights, including the right to life, the enjoyment of the highest attainable standard of physical and mental health and other human rights affected by the illicit movement and dumping of toxic and dangerous products, including the **rights to clean water**, food, adequate housing and work; ...

⁸² At: http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2005-15.doc.

See also Commission on Human Rights, Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Human Rights Resolution 2004/17, at http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2004-17.doc, in which the Commission also repeatedly refers to the right to water.

⁸³ <http://heiwvv.unige.ch/humanrts/demo/1994min.html>.

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 and sanitation. Unlike international instruments, regional instruments apply only to their particular regional framework. > problem with definitions: a regional treaty of course is a international treaty, too. Perhaps we should use the term "universal"

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 American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* clearly refers to the rights 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 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 State. In the Americas, 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 and sanitation as a norm shared by different peoples.

Each of the three regional human rights system includes a court, commission or committee that can address individual complaints of human rights violations.⁸⁴ In all cases, individual complaints may only be made after domestic remedies have been exhausted.

Africa

Explicit Provisions

African Charter on the Rights and Welfare of the Child, 1990⁸⁵

Article 14

1. Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.
2. States 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**.

⁸⁴ See note 14 above for more information. A guide on the complaints system of the Inter-American system can be accessed at www.cohre.org/litigation.

⁸⁵ <http://www1.umn.edu/humanrts/africa/afchild.htm>

Protocol to the African Charter on Human and Peoples' Rights, 2003⁸⁶ NEW

States Parties shall ensure that women have the right to nutritious and adequate food. In this regard, they shall take appropriate measures to:

a) provide women with **access to clean drinking water**, ...

Senegal River Water Charter, 2002⁸⁷

Article 4

...

(3) The guiding principles governing every distribution of the water of the River [Senegal] aim to ensure the full use of the resource for the populations of the riparian States, while respecting the safety of people and works, as well as the **fundamental human right to healthy water**, in the perspective of sustainable development.

Article 8

The use of the water resource aims to satisfy in an equitable manner:

- the drinking water needs of the populations, especially of the most vulnerable; ...

Article 10

Apart from domestic usages which are free of charge, the catchment of the waters of the river shall be subject to a regime of prior authorisation or declaration. ...

Implicit Provisions

African (Banjul) Charter of Human and People's Rights, 1981⁸⁸

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.

⁸⁶ Available at: <http://www.africa-union.org/root/AU/Documents/Treaties/treaties.htm>.

⁸⁷ Charte des Eaux du Fleuve Sénégal, concluded between Mali, Mauritania and Senegal in May 2002, French original version available at: http://www.lexana.org/traites/omvs_200205.pdf.

⁸⁸ <http://www1.umn.edu/humanrts/instrree/z1afchar.htm>.

Article 24

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

African Convention on the Conservation of Nature and Natural Resources (Revised Version), 2003⁸⁹ NEW

Article VII. WATER

2. The Parties shall establish and implement policies for the planning, conservation, management, utilization and development of underground and surface water, as well as the harvesting and use of rain water, and shall endeavour to ***guarantee for their populations a sufficient and continuous supply of suitable water, ...***

Americas

Implicit Provisions

American Convention On Human Rights, Pact of San José, Costa Rica, 1969⁹⁰

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, 1948⁹¹

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.

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador," 1988⁹²

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.***

⁸⁹ Available at: <http://www.africa-union.org/root/AU/Documents/Treaties/treaties.htm>. The Convention has been signed by 34 States and ratified by 7. It will enter into force after the 15th ratification.

⁹⁰ Available at: <http://www.oas.org/juridico/english/treaties/b-32.html>.

⁹¹ Available at: <http://www1.umn.edu/humanrts/oasinstr/zoas2dec.htm>.

⁹² At: <http://www.unesco.org/most/rr4am3.htm>.

2. The States Parties shall promote the protection, preservation, and improvement of the environment.

Europe

Explicit Provisions

London Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1999⁹³

Article 1 - Objective

The objective of this Protocol is to promote at all appropriate levels, nationally as well as in transboundary 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 – General Provisions

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; ...

Art. 5 – Principles and Approaches

...

(l) Equitable **access to water**, adequate in terms both of quantity and of quality, should be provided for all members of the population, especially those who suffer a disadvantage or social exclusion.

Art. 6 – Targets and Target Dates

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 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.

⁹³ Available at: <http://unece.org/env/documents/2000/wat/mp.wat.2000.1.e.pdf>.

Council of Europe, Committee of Ministers, Recommendation Rec (2001) 14 of the Committee of Ministers to member States on the European Charter on Water Resources, 17 October 2001⁹⁴

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....

To finance the supply and purification of water, it is essential to implement the "polluter-pays" principle. To this end, appropriate charges must be set (proportional or progressive rates, rates for low-income categories or supply of a minimum quantity of water on preferential terms), depending on the use. Charges will depend on the expected evolution of water resources, the investment required and social considerations. The "user-pays" principle, pursuant to which the price of water available for given uses – and thus of adequate quality – must be borne by the user, must be taken into account, subject to basic needs being met.

"Water management in developing countries", European Parliament resolution on the Commission communication on water management in developing countries and priorities for EU development cooperation (COM (2002) 132 – C5-0335/2002 – 2002/2179(COS)), 4 September 2003⁹⁵

C. whereas access to water is essential for life, health, food, well-being and development and water cannot therefore be regarded as a mere commodity,

D. whereas the United Nations Committee on Economic, Social and Cultural Rights has enshrined access to water as a human right and the 145 countries that have ratified the International Covenant on Economic, Social and Cultural Rights have an obligation to ensure that everyone has access to water, equitably and without discrimination, ...

1. Reaffirms that access to drinking water in a sufficient quantity and of adequate quality is a basic human right and considers that national governments have a duty to fulfil this obligation; reasonable access to water means at least 20 litres per person per day from a clean source within a radius of 1 km (Global Water Supply and Sanitation Assessment Report 2000, published by WHO/UNICEF);

⁹⁴<https://wcd.coe.int/ViewDoc.jsp?id=231615&BackColorInternet=DBCDF2&BackColorIntranet=FD864&BackColorLogged=FD864>.

⁹⁵ At: <http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/ce076/ce07620040325en04300435.pdf>.

2. Points out that on several occasions, including at Mar del Plata (1997) and Rio (1992), the declarations adopted at the end of UN conferences have established the universal right of access to drinking water in sufficient quantity and of adequate quality for basic needs, and welcomes the inclusion of this right in the United Nations' International Covenant on Economic, Social and Cultural Rights;
3. Emphasises that distribution of water should be looked upon as essentially a public service and hence organised so as to guarantee affordable access for all; stresses that the key issue is not whether water provision is organised by a public or private entity but rather the specific obligations provided by the policy framework; considers that it is up to the public authorities in developing countries to define the legal framework for regulating the work of operators;
4. Notes that the most disadvantaged inhabitants of developing countries continue to face a shortage of drinking water despite the efforts undertaken so far by the international community, that the solutions focusing on the privatisation of drinking water supplies put forward by donors have failed, and that consequently there has been no improvement in access to drinking water and no decline in illnesses related to lack of water;
5. Considers that the public-private partnership system, whereby the public authorities retain the ownership of the infrastructure and conclude a management contract with the private sector — securing access for all and ensuring publicly transparent pricing — should be viewed not as a panacea but as one of several ways of providing improved access to water; ...
7. Stresses the need for a pricing system which allows everyone access to the water required to meet essential needs and which ensures efficient use of water by giving users responsibility;...

The European Water Fund

21. Recognises the need to mobilise substantial funds in order to meet the basic needs of the vast majority of the populations, notably in Africa, who suffer from a shortage of drinking water and a lack of sanitation services;
22. Takes the view that the establishment of a European Water Fund is a good initiative in principle and that the fund must make it its main objective to support the water policy of the beneficiary countries, which must be based on democratic management and equitable distribution;
23. Reaffirms that access to water for all without discrimination is a right, and therefore takes the view that appropriate measures must be taken to ensure that insolvent people are not deprived of such access;
24. Takes the view that the fund must help the ACP countries to put in place measures clearly regulating management and control of the water sector, and must promote the development of local capacities for the establishment and maintenance of water supply systems; ...

Implicit Provisions

Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 'Aarhus Convention', 1998⁹⁶

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-

⁹⁶ <http://www.unece.org/env/pp/documents/cep43e.pdf>.

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, 1950⁹⁷

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, 1961⁹⁸

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*:

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. 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:

1. 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:

1. 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; ...
3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want; ...

⁹⁷ As amended by Protocol No. 11 Rome, 4.XI.1950,
<http://www.echr.coe.int/Convention/webConvenENG.pdf>.

⁹⁸ <http://conventions.coe.int/treaty/en/treaties/html/035.htm>.

Revised European Social Charter, 1996⁹⁹

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.

Asia-Pacific NEW

"Message from Beppu", 1st Asia-Pacific Water Summit, 3-4 December 2007¹⁰⁰

At the 1st Asia-Pacific Water Summit, held in Beppu, Japan, on 3-4 December 2007, ten Heads of State and Government, 31 Ministers, and representatives from over 37 Asia-Pacific countries endorsed unanimously the following "Message from Beppu":

We, the leaders of the Asia-Pacific, do hereby agree to:

- Recognise the people's **right to safe drinking water and basic sanitation** as a basic human right and a fundamental aspect of human security;
- Reduce by half the number of people who do not have access to safe drinking water by 2015 and aim to reduce that number to zero by 2025;
- Reduce by half number of people who do not have access to basic sanitation in our region by 2015 and aim to reduce that number to zero by 2025, through the adoption of new and innovative sanitation systems that are not as water reliant as current methods;
- Accord the highest priority to water and sanitation in our economic and development plans and agendas and to increase substantially our allocation of resources to the water and sanitation sectors,
- Improve governance, efficiency, transparency and equity in all aspects related to the management of water, particularly as it impacts on poor communities. We recognise that while women are particularly vulnerable, they are also resilient and entrepreneurial, hence, should be empowered in all water-related activities.

⁹⁹ <http://conventions.coe.int/Treaty/en/Treaties/Word/163.doc>

¹⁰⁰ Available at: <http://www.apwf.org:80/>. The following countries were represented at the summit: Armenia, Australia, Azerbaijan, Bhutan, Brunei Darussalam, Cambodia, China, Cook Islands, Fiji Islands, Japan, India, Indonesia, Iran, Kazakhstan, Kiribati, Republic of Korea, Kyrgyz Republic, Lao People's Democratic Republic, Marshall Islands, Federated States of Micronesia, Mongolia, Myanmar, Nauru, Nepal, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Samoa, Singapore, Sri Lanka, Tajikistan, Thailand, Tuvalu, Uzbekistan. Most participants (including those from China, Japan and Iran) were at least at ministerial or vice-ministerial level.

5. NATIONAL LEGAL STANDARDS

5.1 Selected Constitutional Sources

Many national constitutions, in various regions of 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 include explicit references to the right to water and sanitation. Although this subsection does not focus on provisions on the right to a healthy environment (or a similar formulation), those may provide a legal basis for the improvement of water quality, for example 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 1992.¹⁰¹ In the legal excerpts below, specific references to the right to water and sanitation or a specific entitlement to water, either explicit or implicit, are printed in bold italic type. The provisions from Ecuador, Colombia, Mexico, Panama and Venezuela are our unofficial translations from the original Spanish. Links are provided to websites where the original texts can be accessed.

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 sanitation, 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 the realisation of this right.

Constitutional provisions can be applied in three primary ways: development of legislation, enforcement in courts, and in political discourse.

Firstly, the manner in 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.

Secondly, the obligations contained in constitutional provisions may be enforced in courts. In many countries, it remains difficult to base legal complaints concerning the right to water and sanitation before a court of law exclusively upon constitutional provisions. It is therefore necessary to analyse the constitution and the relevant jurisprudence of each country to determine the probability of a constitutional right to water and sanitation being enforced by the courts. However, it is normally the case that courts can enforce rights and duties incorporated in legislation. In such cases, the provisions of the Constitution can be used to interpret such legislation. And while it is true that courts in most jurisdictions have

¹⁰¹ 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>.

traditionally been reluctant to accept complaints dealing essentially with economic, social and cultural rights, domestic courts around the world are now increasingly prepared to accept their role in the promotion and protection of this category of human rights and judicially enforce them. Through such practice, courts are becoming increasingly familiar with the concept and application of economic, social and cultural rights.

Thirdly, inclusion in a constitution of the right to water and sanitation, or State duties to ensure the provision of safe and sufficient water and adequate sanitation, signifies a political commitment to the reality that everyone not only has a need for water and sanitation, but is also entitled to it as a matter of a legal right. National campaigns can rely on Constitutional provisions in order to bolster their claims.

It is important to note, though, that the fact that a country's laws do not explicitly refer to the right to water and sanitation does not necessarily mean that the country's courts will not enforce the right: courts from jurisdictions around the world have developed practices of enforcing the RTWS or components thereof through other rights. In India, Pakistan and Costa Rica, for example, courts interpret the constitutional right to life as to include the right to have access to clean water and sanitation. In Brazil, courts have used article 42 of the Consumers Defence Code stipulating that consumers must not be ridiculed or exposed to any shameful situations to reverse the disconnection of basic services for non-payment. Similarly, Argentinian and Colombian courts have based progressive judgments on water and sanitation issues on the right to health, while Costa Rican courts have relied on the right to a healthy environment to the same effect. (Costa Rica, Colombia). In other jurisdictions, the right to housing, the principle of non-discrimination or the right to participation and access to information may be promising vehicles to enforce the right to water and sanitation.

Explicit references to Right to Water and Sanitation

CONGO (Democratic Republic of the Congo – Kinshasa) Constitution of the Democratic Republic of the Congo, 2006 (Unofficial translation)¹⁰²

Article 48

The State guarantees the right to a decent dwelling, ***access to potable water*** and electricity.

ECUADOR Constitution of the Republic of Ecuador, 1998 (Unofficial translation)¹⁰³

¹⁰² French original version available at: <http://www.presidentrdc.cd/constitution.html>.

¹⁰³ Spanish original available at: <http://www.mmrree.gov.ec/refugiados/cons1998.pdf>.

Article 23

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: ...

(20) 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** ... in accordance with the principles of equity, universality, solidarity, quality and efficiency.

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 belong 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 drinking water** and irrigation services ... 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 services**, supplied under its control and regulation, conform to the principles of efficiency, responsibility, universality, accessibility, continuity and quality; and shall safeguard that their rates or tariffs are equitable.

KENYA

Proposed Constitution of Kenya, draft of 23 August 2005¹⁰⁴

65. Water

Every person has the **right to water** in adequate quantities and of reasonable quality.

66. Sanitation

Every person has the right to a reasonable standard of **sanitation**.

NICARAGUA

Constitution of the Republic of Nicaragua, 1987, as last amended by Law 527 of 8 April 2005 (Unofficial translation)¹⁰⁵

¹⁰⁴ Available at: <http://confinder.richmond.edu/admin/docs/KenyaProposed220805.pdf>. Note that arts. 65 and 66 are non-contentious. All political parties agree that they shall be included in the new Constitution.

¹⁰⁵ Spanish original available at: http://www.iidh.ed.cr/BibliotecaWeb/Varios/Documentos/BD_1283266847/Nicaragua.doc?url=%2FBibliotecaWeb%2FVarios%2FDocumentos%2FBD_1283266847%2FNicaragua.doc.

Article 89

(3) The State recognizes the communal forms of property over land of the Communities of the Atlantic Coast. Equally, it recognizes the enjoyment, use, and possession of the **waters** and forests of their communal land.

Article 105

(1) It is the obligation of the State to promote, facilitate and regulate the provision of the **basic public services** of energy, communication, **water** ... and the population has an inalienable right to have access to these services.

...

(4) It is the duty of the State to guarantee the control of the quality of goods and **services** ...

SOUTH AFRICA

Constitution of South Africa (1996), as last amended by Amendment Act No. 3 of 2003¹⁰⁶

Article 27

(1) Everyone has the right to have access to ...

(b) sufficient food and **water**; and ...

South Africa's Water Services Act and National Water Act further elaborate on this constitutional right. Excerpts of these laws are included in Subsection 5.2 below. Three South African cases on the right to access to water are included in Section 7.

UGANDA

Constitution of the Republic of Uganda, 1995, last amended by Constitution Amendment Act No. 2 of 2005¹⁰⁷

Preamble: National Objectives and Directive Principles of State Policy

XIII. Protection of Natural Resources

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

XIV. General Social and Economic Objectives

The State shall endeavour to fulfil the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that-

(i) all developmental efforts are directed at ensuring the minimum social and cultural well-being of the people; and

(ii) all Ugandans enjoy rights and opportunities and access to education, health services, **clean and safe water**, work, decent shelter, adequate clothing, food security and pension and retirement benefits.

¹⁰⁶ Available at: <http://www.info.gov.za/documents/constitution/1996/a108-96.pdf>.

¹⁰⁷ Available at: <http://www.trybunal.gov.pl/constit/constitu/constit/uganda/uganda-e.htm>;
http://www.ugandaonlinelawlibrary.com/files/constitution/Constitution_Amendment_No_2_Act_2005.pdf.

XXI. Clean and safe water

The State shall take all practical measures to promote a good **water** management system at all levels.

URUGUAY

Constitution of the Republic of Uruguay, 1967, as last amended 31 October 2004 (Unofficial translation)¹⁰⁸

Article 47

The protection of the environment is a matter of general interest.... **Water** is a natural resource that is essential for life.

Access to **drinking water** and access to **sanitation** constitute fundamental human rights.

1) National Water and Sanitation policies will be based on:

...

b) the sustainable management, in solidarity with future generations, of the water resources and the preservation of the water cycle, which constitute issues of public interest. Users and civil society shall participate in every step of planning, management and control of water resources; hydrographic basins are being established as basic units;

c) the establishment of priorities for the use of water by regions, basins or parts of these, whereby the first priority will be the provision of **drinking water** to the population.

d) the principle according to which in the provision of **drinking water** and **sanitation services** social grounds must prevail over economic grounds. Any authorisation, concession or permission that in any way violates the above provisions is without effect.

2) Surface waters as well as subterranean waters, with the exception of rain water, integrated into the water cycle constitute a unitary resource that is subject to the public interest, which, as the public hydraulic domain, forms part of the public domain of the State.

3) The public service of **sanitation** and the public service of **water provision** shall exclusively and directly be provided by legal persons of public law.

4) The provision of water to another country can be authorised by law, adopted with a three-fifths majority of all members of each chamber, in case this [country] is without sufficient supplies or for reasons of solidarity.

Explicit State Duties in Relation to Water and Sanitation Services

ARGENTINA

Constitution of the Argentine Nation, 1994¹⁰⁹

Section 42.

As regards consumption, consumers and users of goods and services have the right to the protection of their health, safety, and economic interests; to adequate and truthful information; to freedom of choice and equitable and reliable treatment.

The authorities shall provide for the protection of said rights, the education for consumption, the defense of competition against any kind of market distortions, the

¹⁰⁸ Spanish original available at: <http://www.parlamento.gub.uy/constituciones/const004.htm>.

¹⁰⁹ Available at: http://www.argentina.gov.ar/argentina/portal/documentos/constitucion_ingles.pdf

control of natural and legal monopolies, the control of **quality and efficiency of public utilities**, and the creation of consumer and user associations. Efficient procedures for conflict prevention and settlement, as well as regulations for national **public utilities** shall be established by legislation. Such legislation shall take into account the necessary participation of consumer and user associations and of the interested provinces in the control entities.

ARMENIA

Constitution of the Republic of Armenia, 1995, as last amended 27 November 2005¹¹⁰

Article 31.1

The state shall protect the interests of consumers, take measures prescribed by the law to exercise quality control over goods, **services** and works.

BANGLADESH

Constitution of the People's Republic of Bangladesh, 4 November 1972, as amended on 17 May 2004¹¹¹

Fundamental Principles of State Policy

15. Provision of basic necessities

It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens

(a) the **provision of the basic necessities of life**,¹¹² including food, clothing, shelter, education and medical care ...

BELGIUM

Constitution, 1994 (Unofficial translation)¹¹³

Article 23

(1) Every person has the right to lead a life in conformity with human dignity.

(2) To this end, the laws, decrees and rules referred to in Article 134 guarantee, taking into account corresponding obligations, the economic, social and cultural rights, and determine the conditions for exercising them.

(3) These rights notably include: ...

2° the right to social security, to health care and to social, medical and legal aid;

3° the right to have decent housing;

4° the right to enjoy the protection of a healthy living environment;

5° the right to enjoy cultural and social fulfilment.

Draft Amendment, 5 January 2004 (unofficial translation)¹¹⁴

¹¹⁰ http://www.gov.am/enversion/legal_1/legal_sahman_all.html.

¹¹¹ Available at: <http://www.pmo.gov.bd/constitution/index.htm>.

¹¹² The term "basic necessities of life" must be understood to include minimum supplies of safe water.

¹¹³ Dutch original available at: http://www.senate.be/doc/const_nl.html.

¹¹⁴ Dutch original available at:

<http://www.senate.be/www/webdriver?MItabObj=pdf&MIcolObj=pdf&MInamObj=pdfid&MItypeObj=application/pdf&MIvalObj=50332290>.

Proposal

Single Article

Article 23, paragraph 3 of the Constitution is supplemented as follows :

«6° the **right to water**.»

BOLIVIA

Constitution of the Republic of Bolivia, 1967, as last amended 6 July 2005 (Unofficial translation)¹¹⁵

Article 107:

I. The State regulates, controls and supervises the exploitation of national goods [bienes nacionales] and the **provision of public services**, through public entities or private persons and the defence of the users through the superintendencies [Superintendencias] created by law.

COLOMBIA

Constitution of Colombia, 1991, as last amended April 1, 2005 (Unofficial translation)¹¹⁶

Article 49.

Public health and **environmental sanitation** are public services for which the State is responsible. All individuals are guaranteed access to services that promote, protect, and rehabilitate public health.

It is the task of the State to organize, direct, and regulate the provision of health services to inhabitants as well as **environmental sanitation** consistent with the principles of efficiency, universality, and solidarity...

Article 334.

...

(2) The State shall intervene, in a special manner, to reach full employment and to ensure that all individuals, and particularly those with low income, have effective access to **basic goods and services**. ...

Article 365.

(1) **Public services** are inherent to the social purpose of the State. It is the duty of the State to ensure their effective provision to all inhabitants of the national territory.

(2) Public services shall be subject to the legal regime established by law, they may be provided by the State directly or indirectly, by organised communities or by individuals. In any case, the State is responsible for the regulation, control and application of such services...

Article 366.

General welfare and the improvement of the quality of life of the population are social purposes of the State. It will be a fundamental objective of State activity to

¹¹⁵ Spanish original available at http://www.presidencia.gov.bo/leyes_decretos/constitucion_estado.asp.

Note that the Bolivian government is in the process of drafting a new constitution which according to official statements will include the right to water.

¹¹⁶ Spanish original available at:

http://abc.senado.gov.co/prontus_senado/site/artic/20050708/asocfile/reformas_constitucion_politica_de_colombia_1.pdf.

address the unmet needs regarding health, education, **environmental sanitation and potable water**. ...

Article 367.

(1) The law shall determine the competences and responsibilities regarding the provision of **public household services**, their coverage, quality and financing, and the tariff system, which shall take into account, in addition to cost criteria, those of solidarity and redistribution of revenues.

(2) Public household services shall be provided directly by each municipality when the technical and economic characteristics of the service and the general benefits of the services indicate that this is possible and advisable, and the departments shall provide support and coordination.

(3) The entities competent to determine rates will be determined by law.

Article 368.

The Nation, the departments, the districts, the municipalities and the decentralised entities shall grant subsidies in their respective budgets, so that persons with low income can afford to pay the rates for the public household services covering their **basic needs**.

DOMINICAN REPUBLIC

Constitution of the Dominican Republic, 2002 (Unofficial translation)¹¹⁷

Article 8

...

(40) The State shall also afford social assistance to the poor. Said assistance shall consist of food, clothing and, as far as this is possible, adequate housing. The State shall watch over the improvement of **alimentation, sanitation services and hygienic conditions**, ...

ERITREA

Constitution of Eritrea, 1997¹¹⁸

Article 8 - Economic and Social Development

...

3. In the interest of present and future generations, the State shall be responsible for managing all land, **water**, air and natural resources and for ensuring their management in a balanced and sustainable manner; and for creating the right conditions to secure the participation of the people in safeguarding the environment.

¹¹⁷ Spanish original available at:

http://www.dominicanaonline.org/Portal/documentos/Constitucion_Politica_de_la_Republica_Dominicana.pdf.

¹¹⁸ Available at: http://www.chr.up.ac.za/hr_docs/constitutions/docs/EritreaC.pdf.

ETHIOPIA

Constitution of the Federal Republic of Ethiopia, 1994¹¹⁹

Article 90 – Social Objectives

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

Article 92 - Environmental Objectives

1. Government (sic) shall endeavour to ensure that all Ethiopians live in a clean and healthy environment.

...

3. People have the right to full consultation and to the expression of their views in the planning and implementations of environmental policies and projects that affect them directly.

THE GAMBIA

The Constitution of the Gambia, 1996, as last amended 2001¹²⁰

Article 216

4. The State shall endeavour to facilitate equal access to **clean and safe water**, adequate health and medical services, habitable shelter, sufficient food and security to all persons.

GHANA

The Constitution of the Republic of Ghana, 1992¹²¹

Article 35

...

The State shall promote just and reasonable access by all citizens to **public facilities and services** in accordance with law.

GUATEMALA

Constitution of the Republic of Guatemala, 1985, as amended 17 November 1993 (Unofficial translation)¹²²

Article 96: Control of product quality.

The State shall control the quality of alimentary, pharmaceutical, chemical and all other products that can affect the health and well-being of the inhabitants. It shall watch over the establishment and planning of primary health care and the improvement of the conditions of **basic environmental sanitation** of the less protected communities.

Article 99: Alimentation and nutrition.

The State shall safeguard that **alimentation and nutrition** of the population meet minimum health requirements. ...

¹¹⁹ Available at: <http://www.ethiopianembassy.org/constitution.doc>.

¹²⁰ Available at: [http://www.chr.up.ac.za/hr_docs/constitutions/docs/The%20GambiaC\(english%20summary\)\(rev\).doc](http://www.chr.up.ac.za/hr_docs/constitutions/docs/The%20GambiaC(english%20summary)(rev).doc).

¹²¹ Available at: http://www.parliament.gh/const_constitution.php.

¹²² Spanish original available at <http://www.guatemala.gob.gt/docs/constitucion-01.pdf>.

Article 127: Water regime.

All **waters** are public goods, inalienable and imprescriptable. Their exploitation, use and enjoyment, are granted in the form established by law, in accordance with the social interest. This matter shall be regulated by a specific law.

GUYANA

Constitution of the Co-operative Republic of Guyana, 1980, as last amended 12 August 2003¹²³

Article 36.

The well-being for the nation depends upon preserving clean air, fertile soils, **pure water** and the rich diversity of plants, animals and eco-systems.

Article 40.

(1) Every person in Guyana is entitled to the basic right to a happy, creative and productive life, **free from** hunger, ignorance and **want**. That right includes the fundamental rights and freedoms of the individual.

INDONESIA

Constitution of the Republic of Indonesia of 1945, as amended by the Fourth Amendment in 2002¹²⁴

Article 28C

(1) Every person has the right to self-realization through the **fulfilment of his basic needs**, ...

Article 33

...

(3) The land and the **waters** as well as the natural riches therein are to be controlled by the state to be exploited to the greatest benefit of the people. ...

Article 34

...

(3) The state has the responsibility to provide proper ... **public service facilities**.

IRAN

Constitution of the Islamic Republic of Iran, 1979¹²⁵

Article 43

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; ...

¹²³ Available at: <http://www.sdn.org.gy/parliament/constitution/Content.html>.

¹²⁴ Available at: <http://www.indonesianembassy.org.ar/Novedades/constitution1.htm>.

¹²⁵ Available at: <http://www.iranonline.com/iran/iran-info/Government/constitution.html>.

Article 45

Public wealth and property, such as ... lakes, rivers and other public waterways, ... forests, ... 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 of the Lao People's Democratic Republic, 1991¹²⁶

Article 17

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

LITHUANIA

Constitution of the Republic of Lithuania, 1992, last amended 13 July 2004¹²⁷

Article 54

The State shall secure the protection of the natural environment, wildlife and plants, individual objects of nature and protected areas and shall supervise a sustainable use of **natural resources**, their renewal and replenishment. The devastation of land and the subsoil, the **pollution of waters** and air, radioactive impact on the environment as well as depletion of wildlife and plants shall be prohibited by law.

MALAWI

Constitution of the Republic of Malawi, 1992, last amended 8 April 1998¹²⁸

Article 30

(1) All persons and peoples have a right to development and therefore to the enjoyment of economic, social, cultural and political development and women, children and the disabled in particular shall be given special consideration in the application of this right.

(2) The State shall take all necessary measures for the realization of the right to development. Such measures shall include, amongst other things, equality of opportunity for all in their **access to basic resources**, education, health services, food, shelter, employment and infrastructure.

MOZAMBIQUE

Constitution of The Republic of Mozambique, 2005 (Unofficial translation)¹²⁹

Article 92 - Rights of Consumers

1. Consumers have the right to quality goods and **services**, to association and information, to the protection of health, safeguarding of their economic interests as well as reparation for damages.

¹²⁶ Available at: <http://www.laoembassy.com/news/constitution/constitution.doc>.

¹²⁷ At: <http://www.legislationline.org/upload/legislations/82/48/824896cfe69f30f10bea56ffb1b2.htm>.

¹²⁸ Available at: <http://www.sdn.org.mw/constitut/intro.html>.

¹²⁹ Portuguese original available at: <http://www.mozambique.mz/pdf/constituicao.pdf>.

NEPAL

Constitution of the Kingdom of Nepal (2047/1990), 9 November 1990¹³⁰

Article 11 - Right to Equality

...

(4) No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of **public utilities**. Any contravention of this provision shall be punishable by law. ...

Interim Constitution of Nepal (2063/2007), 2007¹³¹

14. Right against Untouchability and Racial Discrimination

...

(2) No person shall, on the ground of caste or tribe, be deprived of the use of **public services, conveniences or utilities**, or be denied access to any public place, or public religious places, or be denied to perform any religious act. ...

33. Responsibilities of the State

The State shall have the follows responsibilities:

...

(o) To use existing natural resources including **water resources** of the country for the interest of the nation. ...

NIGERIA

Constitution of The Federal Republic of Nigeria, 1999¹³²

Article 20

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

PAKISTAN

Constitution of the Islamic Republic of Pakistan, 14 August 1973, as amended by the 17th Amendment Act in 2003¹³³

Principles of Policy

38. Promotion of social and economic well-being of the people

The State shall:

...

(d) **provide basic necessities of life**, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment; ...

¹³⁰ Available at: <http://www.nepal.gov.np/constitution.php>.

¹³¹ Available at: http://www.worldstatesmen.org/Nepal_Interim_Constitution2007.pdf.

¹³² Available at:

<http://www.nigeriacongress.org/resources/constitution/Constitution%20of%20the%20Federal%20Republic%20of%20Nigeria.htm>.

¹³³ Available at: <http://www.pakistani.org/pakistan/constitution>.

PANAMA

Constitution of the Republic of Panamá, 1972, as last amended on 15 November 2004 (Unofficial translation)¹³⁴

Article 43.

Everyone has the right to request information that is publicly accessible or of collective interest that is stored in databases or registers of public service providers or private persons that provide **public services**...

Article 110.

In the area of health, the State is primordially responsible for developing the following activities, integrating the functions of prevention, cure and rehabilitation:

...

4. Fighting transmittable diseases by way of environmental sanitation, development of the availability of **drinking water**...

Article 118.

It is a fundamental duty of the State to guarantee that the population lives in an environment that is healthy and free of contamination, in which the air, the **water** and the foodstuffs satisfy the requirements for an adequate development of human life.

Article 258.

The following are State property and of public use and, in consequence, cannot be privately owned:

2. The lands and **waters** destined for public services ...

Article 259.

Concessions for the ... **utilisation of water** ... shall be inspired by social welfare and the public interest.

PORTUGAL

Constitution of the Portugese Republic, 1997¹³⁵

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.

¹³⁴ Spanish original available at http://www.asamblea.gob.pa/actualidad/25176_2004.pdf.

¹³⁵ Available at: http://www.parlamento.pt/ingles/cons_leg/crp_ing/.

SENEGAL

Constitution of the Republic of Senegal, 2001, as last amended by Law 2007-26 of 25 May 2007 (Unofficial translation)¹³⁶

Preamble

Proclaims:

- equal access for all citizens to **public services**; ...

SWAZILAND

Constitution of the Kingdom of Swaziland, 2005¹³⁷

210. Declaration of land, minerals and water as national resource

(1) Subject to the provisions of this Constitution or any other law, land, minerals and **water** are national resources.

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

UGANDA

Constitution of the Republic of Uganda, 1995, last amended by Constitution Amendment Act No. 2 of 2005¹³⁸

Preamble: National Objectives and Directive Principles of State Policy

XIII. Protection of Natural Resources

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

XIV. General Social and Economic Objectives

The State shall endeavour to fulfil the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that-

- (i) all developmental efforts are directed at ensuring the minimum social and cultural well-being of the people; and
- (ii) all Ugandans enjoy rights and opportunities and access to education, health services, **clean and safe water**, work, decent shelter, adequate clothing, food security and pension and retirement benefits.

UKRAINE

Constitution of the Republic of Ukraine, 1996, last amended 8 December 2004¹³⁹

¹³⁶ French original version at: <http://www.gouv.sn/textes/constitution.html>.

¹³⁷ Available at:

http://www.southernafricalitigationcentre.org/files/tbl_s5107SAPublications/FileUpload5913/417/Swaziland%20Constitution%202005.DOC.

¹³⁸ Available at: <http://www.trybunal.gov.pl/constit/constitu/constit/uganda/uganda-e.htm>;

http://www.ugandaonlinelawlibrary.com/files/constitution/Constitution_Amendment_No_2_Act_2005.pdf.

¹³⁹ Available at: http://www.president.gov.ua/en/content/103_e.html.

Article 13

The land, its mineral wealth, atmosphere, **water** and other natural resources within the territory of Ukraine ... are objects of the right of property of the Ukrainian people. Ownership rights on behalf of the Ukrainian people are exercised by bodies of state power and bodies of local self-government within the limits determined by this Constitution.

...

Every citizen has the right to utilise the natural objects of the people's right of property in accordance with the law.

Article 48

Everyone has the right to a standard of living sufficient for himself or herself and his or her family that includes **adequate nutrition**, clothing and housing.

Article 50

...

Everyone is guaranteed the right of free access to information about the environmental situation, the quality of food and consumer goods, and also the right to disseminate such information. ...

VENEZUELA

Constitution of the Bolivarian Republic of Venezuela, 1999 (Unofficial Translation)¹⁴⁰

Article 82.

Everyone has the right to housing that is adequate, secure, comfortable and hygienic, with **essential basic services** that include a living space that humanises family, neighbourly and community relations. The progressive realisation of this right is an obligation that in all of its aspects rests on both the citizens and the State.

Article 83.

Health is a fundamental social right and obligation of the State who shall guarantee it as part of the right to life. The State shall promote and develop policies designed to improve the quality of life, general well-being and **access to services**. All people have a right to the protection of health as well as a duty to participate in its promotion and defense in an active manner and to comply with the **sanitary and sanitation** measures provided by law, in accordance with the treaties and international covenants signed and ratified by the Republic.

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. Every person has an individual and collective right to enjoy a life and an environment that is safe, healthy and ecologically balanced. ...

It is a fundamental obligation of the State, with the active participation of society, to guarantee that the population develops in an environment that is free from contamination, where the air, the **water**, the soil, the coasts, the climate, the ozone layer and all living species are specially protected in conformity with the law.

¹⁴⁰ Original Spanish version available at: <http://www.tsj.gov.ve/legislacion/constitucion1999.htm>.

Article 156

The national public authorities are responsible for:

29. The general regime for **public household services**, and particularly electricity, **potable water** and gas.

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 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 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 in order for the States and Municipalities to decentralise and transfer to the communities and organised neighbourhood groups, after they have demonstrated the capacity to provide them, the services managed by them, promoting:

(1) The transfer of services in the area of ... **provision of public services**. ...

(2) The participation of the community and citizens, through neighbourhood associations and non-governmental organisations, 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 services within their jurisdiction.

Article 304

All **waters** are public goods of the Nation, unsubstitutable for life and development.

...

ZAMBIA

The Constitution of Zambia, 1991, as last amended by Act 1996¹⁴¹

Article 112

The following shall be the Principles of State Policy ...

(d) the State shall endeavour to provide **clean and safe water**, adequate medical and health facilities and decent shelter for all persons, and take measures to constantly improve such facilities and amenities;...

(i) the State shall promote sustenance, development and public awareness of the need to manage the land, air and **water** resources in a balanced and sustainable manner for the present and future generation; ...

¹⁴¹ Available at: [http://www.chr.up.ac.za/hr_docs/constitutions/docs/ZambiaC\(rev\).doc](http://www.chr.up.ac.za/hr_docs/constitutions/docs/ZambiaC(rev).doc).

5.2 Selected National Laws

Constitutional recognition of the right to water and sanitation, 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 provided to everyone, or that this will be treated as a human right. The implementation of legislation or policies will be required to transform constitutional provisions on the right to water and sanitation – often written with little explanation – into concrete, practical and effective laws and regulations. Even though 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 and sanitation are covered by law.

In order to illustrate how some countries have sought to provide the necessary legislative substance for the right to water and sanitation, a selection of national provisions are set out below. Only some of the national laws and policies included in this subsection explicitly set out a right to water and basic sanitation. However, they address key features of the right to water and sanitation and the corresponding State obligations. The inclusion of these laws and policies 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 and sanitation. Such issues could include, for example, a requirement for the use of indicators to highlight disparities between men and women, and between different ethnic or social groups, in terms of access to water. In addition, it may be noted that several provisions only grant a Minister or other State body the power to act in a particular manner to ensure access to water, but do not require the exercise of such power.

These laws and policies are obviously important in organising water rights 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.

Recognition and Entitlements

Our research has found a very substantial number of laws, statutes and policies from countries from all world regions explicitly recognising the right to water, with significant increases in relation to our 2004 survey. In particular, the majority of the laws and policies dealing with access to drinking water that have been adopted in the course of the past few years or that are currently under discussion in national legislative bodies address access to water from a rights perspective, and thus bear evidence of what

we consider a very strong trend towards recognition of the right to water in domestic law and policy.

In addition to general recognition of the right to water, many laws contain specific entitlements in respect of access to water. Swaziland's *Water Act*, the Mauritanian *Water Code*, Costa Rica's *Water Law*, Kyrgistan *Water Code* or South Africa's *National Water Act*, for example, all address the right to access to water from natural sources, which is relevant for the implementation of the right to water in rural areas. The South African Act, exempts users from having to apply for a licence to access water from a water body that is adjacent to the land that they occupy, if this water is used for personal and domestic uses.

The number of laws and policies recognizing the right to sanitation or specific entitlements to access to sanitation services is still smaller, but clearly on the increase. Thus, the right to sanitation is now explicitly recognized, inter alia, in the Algerian *Water Code*, Bangladesh's *National Sanitation Strategy*, Kenya's *National Water Services Strategy*, South Africa's *Water Services Act as well as Sri Lanka's National Policy on Sanitation* (2007).

Allocation and Availability¹⁴²

Allocation of water resources is an issue that is addressed in the water legislation of most countries. More importantly, however, our research shows that it is very common for domestic water laws to explicitly prioritise water for essential human needs over any other use. The geographical spread of the examples reproduced in excerpts below – including legislation from Chad, Costa Rica, Indonesia, Lithuania and Kazakhstan – underlines that the principle of priority for essential human water needs is recognised in all world regions and in all legal cultures.

In addition, domestic water law increasingly addresses issues related to the availability of water resources, including the sustainable availability of water resources, i.e. issues regarding the protection of water sources, catchment areas, etc.

One of the most specific norms regarding per capita availability of water is the Indonesian Regulation 23/2006, which sets a standard for basic drinking water needs at 10m³ per family member per month or 60 liters per person per day. Under South Africa's *Free Basic Water Policy*, the "basic" level of water supply is set at 25 litres per person per day.

In order to ensure the availability of water fit for essential human purposes, Georgia's *Water Law* or Kazakhstan's *Water Code*, e.g., prohibit the use of water of drinking water quality for non-domestic purposes. Other laws, such as China's *Water Law*, Kyrgistan's Law No. 1422-XII or Tajikistan's *Water Code* prescribe the establishment of safety zones around drinking water sources to ensure the protection of water resources.

The *European Directive Establishing a Framework for Community Action in the Field of Water Policy* requires that States, in order to raise the finances

¹⁴² The requirement of sufficient water is addressed in Section 2 (Introduction). See also Subsection 6.1 below, General Comment No. 15, particularly at paras. 12 (a) and 28.

necessary for conservation of water resources, should take account of the principle of cost recovery for water services. This Directive should be read together with Recommendation 14 of the European Committee of Ministers (see Subsection 4.5), which provides an exception to the principle of cost recovery for the right to have access to water for basic needs.

Quality¹⁴³

Legislation setting technical standards for drinking water quality is commonplace in jurisdictions around the world. Therefore, only a few more general examples have been provided above.

Some countries have broader provisions addressing not only the quality of drinking water itself, but the quality of water and sanitation services. The new Brazilian Law on Sanitation e.g. provides that the service must comply with minimum quality standards, including regularity, continuity, etc. Similar standards can be found, inter alia, in the relevant laws of Indonesia, Panama or Paraguay reprinted in excerpts below.

Physical Accessibility¹⁴⁴

A considerable number of domestic laws and policies address the issue of *physical accessibility* of water and sanitation services.

South Africa's *Water Services Act* requires that water service authorities progressively ensure that all consumers or potential consumers in its area of jurisdiction have efficient, affordable, economic and sustainable access to water services. Water service authorities are duty-bound to act reasonably in providing such services, subject to the availability of resources.¹⁴⁵ Taking account of the country's resource limitations, 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 all persons. The Act does not state that this latter duty is subject to availability of resources. The Act further requires that water service authorities draw up a development plan, indicating a timeframe for achieving universal access to basic water supply and sanitation. Every year, these authorities must publicly report on the implementation of this plan.

Costa Rica's *Law on the Regulating Authority for Public Services*, Nicaragua's *General Law on Drinking Water and Sanitation Services*, Peru's

¹⁴³ The requirement of safe and acceptable water is addressed in Section 2 above. See also Subsection 6.1, General Comment No. 15, particularly at para. 12 (b).

¹⁴⁴ The requirement of physical accessibility is addressed in Section 2. See also Subsection 6.1, General Comment No. 15, particularly at paras. 12 (c) (i) and 37.

¹⁴⁵ 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, see Section 7 below.

General Law on Water and Sanitation Services or the *Water Code* of the Republic of Congo (Brazzaville) aim to ensure accessibility by obliging water service providers to grant the service to every applicant within their area.

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.

Sri Lanka's *Rural Water Supply and Sanitation Policy* addresses accessibility by establishing a maximum haulage distance of 200m, which should be further reduced in steep terrain with consideration to the effort for hauling water. The same standard of 200m can also be found in the *South African Regulations Relating to Compulsory National Standards and Measures to Conserve Water*.

Affordability¹⁴⁶

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*.¹⁴⁷

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 difficult financial circumstances, or the advanced 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 in and costs of the water supply plant in the long term, but may only include a minimum return on capital. Furthermore,

¹⁴⁶ The requirement that water, water services and facilities be affordable is addressed in Section 2. See also Subsection 6.1, General Comment No. 15, particularly at paras. 12 (c) (ii) and 27. See also para. 56 of the General Comment with respect to the State's obligations before it takes any action that interferes with any person's right to water.

¹⁴⁷ Chile's subsidy system for water and other utilities has been seen as a model for targeted subsidies to low-income groups. The system is based on the assessed income of households. However, it has been shown that at least 60% of the poorest 20% of Chileans were not receiving subsidies, even though a significant range of persons in middle-income groups applied for and were granted subsidies. In Colombia, subsidies provided automatically to person in areas dominated by persons of low-income reached 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 with the onus of proof on the applicant may exclude deserving low-income applicants who may not have the necessary documents or knowledge of the system, or who are for cultural reasons unwilling to be singled out as poor.

water services may be subsidised by municipal, national or European Community Funds. The Act also requires that a municipal water supply plant maintain accounts separately from the municipality. This provision is relevant given that, in many countries, a significant cause of poor water services is that municipalities divert revenues from water-use charges to non-water-related uses.

A number of laws restrict disconnections of water services, in particular those that occur due to the user's inability, rather than unwillingness, 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 with 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 on land or in a building, and that water supply cannot be discontinued, except for repairs or to stop nuisances or avert 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 user, and the water provider has been notified. However, this provision would appear to be in conflict with the right to water and sanitation, which does not permit any disconnection in such circumstances.

Indonesia's Regulation No. 23/2006 provides that for tariff for the standard basic drinking water to comply with the principle of affordability, expenses for the satisfaction of the standard basic drinking water need of 10m³ per family member per month or 60 liters per person per day must not exceed 4% of the subscribers' income.

Participation and Access to Information¹⁴⁸

The vast majority of the jurisdictions surveyed have provisions requiring public participation in water and sanitation service provision. The *Australian Utilities Act*, the South African *Water Services Act* and New Zealand's *Local Government Act*, e.g., require public consultations to be held, particularly on licensing operators. New Zealand's *Local Government Act* prescribes very clearly defined processes for consultations. The Colombian Law 142 provides for the establishment of "Committees for Development and for the Social Control of Public Utilities" in every municipality to ensure participation of subscribers in public services. The Malaysian *Water Service Industry Act* prescribes the creation of a so-called "Water Forum" to promote public participation in water supply and sanitation services.

¹⁴⁸ See Subsection 6.1, General Comment No. 15, particularly at paras. 12 (c) (iv) and 48.

Access to Information is a critical element of the consultative process, and a requirement in its own right. In this regard, the *Australian Utilities Act* provides for all licenses of water operators and related documentation to be made accessible on the regulatory commission's website. The Brazilian *Law on Basic Sanitation* provides that service holders must establish an information system for the services that is combined with the National System of Information on Sanitation (SINISA). The Law further provides that all information made available to SINISA must be published on the internet. 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.

Discrimination and Attention to Vulnerable Groups¹⁴⁹

While it is often constitutional provisions or legislation that prohibit discrimination in general terms, a number of domestic laws specifically outlaw discrimination with regard to access to water and sanitation services and/or pricing. Examples include the *Canadian Human Rights Act*, several regional Canadian Human Rights Codes, Colombia's *Law 142*, Guyana's *Public Utilities Commission Act*, Mexico's *Water Law of the Distrito Federal* or Niger's *Decree 2003-145/PRN/MHE/LCD*.

In addition, a number of water laws provide for differential treatment of vulnerable groups, which is often necessary to ensure that all people have substantively equal access to water. As noted above under 'Affordability,' 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 advanced age, disability or ill-health. The South African *Water Services Act* allows the State to make standards that differ from area to area, according to local socio-economic or physical attributes.¹⁵⁰ 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

¹⁴⁹ State obligations to refrain from discrimination and to ensure attention to the needs of vulnerable groups are addressed in Section 2. See also Subsection 6.1, General Comment No. 15, particularly at paras. 12 (c) (ii) and 13-16.

¹⁵⁰ The Constitutional Court of South Africa in the case of *City Council of Pretoria v. Walker* (1998) addressed a situation where a local 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 comparable in seriousness to an invasion of dignity: therefore, 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 objectively determinable characteristics of different geographical areas, and not on race.

sufficient representation of women and social or ethnic groups prejudiced by past racial and gender discrimination in relation to access to water.

Remedies for Violations

Remedies for Violations¹⁵¹ and Monitoring¹⁵²

A number of laws provide for remedies that allow the water user to make complaints. The Honduran *Framework Law for the Drinking Water and Sanitation Sector* stipulates that every service provider must have a costumers' office to receive complaints about the services delivered. The *Australian Utilities Act* provides for a Consumer Council that, for example, would protect users' rights and seek to ensure that utility services continue to be provided to persons suffering financial hardship. In this regard, it may direct a utility not to withdraw services, or instruct it to re-connect services within 24 hours. South Africa's *Water Services Act* states that a disconnection procedure must be fair and equitable and must provide for reasonable notice and an opportunity for the affected user to make representations to the authorities. Several laws reprinted below provide for *monitoring* of public and/or private water service providers. Finland's *Water Service Act*, e.g., grants jurisdiction to a Consumer Ombudsman to ensure compliance with the law. It also provides that customers be compensated if damage is caused by an error in water services. Under Guyana's *Public Utilities Commission Act*, the Public Utilities Commission may hear complaints about the service, prescribe the service to be provided by the public utility and also direct the utility to pay compensation to the consumer for loss or damage suffered due to inadequate service provision.

Virtually all national laws governing drinking water issues in some way or the other provide for State regulation and monitoring of water service providers. However, New Zealand's *Local Government Act* stipulates that any local authority considering a partnership with the private sector must develop a formal policy for such partnerships. Such a policy 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 their 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.

International Cooperation

¹⁵¹ The requirement of accountability is addressed in Section 2. See also Subsection 6.1, General Comment No. 15, particularly at para. 55.

¹⁵² The requirement to monitor water service providers, as a State obligation to protect, is addressed in Section 2. See also Subsection 6.1, General Comment No. 15, particularly at para. 24.

The French Law No. 2005-95 concerning international cooperation for territorial collectivities and water agencies relating to water supply and sanitation allows municipalities, public establishments for inter-communal cooperation and mixed syndicates responsible for the public services of drinking water supply and sanitation services to allocate up to 1% of the resources available to them to international cooperation projects in the fields of water and sanitation services.

The government of the Belgian Walloon region is in the process of adopting legislation establishing a fund for international water solidarity. The purpose of the fund will be to provide financial assistance to water projects in developing countries. The fund is to be financed by water providers, who shall contribute a tax of EUR 0.0125 for every m³ of drinking water supplied in the Walloon region.

5.2.1 Recognition & Entitlements

ALGERIA

Water Law no. 05-12, 4 August 2005¹⁵³

Article 3 (access to water based on equity; replaces article 9 of Law no 83-17, 1983)

The principles on which the use, the management and the sustainable development of water resources are as follows:

- the right of access to water and sanitation to satisfy the basic needs of the population respecting equity and the rules set forth by the present law relating to public water and sanitation services;
- the right to use water resources, granted to any physical or moral person in public or private law, subject to the limits of the general public interest and the respect for the duties and obligations set forth by the present law and the decrees arising from its application.

ANGOLA

Water Act, 21 June 2002 (Unofficial translation)¹⁵⁴

Article 9 - Principles for the management of water resources

1. The management of water resources is governed by the following principles:

- a. the right to water of the citizen and of collective entities; ...
- g. water as a social good, renewable, limited and with economic value; ...
- i. complementarity between water provision and sewerage services; ...

ARGENTINA

Civil Code of the Republic of Argentina, 1870, as modified by Law 17711 of 1968 (Unofficial translation)¹⁵⁵

Article 2350

Watercourses that start and end within the same private property belong in property, use and enjoyment to the owner of it.

Article 2637

Waters that come to the surface on private lands belong to the owners of such lands, who can freely make use of them and change their natural direction.

Water Code of the Province of Córdoba, Law 5589/73, as amended by Law 8928/01 (Unofficial translation)¹⁵⁶

¹⁵³ French original version available at: <http://www.joradp.dz/HFR/Index.htm>.

¹⁵⁴ Available at: <http://www.minea.gv.ao/Minea/Detalhes.cfm?Plano=22&>.

¹⁵⁵ Spanish original at: <http://www.divulgacionjuridica.com.ar/divulgacionjuridica/leyes/codigocivil.html>

¹⁵⁶ Spanish original available at: http://www.cordobaambiente.cba.gov.ar/legislaciones_agua.html

Article 37: Right to common use.

Every person has the right to make common use of the terrestrial waters (subterranean and emerging waters, the waters of lakes and rainwater) so that he always has free access to them and does not exclude others from exercising the same right.

Article 38: Enumeration of common uses.

The common uses authorized by this Code are the following:

1) Drinking, human hygiene, domestic uses and watering of plants, always under the condition that the extraction is done by hand, without and kind of machine of apparatus, without contamination of the water resources, ...

Water Code of the Province of Buenos Aires, Law 12.257 of 9 December 1998 (Unofficial translation)¹⁵⁷

Article 25

Every individual may make use of public water free of charge and in conformity with general regulations to satisfy domestic needs of drinking and hygiene, ... It is prohibited, however, to contaminate the environment or prejudice equal rights of third parties.

AZERBAIJAN

Water Code of the Azerbaijan Republic, 1997¹⁵⁸

Article 36 - Using water bodies for common purposes

Water bodies for common use shall be those water bodies that are open and available for everybody's use. Natural persons shall use such water bodies free of charge for their own needs (... watering cattle, taking water without using technical devices, etc).

BANGLADESH

National Water Policy, 1999¹⁵⁹

Preface

Availability of water, in both quantitative and qualitative terms, is a basic human right and sound planning is necessary to ensure it.

1. Introduction

Its availability for sustenance of life, in both quantitative and qualitative terms, is a basic human right and mandates its appropriate use without jeopardising the interest of any member of the society.

National Sanitation Strategy, March 2005¹⁶⁰

4. Guiding Principles

Sanitation is a human right

¹⁵⁷ Spanish original available at: <http://www.gob.gba.gov.ar/legislacion/legislacion/1-12257.html>

¹⁵⁸ <http://faolex.fao.org/docs/texts/aze32664E.doc>

¹⁵⁹ Available at: http://www.warpo.gov.bd/nw_policy.pdf.

¹⁶⁰ Available at: http://www.sanitation-bd.org/downloads/MR11_SanitationStrategy.pdf.

The international acceptance that health and access to water are human rights clearly implies that access to sanitation should also be considered as a human right. The national government is therefore obliged to progressively ensure access to basic sanitation equitably and without discrimination.

BELARUS

Law on drinking water supply, Law No. 271-Z of 24 June 1999, as last amended 20 July 2006 (unofficial translation)¹⁶¹

Article 19

The users of drinking water have the right:
to be provided with drinking water from the centralized and non-centralized drinking water supply systems in accordance with the norms governing drinking water quality and the standards for drinking water consumption;

...

Article 31

The republic of Belarus guarantees each natural person within its territory the provision with drinking water in accordance with the standards for drinking water consumption and the established norms of quality.

The satisfaction of the drinking water needs of the natural persons in the places of their stay is ensured through realization of the measures directed at the development of the centralized (priority) and non-centralized drinking water supply systems, and also by regulation and control of the drinking water supply in accordance with the requirements of present law.

Natural persons are guaranteed the right to be provided with drinking water during their stay in public places (stations, parks, beaches, etc.); also on transportation means with travel time exceeding three hours the same right is to be ensured by the owners of these objects.

Law on the sanitary and epidemic well-being of the population, Law No. 2583-XII of 23 November 1993, as last amended 16 May 2006¹⁶²

Article 30 - Drinking and Domestic Water Supply Requirements for the Needs of the Population

The residents of the cities and other inhabited localities shall be supplied with an amount of water that is sufficient satisfy drinking and domestic needs.

The quality of water used for drinking and domestic needs ... must meet the standards and sanitary rules.

Organizations and natural persons, including individual entrepreneurs that carry out the drinking water supply, in cases when its quality does not meet the standards and sanitary rules must stop its distribution to consumers and immediately inform the bodies and institutions that perform the state sanitary inspections in respect of these facts.

BELGIUM

¹⁶¹Russian original at: <http://pravo.by/webnpa/text.asp?RN=H19900271>.

¹⁶²Available at:

<http://law.by/work/EnglPortal.nsf/6e1a652fbefce34ac2256d910056d559/e1a1222b11303d0fc2256dee00516e6c?OpenDocument>.

Water Resolution, adopted by the Belgian Parliament on 14 April 2005 (Unofficial translation)¹⁶³

...

Requests the Federal Government:

1. to confirm that access to safe water in adequate quantity and quality is a basic human right and to take an initiative to include this right explicitly into the Belgian Constitution; to have this same right also included into relevant international treaties and above that to insist that governments are at all levels under the obligation to guarantee this basic right; ...

Decree regulating the provision of drinking water via the piped water system, Council of the Brussels-Capital Region, 8 September 1994 (Unofficial translation)¹⁶⁴

Article 2.

This decree applies to the provision of drinking water as a public service in the Brussels-Capital Region.

It guarantees for every natural person residing in a building intended for habitation for which a connection has been established the right to the provision of drinking water for domestic uses.

Decree regarding the water cycle and instituting a public water provider, Walloon Regional Council, 15 April 1999 (unofficial translation)¹⁶⁵

Article 1

§ 2. Every person has the right to have access to drinking water in a quality and quantity sufficient for her alimentation, domestic needs and health. ...

§ 4. The unequal conditions regarding access to and utilization of the resource by the users must be taken into account in the general policy of the region in accordance with the principle of solidarity.

Decree regulating the right to a minimum supply of electricity, gas and water, Parliament of Flanders, 19 December 1996¹⁶⁶

Article 3

Every subscriber has the right to a minimum uninterrupted supply of electricity, gas and water for domestic uses in order to live in human dignity, oriented at the prevailing standard of living.

BELIZE

Draft Water Resources Management Act, 25 May 2006¹⁶⁷

Article 2

(1) In this Act, unless the context otherwise requires, ...

“domestic use” in relation to the abstraction of water means the use of such water for

drinking, washing, cooking and sanitary purposes in connection with a residence; or

¹⁶³ Dutch original at: <http://www.dekamer.be/FLWB/pdf/51/1666/51K1666003.pdf>.

¹⁶⁴ French original version available at: http://www.juridat.be/cgi_loi/loi_F.pl?cn=1994090832

¹⁶⁵ Available at: <http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/1999/06/22/62305.pdf>.

¹⁶⁶ Dutch original version available at: <http://jsp.vlaamsparlement.be/docs/stukken/1996-1997/g442-5.pdf>.

¹⁶⁷ http://www.gpcbelize.com/press_releases/WaterResourcesBill%20-%20Draft%207.pdf

farming, gardening, the watering of stock or pen-keeping in connection with a household where the entire area of land does not exceed 5 acres;

Article 10

(2) A person may abstract and use water without a licence if the water is required for either or both of the following purposes, ...

(i) domestic use; ...

Article 41

(3) Unless the Order specifies otherwise, it shall not be unlawful to use any reserved water for domestic use.

BRAZIL

Law on Basic Sanitation, Law 11445 of 7 January 2007 (Unofficial translation)¹⁶⁸

Article 2

Public basic sanitation services shall be delivered in accordance with the following fundamental principles:

I - **universal access**; ...

BURKINA FASO

Framework law on Water Management, Law No. 002-2001 (Unofficial translation)¹⁶⁹

Article 2

The law acknowledges that everyone has the right to avail of water corresponding to his or her needs and for the basic needs of his/her life and dignity.

...

CAMEROON

Water Code, Law No. 98-005, 14 April 1998 (Unofficial translation)¹⁷⁰

Article 2

(1) Water is part of the common heritage of the nation; the State ensures its protection and management and must facilitate access to water for all.

CANADA

Québec Water Policy, 2002¹⁷¹

The Québec government first wishes to reaffirm, through this Policy, its determination to recognize this resource as a valuable asset of Québec society and an integral part of its collective heritage. Water, both surface and groundwater, is recognized in the Civil Code of Québec as something whose use is common to all, subject to rights of use or limited appropriation rights, that may be recognized. This "common to all" status implies that all members of society have **the right to access water** and use it in a manner consistent with its nature, and that the government has a responsibility to regulate water use, establish priority uses and

¹⁶⁸ Portuguese original at: http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Lci/L11445.htm.

¹⁶⁹ French original version available at: <http://www.agora21.org/grn-lcd/burkina/codeau.rtf>.

¹⁷⁰ French original version available at: <http://www.riddac.org/document/pdf/cm-loicau.pdf>.

¹⁷¹ Available at: <http://www.mddep.gouv.qc.ca/eau/politique/index-en.htm>.

preserve its quality and quantity, while taking the public interest into account. Therefore, the government intends to create the necessary instruments so that they may give precedence, in the event of conflict, to the ***fundamental right of individuals to access this resource for their basic needs***.

Montréal Charter of Rights and Responsibilities, 2006¹⁷²

Article 18 – Commitments

To foster the economic and social rights of citizens, Montréal is committed to:

...

f) Providing citizens with access to sufficient quantities of quality drinking water; ...

CAPE VERDE

Water Code, Law No.41/II/84, as amended by Decree No. 5/99 (Unofficial translation)¹⁷³

Article 61 - Licensing exemptions

The following uses are free and do not require licensing:

a) Water for individual consumption and domestic purposes, coming from any kind of catchment or public reservoirs...

CENTRAL AFRICAN REPUBLIC

Draft Water Code, 2005 (Unofficial translation)¹⁷⁴

Article 42

The law acknowledges the right to access water to fulfil the basic needs and demands of a person's life and dignity. The Minister for Water and the Minister for Health, within their respective mandate and in conjunction with other competent public water authorities, shall propose and implement the necessary measures to exercise this right.

CHILE

Water Code, DFL No. 1122 of 1981, as last amended by Law No. 20099 of 15 May 2006 (Unofficial translation)¹⁷⁵

Article 56

Anyone may dig wells in his/her own soil for drinking and domestic uses, although he may come to reduce the water that supplies some other well; but if one does not report some utility, or if one does so but for a utility that is not commensurate with the damage done to another, he/she will be forced to close up the well.

Law 19.253, Indigenous Law, 5 October 1993 (Unofficial translation)¹⁷⁶

¹⁷² Available at:

http://ville.montreal.qc.ca/pls/portal/docs/page/charte_mtl_en/media/documents/charte_droits_en.pdf.

¹⁷³ Original Portuguese versions of the original law available at:

<http://faolex.fao.org/docs/pdf/CVI10783.pdf>;

the 1999 amendments can be accessed at: <http://faolex.fao.org/docs/pdf/cvi25626.pdf>.

¹⁷⁴ French original version available at:

http://www.cf.undp.org/Doc_pdf/Energie%20Environ/code%20de%20l%27eau.pdf.

¹⁷⁵ Spanish original available at: <http://www.bcn.cl/leyes/pdf/actualizado/5605.pdf>.

¹⁷⁶ Spanish original available at:

http://www.mapuche.cl/oldmapuche/documentos/chilenos/legislacion/ley/ley_indigena.htm.

Article 64

II. New water rights in respect of lakes, pools, watersheds, rivers and other aquifers that affect the water resources that are property of the various indigenous communities established by this law shall not be issued without previously guaranteeing the normal provision of water to the affected communities.

COLOMBIA

Draft Water Law, 17 January 2005 (Unofficial translation)¹⁷⁷

Article 3.5. Equity.

All persons have the right to access to the use of water, without discrimination of any kind.

COSTA RICA

Principles governing the national policy in the field of water resources management, Executive Degree No. 30480-MINAE of 5 June 2002 (Unofficial translation)¹⁷⁸

Article 1.1.

Access to potable water is an inalienable human right and must be guaranteed constitutionally.

Article 1.2.

The management of water and above all the rules governing access to this resource must be governed by the principle of social and intergenerational equity and solidarity.

Water Law, Law 276 of 27 August 1942, as last amended by Law 7593 of 9 August 1996 (Unofficial translation)¹⁷⁹

Article 11.

Waters that are flowing in their natural and public courses and are not subject to a private concession, can be used by every person for drinking, washing of clothes, pots and any other objects, bathing or ...

Draft Law on Water Resources, proposal No. 14585, 2005 (Unofficial translation)¹⁸⁰

Article 2. General Principles

a) Human right to access to water: Access to water in adequate quantity and quality is a human right, indispensable for the satisfaction of basic needs of the human being.

¹⁷⁷ Spanish original available at: [http://www.oas.org/dsd/environmentlaw/waterlaw/documents/Colombia-Proyecto_de_Ley_del_Agua_\(2005\).pdf](http://www.oas.org/dsd/environmentlaw/waterlaw/documents/Colombia-Proyecto_de_Ley_del_Agua_(2005).pdf).

¹⁷⁸ Spanish original version published in La Gaceta No. 112 of 12 June 2002; partially available at: http://www.fundacionambio.org/media_files/download/guia-sanciones.pdf.

¹⁷⁹ Spanish original available at: http://documentacion.sirefor.go.cr/archivo/legislacion_y_politicas/legislacion/ley_aguas.pdf.

¹⁸⁰ Spanish original available at: <http://www.conare.ac.cr/proyectos/14585%20dic.htm>. The draft was approved by the Comisión Permanente Especial de Ambiente on 14/4/2005 and is currently under debate in parliament.

...

l) Value of water: Water has an economic value whose determination shall take place in consideration of the costs for its administration, protection and recuperation, according to its distinct uses and priorities and in harmony with the human right to access to water for all people.

Article 49. Common uses

(1) All persons can use the waters, without the necessity of a concession or permit of use, to satisfy the ordinary needs of life, such as drinking, washing clothes, bathing, ..., among others.

Such common uses can be made if they do not produce an alteration of the quality of the waters and they [the respective waters] flow in their natural courses without having been deviated ...

DOMINICA

Water and Sewerage Act, 1989¹⁸¹

Article 42 - Private use of water

... the occupier of any land, his family and employees ordinarily resident on that land are entitled to abstract and use any water on, adjacent to, or under that land for the domestic necessities of his household, including the watering of livestock and the irrigation of a subsistence garden, ...

DOMINICAN REPUBLIC

Law No. 64-00, General Law on the Environment and Natural Resources, 2000 (Unofficial translation)¹⁸²

Article 127.

All persons have the right to utilise water in order to satisfy their vital human needs of alimentation and hygiene, those of their family and their animals, always in such a manner that their use does not cause prejudice to other users and does not imply diversions or containment, nor the use of machines or the realisation of activities that in any way deteriorate or damage the watercourse and its margins, that alter it, contaminate it or make impossible its use by third persons.

EL SALVADOR

Health Code, Decree No. 955 of 1988, as last amended 1994 (Unofficial translation)¹⁸³

Article 61.

The cities and urban populations must be provided with potable water services, and in case they are not, the State, subject to its resources and according to respective plans, shall provide them through the respective specialised organisms.

Article 62.

In rural areas, the State shall stimulate settlers to create, operate and maintain aqueducts, by giving them the technical assistance necessary and economic assistance possible, subject to its resources.

¹⁸¹ Available at: [http://www.oas.org/dsd/environmentlaw/waterlaw/documents/Dominica-Water_and_Sewage_Act_\(1989\).pdf](http://www.oas.org/dsd/environmentlaw/waterlaw/documents/Dominica-Water_and_Sewage_Act_(1989).pdf).

¹⁸² Spanish original available at: <http://www.medioambiente.gov.do/cms/archivos/legislacion/ley64.pdf>.

¹⁸³ Spanish original at: http://www.mspas.gob.sv/pdf/codigo_salud.pdf

FRANCE

Law No. 2006-1772 of 30 December 2006 on water and aquatic environments (unofficial translation),¹⁸⁴ amending the Environment Code¹⁸⁵

The second line of article L. 210-1 of the Environment Code is amended as follows:
... the use of water belongs to all and every natural person, for her alimentation and hygiene, has the right to have access to drinking water under conditions which are economically acceptable for all.

GHANA

Draft National Water Policy, 2005¹⁸⁶

The Guiding Principles of the Draft National Water Policy include:

- The fundamental rights of all people to safe and adequate water to meet basic human needs.

...

GUATEMALA

Draft General Water Law, Draft Law No. 3118 of 1 August 2005 (Unofficial translation)¹⁸⁷

Article 2. Principles.

...

a) Principle of equity.

Access to water and sanitation for the satisfaction of primary needs of the population at adequate prices is a fundamental right of every human being. ...

GUINEA

Water Code, Law No. L/94/005/CTRN of 14 February 1994 (Unofficial translation)¹⁸⁸

Article 6

(1) Subject to the provisions stipulated in article 4 of the present law, everyone has an inalienable right to access water resources and a right to use them for domestic purposes.

(2) Water resources used exclusively for the satisfaction of natural persons subject to the quantitative limits necessary for human consumption, hygiene, washing and vegetables or animal productions destined for family consumption are to be regarded as domestic uses.

(3) The rights mentioned in the present provision include the use of water extracted and contained in an individual or collective container. However, the user is obliged to exercise his/her right in a manner that preserves the availability of the resource in both quantity and quality and does not compromise other users.

GUINEA BISSAU

Water Code, Law No. 5-A/92 (Unofficial translation)¹⁸⁹

¹⁸⁴ French original at: <http://aida.ineris.fr/textes/lois/text1064.htm>.

¹⁸⁵ <http://www.legifrance.gouv.fr/WAspad/UnCode?code=CENVIROL.rcv>.

¹⁸⁶ Available at: <http://www.wrc-gh.org/wateruseregulations.html>.

¹⁸⁷ Original Spanish version at: <http://www.ccad.ws/documentos/agua/3118.pdf>.

¹⁸⁸ French original version available at: <http://faolex.fao.org/docs/texts/gui4825.doc>.

¹⁸⁹ Portuguese original version available at: <http://faolex.fao.org/docs/pdf/gbs39315.pdf>.

Article 7 (Free use)

1. The owner or user of land has the right to freely use rainwater falling over it, and other water of public domain, for the purpose of satisfying domestic, personal and family necessities, including cattle watering and gardening, through traditional means and excluding mechanical means.

HONDURAS

Law on the Utilisation of National Waters, 1927, last amended 1945 (Unofficial translation)¹⁹⁰

Article 9.

While waters run through their natural and public courses, every person may make use of them for drinking, washing of clothes ...

Article 10.

From waters that, artificially separated from their natural courses, run through channels, irrigation channels or open aqueducts, although pertaining to private licensees, every person may extract and take away in vessels what they need for their domestic uses ... However, the authority must limit the use of this right if it causes prejudice to the licensee of the waters and with the understanding that without permit of the owner, no one may enter into private property to search for or use water.

Decree No. 118-2003, Framework Law for the Drinking Water and Sanitation Sector (Unofficial translation)¹⁹¹

Preamble

Considering that, according to the principle of solidarity, the State must guarantee access to drinking water to sections [of the population] excluded from the service for socio-economic reasons.

Article 1.

The present law establishes the norms applicable to drinking water and sanitation services in the national territory as a basic instrument for the promotion of the quality of life of the population and securing of sustainable development as an inter-generational legacy.

The provision of these services is governed by the principles of quality, equity, solidarity, continuity, generality [universality of access], respect for the environment and citizen participation.

Draft General Water Law, 2005 (Unofficial translation)¹⁹²

¹⁹⁰ Original Spanish version at:

[http://www.oas.org/dsd/environmentlaw/waterlaw/documents/Honduras_Ley_de_Aprovechamiento_de_Aguas_Nacionales_\(1927\).pdf](http://www.oas.org/dsd/environmentlaw/waterlaw/documents/Honduras_Ley_de_Aprovechamiento_de_Aguas_Nacionales_(1927).pdf).

¹⁹¹ Spanish original available at: <http://faolex.fao.org/docs/pdf/hon41347.pdf>.

¹⁹² Available at:

http://rds.hn/uploads/files/DOC_609_ANALISIS_DEL_PROYECTO_LEY_GENERAL_DE_AGUAS.pdf.

Principles:

The following principles are applicable within the normative framework of water management: ...

c) Access to water constitutes a right that is linked to life and human health and its use for human consumption enjoys preference and priority; ...

INDONESIA

Law No. 7/2004 on Water Resources, promulgated 8 March 2004¹⁹³

Article 5

The state guarantees the right of every person in obtaining water for minimum rudimentary daily use to fulfill a healthy, clean and productive life.

Article 8

(1) Beneficial Use Water Right is obtained without any license to fulfill the normal daily needs of individuals and for small-scale farming within an irrigation system. ...

Article 16

The authority and responsibilities of regent/municipal government comprise:

...

(h) the fulfillment of minimum daily need of water for the people in the area; ...

Government Regulation No. 16/2005 regarding Development of Drinking Water Supply Systems and Sanitation¹⁹⁴

Section 14 – Water and sanitation integrated in policy and plans

(1) The establishment to the development of the drinking water supply system and sanitation should guarantee the rights of every person to obtain drinking water for the minimal basic needs daily in order to fulfill healthy clean and productive life. ...

IVORY COAST

Water Code, Law No. 98-755 of 23 December 1998 (Unofficial translation)¹⁹⁵

Article 59

The State is responsible for the management of water resources by preserving the quality of sources, preventing waste and guarantying water availability.

Article 60

The State guarantees:

- the supply of potable water
- the protection, conservation and integrated management of water resources
- the fulfilment of other needs ...

¹⁹³ Available at: <http://faolex.fao.org/docs/texts/ins48775.doc>. Cf. as well the explanation at <http://faolex.fao.org/docs/texts/ins48775-elucidation.doc>.

¹⁹⁴ On file with authors.

¹⁹⁵ French original version available at: <http://faolex.fao.org/docs/texts/ivc15630.doc>,

ISRAEL

Draft amendment regarding the human right to water to the 1959 Water Law, submitted by the Minister of Agriculture, Shalom Simchon, 14 July 2003, 16th Knesset¹⁹⁶

The right to water is part and parcel of the right to life, regarding which there is no legal dispute ... the need to legally ensure the right to water also underscores the state's duty to provide water during water shortages, as rights are born so that they may be realized in times of trouble.

KENYA

The National Water Services Strategy (NWSS), June 2007 draft¹⁹⁷

Foreword

... Safe water and basic sanitation must be regarded as a basic human right and should therefore be accessible and affordable to all. ...

3.4 Key principles of the National Water Services Strategy

The guiding principles for the water sector reform and therefore for the National Water Services Strategy are:

1. Sustainable access to safe water and basic sanitation is a human right. ...
4. Water is a social and economic good – water and sanitation service provision for the poor shall be enabled by social tariffs (minimum 20litres of water per person/day) and users shall pay according to consumption – user pays principle.

KYRGISTAN

Water Code of the Kyrgyz Republic, Law No. 8 of 12 January 2005¹⁹⁸

Article 22 - Water use that does not require a water use permission

Surface water resources may be used without a Water Use Permission: for drinking and domestic water supply, livestock watering and other individual needs in cases where a permanent water economy construction is not used to abstract water from a water body;

...

Underground water resources may be used without Water Use Permission for domestic needs and the watering of household plots and livestock in accordance with the provisions of article 42(2) of this Code.

LATVIA

Law on Water Management, 1 October 2002¹⁹⁹

Article 17 - Recovery of costs for use of water resources

(1) Natural and legal persons shall have the right to ... use free of charge water resources for ... personal needs, where the amount of water abstracted for personal needs does not exceed the limits fixed by the Cabinet of Ministers.

MADAGASCAR

Water Code, Law No. 98-029 (Unofficial translation)²⁰⁰

¹⁹⁶ On file with author.

¹⁹⁷ Available at: http://www.cohre.org/view_page.php?page_id=214.

¹⁹⁸ Available at: <http://faolex.fao.org/docs/texts/kyr49854E.doc>.

¹⁹⁹ <http://faolex.fao.org/docs/texts/lat42197.doc>.

Article 37

(1) The public service of drinking water supply and collective sanitation of domestic wastewaters, as defined in the present chapter as "public water and collective sanitation service", is a service of potable water supply and collective sanitation of domestic wastewaters provided to the public, that is to every user, public or private physical or moral person with obligations of public services as defined in the schedule of charges.

(2) The public service is responsible for the universal provision of potable water, which is based on the obligation to supply all users with a minimum quantity and a minimum service of potable water.

MALAWI

Water Resources Act, 1969²⁰¹

Article 6

(1) ... any person having lawful access to public water may abstract and use the same for domestic purposes.

MAURITANIA

Water Code, Law No. 2005-030 (Unofficial translation)²⁰²

Article 2

...

(2) The use of water is a right recognised for all, subject to the laws and rules in force.

...

(4) The State policy aims to guarantee access to potable water to the populations.

...

Article 18

The use of water taken from permanent or seasonally available sources for domestic or similar uses is exempted from formalities. The criteria of what constitutes domestic water use shall be defined by decree.

Article 37

(1) Urban areas with an urban plan must have a collective sanitation system allowing for the rapid and complete evacuation of domestic and industrial wastewaters as well as their treatment, subject to the public health and environmental protection norms and conditions.

(2) The connection to a sewage system of dwellings or establishments discarding wastewaters must be completed within a set period from the starting date of the implementation of the collective sanitation network. Such time period is to be set by a joint decision of the ministers responsible for water, local collectivities and public health services.

...

MEXICO

Water Law of the Distrito Federal, 2003 (Unofficial translation)²⁰³

²⁰⁰ French original version available at: <http://faolex.fao.org/docs/pdf/mad19324.pdf>.

²⁰¹ Available at: <http://faolex.fao.org/docs/pdf/mlw1269.pdf>.

²⁰² French original version available at: <http://faolex.fao.org/docs/texts/mau69252.doc>.

²⁰³ Spanish original at: <http://www.df.gob.mx/leyes/normatividad.html?materia=1&apartado=1&disp=122>.

Article 5.

Every person in the Distrito Federal has the right to have access to sufficient, safe and hygienic water for personal and domestic uses, as well as to provision without interferences. The authorities shall guarantee this right, granted that individuals present their allegations/claims when the exercise of this right is limited by the acts, facts, or omissions of any authority or person, taking into account the limitations and restrictions established by the present law.

Article 54.

The provision of the public service of supply and distribution of water for human consumption for the population of the Federal District in sufficient quantity and quality is an obligation of the Government of the Federal District, and as such cannot be interrupted in its realization. The provision can only be restricted when such restriction is consistent with the orders contained in the present law and the Financial Code of the Federal District.

MOLDOVA

Law on the sanitary and epidemiological provision of the population, Law No. 1513-XII of 16 June 1993²⁰⁴

Article 15 - Drinking and household water supply for the population

(1) The population shall be supplied with drinking water of high quality (according to the national standard) in sufficient quantity for the fulfilment of their physiological and household needs. ...

Law on Drinking Water, Law No. 272 of 10 February 1999, as last amended 02 November 2000 (unofficial translation)²⁰⁵

Article 4

The state policy in the field of drinking water supply is based on the following principles:

- a) the responsibility of the State for the provision of the population with drinking water according to the established standards of water consumption and the norms of quality;
- b) satisfaction of the need for drinking water primarily through the development of the centralized systems of drinking water supply, ...

NAMIBIA

Water Resources Management Act, Act No. 24 of 2004²⁰⁶

3. Fundamental principles

This Act must be interpreted, and be reasonably and fairly applied, in a manner that is consistent with and promotes the following fundamental principles -

(a) equitable access to water resources by every citizen, in support of a healthy and productive life;

...

(c) essentiality of water in life, and safe drinking water a basic human right;

...

²⁰⁴ Available at: <http://faolex.fao.org/docs/texts/mol60858E.doc>.

²⁰⁵ Available at: <http://law-moldova.com/laws/rus/pitievoi-vode-ru.txt>.

²⁰⁶ Available at: <http://faolex.fao.org/docs/pdf/nam61956.pdf>.

26. Reliability of Water Supply

(1) The Minister must ensure that all Namibians are provided with an affordable and a reliable water supply that is adequate for basic human needs.

...

NEPAL

Water Resources Act (2049/1992), 17 December 1992²⁰⁷

4. Utilization of Water Resources

(1) No person shall be entitled to utilize the water resources without obtaining a license under this Act.

(2) Notwithstanding anything written in sub-section (1), no license shall be required for the following uses of water resources.

(a) For one's own drinking and other domestic use on an individual or collective basis, ...

NICARAGUA

Law governing the suspension of concessions for the use of water, Law 440 of 11 August 2003 (Unofficial translation)²⁰⁸

Article 1.

The purpose of the present law is to preserve and to rationalise the utilisation and to secure the permanent sustainability of the water resources of the country, which, due to their nature and vital importance, are a fundamental and strategic part of the exclusive property of the nation. Access to water constitutes a citizens' right and a human right, inviolable and indispensable. The State shall guarantee and facilitate the adequate provision of potable water at just and popular prices for each and all Nicaraguans.

General Health Law, Law No. 423 of 14 März 2002 (Unofficial translation)²⁰⁹

Article 1.- Purpose of the law

The purpose of the present law is to protect the right of all persons to the enjoyment, conservation and restoration of their health ... For this purpose the law shall regulate:

...

c. Environmental sanitation.

Article 69.

Environmental sanitation comprises the promotion, education, improvement, control and management of ... the quality of water, elimination and treatment of liquid and solid materials, ...

²⁰⁷ Available at <http://www.mowr.gov.np/wract.htm>.

²⁰⁸ Spanish original available at: [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/4D92EC09C7838B2B0625722C005CEB50?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/4D92EC09C7838B2B0625722C005CEB50?OpenDocument).

²⁰⁹ Spanish original at: [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/FF82EA58EC7C712E062570A1005810E1?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/FF82EA58EC7C712E062570A1005810E1?OpenDocument).

General law on the environment and natural resources, Law No. 217 of 6 June 1996 (Unofficial translation)²¹⁰

Article 76

All persons have a right to utilise water for the satisfaction of their basic needs, always in a way that does not cause damage for third parties ...

General National Water Law, 15 May 2007 (Unofficial translation)²¹¹

Article 4

The service of potable water shall not be the object of any privatization, be it direct or indirect, and will always be considered of public character. Its administration, supervision, and control will be under the responsibility and guardianship of the State through the institutions created for such effects or through those institutions created at some future time.

Article 5

It is the obligation and undeniable priority of the State to promote, provide, and adequately regulate the provision of potable water to the Nicaraguan people in sufficient quantity and quality and at differentiated costs, while also supporting the sectors with less economic resources.

Article 13

... the present law is based on the following values and principles ...

c) Water is a vital, limited, vulnerable and finite resource the preservation and sustainability of which is a fundamental and irrefutable task of the State and society combined. To have access to it is an irrenouncable right of every human being.

PAKISTAN

Draft Safe Drinking Water Act, 2007

*The Act will reportedly acknowledge that safe drinking water is a fundamental human right. Water schemes are supposed to be based on the provision of a minimum of 20 litres per capita per day for rural households and 40 litres per capita for urban households.*²¹²

Draft National Drinking Water Policy²¹³

4. The key policy principles that will be pursued are the following;

a) To recognize that access to safe drinking water is the basic human right of every citizen and that it is the responsibility of the state to ensure its provision to all citizens

²¹⁰ Spanish original at:

<http://legislacion.asamblea.gob.ni/Normaweb.nsf/0/1b5efb1e58d7618a0625711600561572?OpenDocument&Click=>.

²¹¹ Spanish original yet unpublished; on file with author.

²¹² Summaries at: <http://www.worldwatercouncil.org/index.php?id=1749>;
<http://www.dawn.com/2006/06/12/nat14.htm>.

²¹³ Available at: http://www.environment.gov.pk/act-rules/D_NATIONAL_DRINKING_WATER_POLICY.pdf.

b) The right to water for drinking takes precedence over rights for water for all other uses such as environment, agriculture, industry etc. ...

...

PALESTINE

Palestinian Water Authority, Water Law No.3, 2002²¹⁴

Article 3

...

(3) Every person shall have the right to obtain his needs of water of a suitable quality for his use, and every official or private institution that provides water services must take the necessary steps to [e]nsure this right and to make the necessary plans for developing these services.

PARAGUAY

General law governing the regulatory and tariff framework for the public drinking water and sanitation services for the Republic of Paraguay, Law 1614 of 2000 (unofficial translation)²¹⁵

Article 34. - Generic right.

All users have the right to the provision of the service in accordance with the norms established in this law and the Regulatory Framework.

Article 35. - Rights of the users.

The users have the following rights, without this list being exhaustive:

a) to demand from the provider the provision and the quality of the service in accordance with the provisions of the present law, ...

Article 45. Complementarity.

The services of provision of potable water and sanitation constitute complementary services that will be developed harmoniously, so as to avoid the installation of systems for the provision of potable water without that for sanitation, and vice versa, except when ERSSAN authorizes it and when such an exception is considered in the contract of concession or in the license. Moreover, the different stages of service should be conceived and developed with the harmonious and efficient development of service as an integrated whole.

Law on Water Resources, Law 3239 of 10 July 2007 (Unofficial translation)²¹⁶

Article 3

...

b) Access to water for the satisfaction of basic needs is a human right and [such access] must be guaranteed by the State in adequate quantity and quality.

...

²¹⁴ On file with author.

²¹⁵ Spanish original available at: <http://www.erssan.gov.py/pagina/ley-1614.pdf>.

²¹⁶ Spanish original available at: <http://www.congreso.gov.py/senadores/leyes/ups/leyes/44473239-2007%20Recursos%20Hidricos.DOC>.

Article 4

The National Water Resource Policy shall be guided by the following fundamental objectives:

...

b) To guarantee that all inhabitants have access to potable water, given that this is a human right.

Article 16.

Every natural person has a right to access to a minimum quantity of potable water per day that is sufficient for the satisfaction of their basic needs.

The minimum quantity of water per person per day shall be established by regulation by the Ministry of Public Health and Social Welfare.

Draft General Water Law, March 2007 (Unofficial translation)²¹⁷

Article 5.- Principles

The principles governing the sustainable and multisectoral use and management of water and associated goods are: ...

3. Principle of priority regarding access to water

Access to water for the satisfaction of the primary needs of the human person has priority because it is a fundamental human right. The availability of water and the assurance of its quality form a part of this right.

...

6. The principle of respect for the use of water in Rural and Native communities

The state respects the uses and customs of the Rural and Native Communities, as well as their human right to use the waters that run through their land, as far as they are not contrary to the law. The state shall promote the knowledge of and traditional methods for water use. The indigenous populations who are not in contact with the state enjoy the natural right to water.

Article 58 - Public Access to Potable Water Networks

The state guarantees to everyone access to potable water services at a reasonable cost in sufficient quantity and under conditions of security and quality for the satisfaction of personal and domestic needs.

RUSSIAN FEDERATION

Water Code of the Russian Federation, Law No. 74-FZ of 3 June 2006, last amended 19 June 2007 (Unofficial translation)²¹⁸

Article 6

1. Surface water objects, which are being the state or municipal property, are the water objects of general use, or commonly accessible water objects, if other is not provided by present code.

2. Each citizen has the right to have access to the water objects of general use and use them for the personal and household needs free of charge, if other is not provided by the present code, other federal laws.

²¹⁷ On file with author.

²¹⁸ Available at:

<http://www.kodeks.net/index?tid=633200094&frame=noframe&where=LcgRFsearch?d&nd=901982862>.

Law on the sanitary-epidemiological well-being of the population, Law No. 52-FZ of 30 March 1999, as last amended 18 June 2007 (Unofficial translation)²¹⁹

Article 19

...

3. The population of urban and rural settlements, as a matter of priority, shall be provided with drinking water in a quantity that is sufficient for the satisfaction of physiological and household needs.

SOUTH AFRICA

Water Services Act, Act 108 of 1997, last amended 2004²²⁰

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 ...

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; ...

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.

...

National Water Act, Act 36 of 1998²²¹

²¹⁹ Russian original available at:

<http://www.kodeks.net/index?tid=633200094&frame=noframe&where=com-pus-fullegrf?find=&flist=%cd%e0%ef7%e0%fc+%ef%ee%e8%f1%ea&w=0%3b10%3b11%3b2%3b3%3b4%3b5%3b6%3b9&sarea=1&a0=&a1=&a4=9000344&a4type=1&a5=&a5type=1&a6=&a6type=1&a7type=1&a7from=&a7to=&a14=&a14type=1&a15type=1&a15from=&a15to=&a17=&a20type=1&a20from=&a20to=&a8=&a8type=1&sort=7>

²²⁰ Available at: <http://www.wrc.org.za/downloads/legislature/WSA108-97.pdf>; www.polity.org.za/attachment.php?aa_id=1385.

²²¹ 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; ...

SRI LANKA

The Rural Water Supply and Sanitation Policy (RWSS Policy), 2001²²²

2.0 Principles of the Policy:

....

- II. Water is a basic human need which warrants for equitable allocation.
- IV. Provision of Water Supply and Sanitation services should be people centered and demand driven.
- V. Provision of water supply and sanitation together with hygiene education should be considered as integral components in all sector projects / programmes.
- VI. Sector approaches should be based on participatory approach involving users, planners and policy makers at all levels
- XI. Women should play a central role in decision making process of the sector.
- XIII. All sector activities should be in harmony with the environment.

4.0 Sector Partners and the responsibilities

4.1 Government

The primary role shall be to:

- a) Ensure all citizens have access to potable water and sanitation facilities. ...

National Policy on Drinking Water, 2007²²³

²²² Available at: <http://www.waterboard.lk/scripts/ASP/Policies.asp>.

²²³ Officially approved by the National Water Supply & Drainage Board in 2007. On file with authors.

Drinking Water

Water is a vital resource, indispensable to life, and essential for overall economic and social development of a country. In Sri Lanka, access to water is considered an inalienable right of its people...

5.0 Institutional arrangements

To reform the institutional structure, to enhance efficiency, improve accountability, and support community involvement, while ensuring adequate water supply to low – income urban and rural consumers.

6.0 Investment

To prioritise and allocate resources based on socio-economic criteria to ensure the equitable distribution of investment across the country and an appropriate investment system.

National Policy on Sanitation, 2007²²⁴

Objectives

The Government of Sri Lanka considers access to safe drinking water and sanitation as an inalienable right.

SWAZILAND

Water Act, Act No. 7 of 2003²²⁵

Article 2 - Interpretation

“use for primary purpose” means the use of water for domestic requirements, sanitation, the watering of animals not exceeding 30 head of cattle or the irrigation of land not exceeding one-quarter hectare adjoining and occupied with a homestead of not more than 10 persons but does not include the use of water by a local authority for distribution to the inhabitants of the area; ...

Article 34 - The right in water

- (1) All water found naturally in Swaziland is hereby declared a national resource.
- (2) There shall be no private right of property in any water found naturally in Swaziland.
- (3) A right to divert, store, or use water shall not be acquired by prescription.
- (4) It shall not be necessary for any person or community to obtain a permit for the use of water for primary purposes.

TAJIKISTAN

Law on State Sanitary Supervision, Law No. 987 of 20 July 1994, as last amended 01 February 1996²²⁶

²²⁴ Officially approved by the National Water Supply & Drainage Board in 2007. On file with authors.

²²⁵ Available at: <http://www.elaw.org/assets/word/sz.WaterAct.doc>.

²²⁶ Available at: <http://faolex.fao.org/docs/pdf/taj19381E.pdf> (English version prior to amendments); Russian version with amendments: <http://faolex.fao.org/docs/texts/taj62261.doc>.

Article 15 – Economic-drinking water supply of the population

1. The inhabitants of cities and other settlements shall be provided with safe drinking water in sufficient quantities for the satisfaction of physiological and economic needs of humans.

TANZANIA

The Water Utilization (Control and Regulations) Act, 1974, as revised 1993²²⁷

10. - Right to water for domestic purposes

Any person having lawful access to any water may abstract and use the same for domestic purposes. Provided that nothing in this section shall be construed as authorizing the construction of any works.

UGANDA

The Water Statute, Statute No. 9 of 1995²²⁸

7. - General rights to use water

(1) Subject to Section 8 a person may -

(a) while temporarily at any place; or

(b) being the occupier of or a resident on any land, where there is a natural source of water, use that water for domestic use, fighting fire or irrigating a subsistence garden.

(2) In addition to the right to water under subsection (1) the occupier of land or resident on land may, with the approval of the authority responsible for the area, use any water under the land occupied by him or is resident on or any land adjacent to that land.

(3) The rights under subsections (1) and (2) do not per se authorise a person to construct any works.

UKRAINE

Law of Ukraine on ensuring the sanitary and epidemic safety of the population, Law No. 4004-XII of 24 February 1994, as last amended 07 February 2002²²⁹

Article 4

Citizens shall have the following rights to: foodstuffs, **drinking water**, work conditions, education, up-bringing, household surroundings, recreation, and the environment that are safe for their life and health; ...

Article 18

Bodies of executive power, bodies of local self-governments shall ensure that inhabitants of cities and other populated localities are provided with drinking water of quality and in quantities complying with the requirements of sanitary regulations and state standards. ...

UNITED STATES OF AMERICA

²²⁷ Available at: <http://faolex.fao.org/docs/texts/tan1277.doc>.

²²⁸ Available at: <http://faolex.fao.org/docs/pdf/uga5251.pdf>.

²²⁹ <http://faolex.fao.org/docs/texts/ukr38311.doc>.

Constitution of the Commonwealth of Pennsylvania, 1776, as last amended 16 May 1978²³⁰

Section 27.

The people have a right to clean air, pure water, ...

Constitution of the Commonwealth of Massachusetts, 1780, as last amended 6 November 1990²³¹

Article XCVII

The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.

California Public Utilities Code, 1993²³²

Section 739.8.

(a) Access to an adequate supply of healthful water is a basic necessity of human life, and shall be made available to all residents of California at an affordable cost.

VENEZUELA

Organic Law on the Provision of Potable Water and Sanitation Services, 31 December 2001 (Unofficial translation)²³³

Article 3.

The principles governing the provision of the public services regulated by this law are the following:

...

b. access of all citizens to potable water and sanitation services; ...

Water Law, 2 January 2007 (Unofficial translation)²³⁴

Article 5.

The principles governing the integral management of water resources, based on the recognition of the full sovereignty the Republic exercises over water, are the following:

1. Access to water is a fundamental human right. ...

ZAMBIA

Water Supply and Sanitation Act, Act No. 28 of 1997²³⁵

²³⁰ http://sites.state.pa.us/PA_Constitution.html. Provision entered into effect 18 May 1971.

²³¹ Available at: <http://www.mass.gov/legis/const.htm#cart097.htm>. Provision entered into force 7 November 1972.

²³² Available at: http://www.legaltips.org/california/california_public_utilities_code/.

²³³ Spanish original available at: <http://www.asambleanacional.gov.ve/ns2/leyes.asp?id=206>.

²³⁴ Spanish original available at: <http://faolex.fao.org/docs/texts/ven69647.doc>.

²³⁵ Available at: <http://www.zambia-water.org.zm/nwasco/WSS%20ACT%2028.pdf>.

10. Obligation to provide water supply and sanitation services

(1) Notwithstanding any other law to the contrary and subject to the other provisions of this Act, a local authority shall provide water supply and sanitation services to the area falling under its jurisdiction, except in any area where a person provides such services solely for that person's own benefit or a utility or a service provider is providing such services. ...

Water Act, 1949²³⁶

2. - GENERAL

In this Act, unless the context otherwise requires interpretation "primary use" means the use of water for domestic purposes and the support of animal life (including the dipping of cattle);

8. - Primary use

Any person shall have right to the primary use of public water which is found in its natural channel or bed at such places to which access may be lawfully had.

ZIMBABWE

Water Act, 1998²³⁷

Preliminary

"primary purposes," in relation to the use of water, means the reasonable use of water—

(a) for basic domestic human needs in or about the area of residential premises; or
(b) for the support of animal life, other than fish in fish farms or animals or poultry in feedlots; ...

(2) In the performance of his functions in terms of subsection (1), it shall be the duty of the Minister—

(a) to provide overall policy guidelines on the development, exploitation and utilization of water resources, ensuring that all components of the water cycle such as ground water surface water, evaporation, clouds and rainfall are recognized as being interdependent and forming part of a single water cycle;

(b) to ensure that water resources are managed, utilized and conserved in a manner consistent with national environmental approaches provided for in any enactment;

(c) to encourage participation by consumers in all the sectors referred to in paragraph (c) of subsection (1) and catchment councils in the development, exploitation and distribution of water resources;

(d) to secure the provision of affordable water to consumers in under-privileged communities;

(e) to ensure that water resources are utilized at all times in an efficient manner having special regard to its value and the economic and other benefits that may be derived from it;

Section 32 - Use of water for primary purposes

(1) Subject to section thirty-three and Part IX, any person may abstract water for primary purposes:

²³⁶ Available at: <http://faolex.fao.org/docs/texts/zam1678.doc>.

²³⁷ Available at: <http://faolex.fao.org/docs/texts/zim26168.doc>.

Provided that this subsection shall not be construed as conferring on any person a right, which he would not otherwise possess, to enter or occupy any land for the purpose of abstracting the water.

5.2.2 Allocation & Availability

ALGERIA

Water Law no. 05-12, 4 August 2005²³⁸

Article 2

The objectives assigned to the use, management and sustainable development of water resources aim to provide for:

- the supply of water through the collection and distribution of water in sufficient quantity and required quality, to satisfy by order of priority the needs of the population, the livestock and to meet the farming and industry demands and any other economic and social activities which require the use of water;
- the preservation of public hygiene and the protection of water resources and aquatic environment against pollution risks by the collection and depuration of domestic and industrial wastewater as well as rain water and stream water in urban areas.

ANGOLA

Water Act, 21 June 2002 (Unofficial translation)²³⁹

Article 10 Objectives of water management policies

(2)

...

d. provide the population in a continuous and sufficient manner with potable water in order to satisfy their needs for domestic uses and for hygiene; ...

Article 22 Classification of uses

...

(2) Common uses have priority over private uses.

Article 23 Common uses

(1) Common uses are uses for the satisfaction of domestic, personal and familiar needs, including the watering of cattle and subsistence farming, without commercial purposes. ...

ARMENIA

Water Code of the Republic of Armenia, 2002²⁴⁰

Article 31 - Criteria for Review of Water Use Permit Application

...

When considering applications for water use permits, the Water Resources Management and Protection Body shall consider the following criteria to establish priority and equitable allocation of limited water resources to competing stakeholders:

²³⁸ French original version available at: <http://www.joradp.dz/HEF/Index.htm>.

²³⁹ Available at: <http://www.minea.gv.ao/Minea/Detalhes.cfm?Plano=22&..>

²⁴⁰ Available at: http://www.parliament.am/law_docs/290602HO373eng.pdf?lang=eng.

1) The maintenance and enhancement of human welfare and ecological health shall be given the first priority (as indicated by the national water reserve) thus providing first priority of drinking water supply and sanitation; ...

Article 120 - Specifics of Operation of Potable Water Supply and Wasterwater Systems

...

- The use of the water resources, meeting the quality standards of potable water, for drinking, household and residential, and health needs shall be considered top priority;
- The potable, household and residential water supply systems shall be classified as highly important life supporting objects; ...

The Water Authority shall be able to obligate the licensee to employ or apply all the methods judged necessary to ensure the established quality. It [the Water Authority] shall also guarantee the removal and ultimate disposal of wastewater in a manner that does not produce contamination nor cause damage to third parties.

Law of the Republic of Armenia on provision of sanitary-epidemiological security of the population, 1992 (Unofficial translation)²⁴¹

Article 16 - General requirements for the provision of sanitary-epidemiological security of the population concerning public water supply and consumption

...

The State Governmental bodies must undertake measures for providing high quality water to the population through maintenance and development of the water supply system. ...

In order to prevent and eliminate the pollution of water sources for public consumption, the authorities of urban and regional municipal executive committees of the deputies define sanitary protection belts, under a special regime, according to the legislation of the Republic of Armenia.

If the quality of the water does not correspond to sanitary regulation, the consumption of the water by the enterprises, institutions, organizations and citizens will be terminated, in accordance with the decision of the State hygienic and anti-epidemiological service of the Republic of Armenia.

ARGENTINA

Water Code of the Province of Córdoba, Law 5589/73, as amended by Law 8928/01 (Unofficial translation)²⁴²

Article 38: Enumeration of common uses.

The common uses authorized by this Code are the following:

1) Drinking, human hygiene, domestic uses and watering of plants, always under the condition that the extraction is done by hand, without and kind of machine of apparatus, without contamination of the water resources, ...

²⁴¹ Available at: <http://faolex.fao.org/docs/texts/arm47094E.doc>.

²⁴² Spanish original available at: http://www.cordobaambiente.cba.gov.ar/legislaciones_agua.html

Article 40: Priority and absence of charges.

Common uses have absolute priority over any form of private use and concessions or permits shall in no case limit their exercise. Common uses are free of charge; rates can only be imposed if the provision of a service is required for their exercise.

Article 100: Critical Areas.

In areas where the availability of water for domestic and municipal use is critical, the relevant authority can prohibit or monitor, with special taxes, sumptuary uses including certain swimming pools, houses built in particular zones, or the irrigation of gardens.

Water Code of the Province of Buenos Aires, Law 12.257 of 9 December 1998 (Unofficial translation)²⁴³

Article 2:

The Executive Power is entrusted with: ...

c) Establishing preferences and privileges for the use of waters belonging to the public domain regarding categories of uses, ... giving priority to the provision of potable water ...

Article 27:

In case of competition between requests for the use of water that exclude each other, preference is to be given to those that most fulfil the objectives of the programmes referred to in Article 2 c) ...

AZERBAIJAN

Water Code of the Azerbaijan Republic, 1997²⁴⁴

Article 16 - Key principles of the management over the use and protection of water bodies

The following shall be the key principles of management over the use and protection of water bodies: ...

- Supply of quality water for population; ...

Article 47 - Water bodies granted to address potable and service water needs

Water bodies containing water the quality of which addresses the requirements of relevant state standards and sanitary norms shall be granted for people's use to address their potable and service water needs.

Potable water for the public shall, as a rule, be supplied via centralized water pipeline facilities.

In the absence of a water pipe line river waters, springs, water-wells, underground water pipes and other water sources may be used directly to address people's potable and service water needs, provided, however, that sanitary norms stipulated in the legislation are observed.

In order to meet the needs of people for potable and service water, relevant executive authorities shall determine, according to each residence area, natural water sources to be used by the population.

²⁴³ Spanish original available at: <http://www.gob.gba.gov.ar/legislacion/legislacion/l-12257.html>

²⁴⁴ Available at: <http://faolex.fao.org/docs/texts/aze32664E.doc>

Article 48 - Restricting the Use of potable waters for other purposes

Potable waters, as a rule, may not be used for the purposes not connected with potable water and service needs.

In regions which do not possess sufficient surface water sources and are rich in subsoil potable water resources such waters may be used for other purposes only on the agreement of relevant executive authorities.

Law on sanitary and epidemiological well-being of the population, Law No. 371 of 1992 (Unofficial translation)²⁴⁵

Article 21

Public organs, public associations, enterprises, organizations, establishments and citizens are obligated to ensure that the quality of the water, supplied by the centralized systems of household drinking water supply, corresponds with hygienic requirements and state standards, and ... to the requirements of the corresponding sanitary standards and rules. Zones of sanitary protection, regulated by a special regime ensuring the proper quality of water, must be established for the water pipes of the centralized household water supply and the respective water sources.

BANGLADESH

National Water Policy, 1999²⁴⁶

3. Objectives of National Water Policy

...

b. To ensure the availability of water to all elements of the society including the poor and the underprivileged, and to take into account the particular needs of women and children.

4.3 Water Rights and Allocation

The ownership of water does not vest in an individual but in the state. The Government reserves the right to allocate water to ensure equitable distribution, efficient development and use, and to address poverty.

...

b. In general, the priority for allocating water during critical periods in the water shortage zones will be in the following order: domestic and municipal uses, non-consumptive uses (e.g. navigation, fisheries and wild-life), sustenance of the river regime, and other consumptive and non-consumptive uses such as irrigation, industry, environment, salinity management, and recreation. The above order of priority could however be changed on specific socio-economic criteria of an area by local bodies through local consensus.

National Policy for Safe Water Supply and Sanitation (Local Government Division Ministry of L.G.R.D & Co-operatives), 1998²⁴⁷

²⁴⁵ <http://faolex.fao.org/docs/texts/aze47716.doc>

²⁴⁶ Available at: http://www.warpo.gov.bd/nw_policy.pdf.

²⁴⁷ Available at:

http://www.sdnpsd.org/sdi/international_days/wed/2006/bangladesh/documents/national_pol_safe_drinking_water_sanitation1998.pdf.

3. Objectives

The objectives of the "National Policy for Safe Water Supply and Sanitation" are to improve the standard of public health and to ensure improved environment. For achieving these objectives, steps will be taken for:

a) facilitating access of all citizens to basic level of services in water supply and sanitation

...

Within the overall objectives the following specific goals will be targeted for achievement in phases in the near future: ...

ii. Ensuring the installation of one sanitary latrine in each household in the rural areas and improving public health standard through inculcating the habit of proper use of sanitary latrines.

iii. Making safe drinking water available to each household in the urban areas.

iv. Ensuring sanitary latrine within easy access of every urban household through technology options ranging from pit latrines to water borne sewerage.

BELARUS

Water Code of the Republic of Belarus, Law No. 191-3 of 15 July 1998, as last amended 13 June 2007 (unofficial translation)²⁴⁸

Article 33

The rights of water users can be limited ... for the purpose of protection of the health of the population, and also for other national interests or interests of other water users. In this case priority in the use of waters shall be given to the provision of the population with water for drinking and household needs.

Article 40

The use of underground waters of drinking quality for purposes not related to the satisfaction of drinking, household and other needs of the population, and also not related to the satisfaction of the needs of the food industry and farming, as a rule is not allowed.

Law on the sanitary and epidemic well-being of the population, Law No. 2583-XII of 23 November 1993, as last amended 16 May 2006²⁴⁹

Article 31 - Requirements for Water Sources Used by the Population

...

In order to prevent the pollution and clogging up of water sources and drinking water supply systems, zones of sanitary protection subject to the relevant requirements and limitations on economic and other activity shall be established in accordance with the legislation of the Republic of Belarus.

Decision No. 724 of the Council of Ministers of Republic Belarus "On measures for the establishment of a system of state social service

²⁴⁸ Russian original available at: <http://pravo.by/webnpa/text.asp?RN=HK9800191>

²⁴⁹ Available at:

<http://law.by/work/EnglPortal.nsf/6e1a652fbefce34ac2256d910056d559/c1a1222b11303d0fc2256dee00516e6c?OpenDocument>.

standards for the population of the Republic,” 2003 (unofficial translation)²⁵⁰

3. The established state social service standards for the population of the Republic:
...
3.2. ... are realized within the limits of means being allocated to these purposes.

Appendix:

System for state social service standards for the population of the Republic: ...

2. Obligatory water provision for citizens who live in apartment houses connected to the centralized water supply and canalisation system
- no less than 180 litres per person per day, including a supply of no less than 90 litres per day of hot water.
3. Obligatory water provision for citizens who use water from the water posts
- 35 litres a day per person ...
10. Availability of public toilet facilities in the cities and the urban settlements
- no less than one per thousand people.

BENIN

Water Code, Law No. 87-016 of 21 September 1987 (Unofficial translation)²⁵¹

Article 54

- The distribution of water resources shall at all times take into consideration the economic and social needs of the populations
- When human requirements for water will have been satisfied, the following needs shall be satisfied by order of importance:
- agricultural needs (livestock, farming);
- industrial needs;
- municipal needs;
- leisure activities needs; ...

BRAZIL

Law 9433 (National Water Resource Management Act), 8 January 1997 (Unofficial translation)²⁵²

Article 1.

The National Water Resource Policy is based on the following principles:

- ...
- When there is a shortage, priority in the use of water resources is given to human uses and the watering of animals; ...

Article 2.

The objectives of the National Water Resource Policy are as follows:

- To ensure that present and future generations have the necessary access to water of a quality adequate for their various uses; ...

²⁵⁰ Russian original available at: <http://www.lawbelarus.com/repub/sub10/texb8911.htm>.

²⁵¹ French original version available at: <http://faolex.fao.org/docs/texts/ben1295.doc>.

²⁵² Portuguese original at: <http://www.aneel.gov.br/cedoc/blei19979433.pdf>.

Article 40.

...

§ 3 The interruption or restriction of water supply due to default to health, educational and collective internment institutions and to low income residential users that benefit from social tariffs shall follow terms and criteria that preserve minimum health conditions for the people affected.

Article 48.

The Union, in establishing its basic sanitation policy, shall observe the following guidelines:

I - priority to actions promoting social and territorial equity in access to basic sanitation; ...

V - improvement of quality of life, environmental and public health conditions; ...

VII - guarantee the availability of appropriate means for serving the rural scattered population, including specific solutions, compatible with their economic and social characteristics; ...

IX - adoption of objective criteria for eligibility and priority-setting, taking into account aspects such as income level and coverage, the level of urbanization, populational concentration, water availability, sanitary, epidemiological and environmental risks; ...

BURKINA FASO

Framework law on Water Management, Law No. 002-2001 (Unofficial translation)²⁵³

Article 1

Water is a precious resource. Its sustainable management is a national imperative. Water management has the following goals, with respect for the environment and the priorities defined by law:

- ensure the provision of drinking water to the population; ...

Decree No. 2005-191/PRES/PM/MAHRH 4 April 2005 regarding priority uses and authority of government to control and allocate water in case of water shortage (Unofficial translation)²⁵⁴

Chapter 2: Order of priority for the use of water resources in the event of a penury

Article 2

In the event of water shortage, the water needs of the population for drinking water and for basic conditions of life and human dignity are considered priorities.

Article 3

Once the water requirements of the population for food are satisfied, the priorities for other water uses shall be determined by taking into account local circumstances based on the principles of equity, subsidiarity and if possible participation.

BURUNDI

Government Decree No. 1/41 of 26 November 1992 on the establishment and organisation of the public water domain (Unofficial translation)²⁵⁵

²⁵³ French original version available at: <http://www.agora21.org/grn-lcd/burkina/codeau.rtf>.

²⁵⁴ French original version available at: <http://faolex.fao.org/docs/texts/bkf53273.doc>.

Article 1

The purpose of the provisions of the present decree is to protect the aquatic habitat, preserve the common water resource and conciliate its use in the interest of all users. The provisions aim for a balanced management and harmonisation of the rules governing the utilization by public or private persons, in order to:

...

2. ensure the provision of drinking water to the population and protect the quality of water against any type of pollution.

Article 14

The use of water is based on the following order of priority:

- the satisfaction of the drinking water needs of the population
- the satisfaction of the water needs of the agricultural sector, including fishery and fish-farming;
- the satisfaction of the water needs of industry; ...

CAPE VERDE

Water Code, Law No.41/II/84, as amended by Decree No. 5/99 (Unofficial translation)²⁵⁶

Article 58 - Purposes to which the water resources serve

Water resources serve to satisfy the needs of the population concerning potable water for domestic purposes and to meet the requirements for the economic and social development of the State, specifically:

a) Basic sanitation and preservation of the environment; ...

Article 59 - Priorities

1. Water provision for the domestic uses of the population is a priority ...

CENTRAL AFRICAN REPUBLIC

Draft Water Code, 2005 (Unofficial translation)²⁵⁷

Article 46

(1) The provision of potable water to the population remains the priority in the allocation of water resources.

(2) The authority responsible for water determines other water usages by order of priority according to the socio-economic needs of the population.

(3) The order of priority may be temporarily altered in the event of grave water shortage, exceptional events, force majeure, drought and inundation.

CHAD

Water Code, Law 016/PR of 18 August 1999 (Unofficial translation)²⁵⁸

²⁵⁵ French original version available at: <http://faolex.fao.org/docs/texts/bur1621.doc>.

²⁵⁶ Original Portuguese versions of the original law available at:

<http://faolex.fao.org/docs/pdf/CVI10783.pdf>;

the 1999 amendments can be accessed at: <http://faolex.fao.org/docs/pdf/cvi25626.pdf>.

²⁵⁷ French original version available at:

http://www.cf.undp.org/Doc_pdf/Energie%20Environ/code%20de%201%27eau.pdf.

²⁵⁸ French original version available at: <http://faolex.fao.org/docs/texts/cha18685.doc>.

Article 149

The allocation of water must at all times take into consideration the socio-economic needs of the population. Provision of potable water to the population remains, in any event, the element of priority in the allocation of water resources.

Article 150

When human water needs have been satisfied and in so far as the sustainability of this supply has not been compromised, priority will then be given to farming, forestry and pastoral activities, and reforestation projects, ...

CHINA

Water Law of the People's Republic of China, 2002²⁵⁹

Article 33

The State establishes a protection system for zones of drinking water sources. The people's governments of provinces, autonomous regions or municipalities directly under the Central Government shall define the drying-up of the water sources and pollution of the water bodies, for the purpose of ensuring town and county residents' safety in respect of drinking water.

Article 34

Construction of any outlet for sewage discharge in the protection zones of drinking water sources is prohibited.

COLOMBIA

Law 142 of 11 July 1994, establishing the regime for public household services (Unofficial translation)²⁶⁰

Article 160 - Priorities in the application of norms.

When the Regulatory Commission on Potable Water and Sanitation as well as the Office of the Superintendent for Public Utilities apply the norms within their capacities, they will be giving priority to the objective of maintaining and extending the coverage of those services, particularly in rural areas, small municipalities or urban areas of the 1st and 2nd strata; in such a manner, without the renunciation of the objectives of improving efficiency, competency, and quality, these services shall be accomplished without any sacrifice of coverage.

Draft Water Law, 17 January 2005 (Unofficial translation)²⁶¹

Article 2. Principles.

In addition to the general environmental principles laid down in the first article of Law 99 of 1993, the following are general principles that the integral management of water resources must comply with:

²⁵⁹ Available at: http://www.gov.cn/english/laws/2005-10/09/content_75313.htm.

²⁶⁰ Spanish original available at:

http://www.crt.gov.co/Documentos/Normatividad/Leyes/LEY_142_94.pdf.

²⁶¹ Spanish original available at: [http://www.oas.org/dsd/environmentlaw/waterlaw/documents/Colombia-Proyecto_de_Ley_del_Agua_\(2005\).pdf](http://www.oas.org/dsd/environmentlaw/waterlaw/documents/Colombia-Proyecto_de_Ley_del_Agua_(2005).pdf).

Article 3.2. Priority for human uses.

Water must guarantee human subsistence and therefore its priority use is for the satisfaction of basic human needs, under conditions of equity.

Article 19. Priorities in the use of the resource.

Water must, above all, protect human health and life, therefore its principal use is the satisfaction of basic subsistence needs of the human being.

COSTA RICA

Organic Law on the Environment, Law 7554 of 4 October 1996 (Unofficial Translation)²⁶²

Article 60. Prevention and control of contamination

In order to prevent and control the contamination of the environment, the State, the municipalities and other public institutions shall afford priority, among others, to the establishment and operation of adequate services in fundamental areas for environmental health, such as:

- a) The provision of water for human uses.
- b) The sanitary disposal of excreta, wastewater and rainwater...

General Health Law, Law 5395 of 30 October 1973, as last amended by Law 7600 of 2 May 1996 (Unofficial translation)²⁶³

Article 264

Water constitutes a good of common public interest and its utilisation for human uses shall enjoy priority over any other use.

Draft Law on Water Resources, proposal No. 14585, 2005 (Unofficial translation)²⁶⁴

Article 2. General Principles

...

- i) Priority for human uses: Water is a resource that has multiple uses. The use of water for human consumption, in harmony with satisfaction of the needs of the ecosystem as guarantor of the sustainability of the resource, is privileged.
- j) Duty of the State: The State has the unrenounceable duty to watch over the existence, protection, conservation, universal access, efficient management and just valuation of water.

Article 50. Preferential utilizations

- (1) Uses can be realised for: provision to the population, domestic uses, ...
- (2) Regional Water Plans [Planes Hídricos Regionales], respecting what is established in the National Water Plan [Plan Hídrico Nacional], shall define a hierarchical order of priorities of use of the water resources in every hydrographic

²⁶² Spanish original available at:

http://documentacion.sirefor.go.cr/archivo/legislacion_y_politicas/legislacion/Ley%20Organica%20Ambiente%20Mayo%202003_.pdf

²⁶³ Spanish original available at: <http://www.ccad.ws/documentos/legislacion/CR/L-5395.pdf>

²⁶⁴ Spanish original available at: <http://www.conare.ac.cr/proyectos/14585%20dic.htm>. The draft was approved by the Comisión Permanente Especial de Ambiente on 14/4/2005 and is currently under debate in Parliament.

unit, always affording prevalence for the use for human consumption and respecting the necessities of the ecosystem, ... For the purpose of the present law, the use of water for bottling and commercialisation shall be considered an industrial use.

CONGO (Republic of the Congo – Brazzaville)
Water Code, Law No. 13-2003, 10 April 2003 (Unofficial translation)²⁶⁵

Article 2

The purpose of the present code is the implementation of a national water policy aiming to:

- ensure a rational use of the water resources in order to meet the needs of water users in the entire territory of the Republic in respect of quantity and satisfactory prices; ...

Article 14

The State is responsible for the quantitative and qualitative protection of water resources.

DOMINICAN REPUBLIC
Law No. 64-00, General Law on the Environment and Natural Resources, 2000 (Unofficial translation)²⁶⁶

Article 13.

In respect of the utilisation of water resources, human uses shall have priority over any other kind of use.

EL SALVADOR
Irrigation and Drainage Law, Law No. 153, 1970, last amended 30 October 1990 (Unofficial translation)²⁶⁷

Article 4

II. Water for human uses enjoys priority.

ETHIOPIA
Ethiopian Water Resources Management Proclamation, Proclamation No. 197/2000²⁶⁸

Article 7 - Preference among uses

1) Domestic uses shall have priority over and above any other water uses. ...

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 policy²⁶⁹

²⁶⁵ French original version available at: http://www.congoinvest.com/fr/pdf/code_eau.pdf.

²⁶⁶ Spanish original available at: <http://www.medioambiente.gov.do/cms/archivos/legislacion/ley64.pdf>.

²⁶⁷ Spanish original at: <http://www.marn.gob.sv/uploaded/content/article/1030594560.pdf>.

²⁶⁸ Available at: <http://faolex.fao.org/docs/pdf/eth44004.pdf>.

²⁶⁹ http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=32000L0060&model=guichett.

This directive is included in the National Standards Section as European Directives have the force of national law in EU Member States. Under Article 24 of the Directive, Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 22 December 2003 and were to immediately inform the European Commission.

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

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, ...

(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, ...

(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, ...

(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, ...

(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, ...

(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....

(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.

2. Where more than one of the objectives under paragraph 1 relates to a given body of water, the most stringent shall apply.

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.

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.

FINLAND

Water Services Act (119/2001)²⁷⁰

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.

²⁷⁰Available at: <http://www.finlex.fi/pdf/saadkaan/E0010119.PDF>.

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.

THE GAMBIA

National Water Resources Bill, 2001²⁷¹

Article 19

The requirement for a licence under Section 18 shall not apply to -

(a) abstractions of less than ten cubic metres in any period of twenty-four hours and less than two thousand cubic metres in any calendar year, for domestic and agricultural purposes.

GEORGIA

Water Law, Law No. 936-Ic of 1997 (Unofficial translation)²⁷²

Article 4

The basic purposes of present law are ...

b) to guarantee as a first priority the satisfaction of the population's needs for clean drinking water; ...

Article 36

The rights to use water objects are granted first of all for the satisfaction of drinking and household needs of the population.

Article 53

1. The following conditions must be observed with regard to the use of water objects for purposes of satisfaction of drinking and household needs of the population:

a) the surface and underground waters ... whose quality in a natural condition or after treatment corresponds to the norms established by the State standards of Georgia, must be used for the satisfaction of the drinking and household needs of the population;

b) the water objects utilized for drinking and household water supply must be selected taking into account the real possibilities for guaranteeing their reliability and the establishment of a zone of sanitary protection;

c) the utilization of underground waters that are suitable for drinking for production purposes is allowed only in those exceptional cases where the technology for production, based on the existing sanitary norms and standards, requires the presence of drinking water of the proper quality; ...

²⁷¹ Available at:

<http://www.csd.gm/Water%20and%20Sanitation/Review%20of%20the%20National%20Water%20Resources%20Council/Review%20of%20the%20National%20Water%20Resources%20Council.doc>.

²⁷² Available at: <http://faolex.fao.org/docs/texts/geo42199.doc>.

GHANA

Water Use Regulations, LI 1692 of 2001²⁷³

7. - Priority of water use

- (1) In considering an application, the Commission shall be guided by
- (a) the prevailing water policy,
 - (a) domestic water use, ...

Draft National Water Policy, 2005²⁷⁴

The Guiding Principles of the Draft National Water Policy include:

- The fundamental rights of all people to safe and adequate water to meet basic human needs.
- Recognising water as a finite and vulnerable resource given its multiple uses.
- Integrating water resources management and development with environmental management in order to ensure the sustainability of water resources in both quantity and quality.

GUINEA

Water Code, Law No. L/94/005/CTRN of 14 February 1994 (Unofficial translation)²⁷⁵

Article 20

Subject to the public interest, the use of water resources for the provision of drinking water enjoys an absolute priority.

Except for the priority provided for the provision of potable water in principle no other priority is established between other types of usage. ...

GUINEA BISSAU

Water Code, Law No. 5-A/92 (Unofficial translation)²⁷⁶

Article 15 (Planning)

1. The use of water resources will be subject to planning, provided for in the Water Master Plan.
2. The main purpose of planning is to achieve an improved satisfaction of water needs, improving its availability, and aiming to protect the quality of water resources, rationalizing its use in harmony with other natural resources, land use planning and the ecological balance.

Article 27 (Protection Perimeter)

1. Around each hole, well or work used for the supply of drinking water of cities or agglomerations, a protection perimeter will be created. Its limits will be set out, in each case, by the Minister responsible for water.
2. Inside the protection perimeters, it is forbidden, among others, to:
 - a. Build houses or buildings of any kind;
 - b. Install industrial or commercial establishments, slaughterhouses or cattle farmyards,

²⁷³ Available at: <http://www.wrc-gh.org/wateruseregulations.html>.

²⁷⁴ Available at: <http://www.wrc-gh.org/wateruseregulations.html>.

²⁷⁵ French original version available at: <http://faolex.fao.org/docs/texts/gui4825.doc>.

²⁷⁶ Portuguese original version available at: <http://faolex.fao.org/docs/pdf/gbs39315.pdf>.

c. Bring in animals, dispose or bury garbage or disposals of any kind; ...

GUYANA

Water and Sewerage Act, 2002²⁷⁷

Article 25.

The Department shall take into account the following principles when granting, amending or renewing a license –

- a) water for domestic purposes shall take precedence over all other uses; ...
- d) where a shortfall in water resources exists, abstraction for domestic consumption shall be safeguarded and all remaining water users shall receive an equal proportion of their normal entitlement.

Article 45.

The Minister shall ensure that for every region of Guyana there is at all times a public supplier [of potable water and sanitation services].

Article 46.

(1) The public supplier shall unless prevented by drought, other extraordinary event or unavoidable accident provide to the public a supply of potable water for domestic purposes ...

HONDURAS

Decree No. 118-2003, Framework Law for the Drinking Water and Sanitation Sector (Unofficial translation)²⁷⁸

Article 3.

The provision of water for human uses has priority over every other use of this resource.

Article 4.

Municipalities have preferential rights over natural or legal persons, be they public or private, regarding the utilisation of any superficial or underground body of water, that are necessary for the provision of water for human consumption or sewerage discharges ...

INDIA

National Water Policy, 2002²⁷⁹

Water Allocation Priorities

5. In the planning and operation of systems, water allocation priorities should be broadly as follows:

- Drinking water
- Irrigation
- Hydro-power
- Ecology

²⁷⁷ Available at: [http://www.oas.org/dsd/environmentlaw/waterlaw/documents/Guyana-Water_and_Sewage_Act_\(2002\).pdf](http://www.oas.org/dsd/environmentlaw/waterlaw/documents/Guyana-Water_and_Sewage_Act_(2002).pdf).

²⁷⁸ Spanish original available at: <http://faolex.fao.org/docs/pdf/hon41347.pdf>.

²⁷⁹ Available at: <http://wrmin.nic.in/>.

Drinking Water

8. Adequate safe drinking water facilities should be provided to the entire population both in urban and in rural areas. Irrigation and multipurpose projects should invariably include a drinking water component, wherever there is no alternative source of drinking water. Drinking water needs of human beings and animals should be the first charge on any available water.

INDONESIA

Law No. 7/2004 on Water Resources, promulgated 8 March 2004²⁸⁰

Article 26

...

(2) Water resources utilization is designated for sustainable water resources utilization by prioritising the fulfilment of the rudimentary living needs of the people in an impartial manner.

...

(7) Water resources utilization shall be conducted by prioritising the social functions to realize the manifestation of justice by taking into account the principle of the payment of water resources management services by water users and by involving the role of the people.

Article 29

...

(3) Water resources supply for the fulfilment of rudimentary daily living needs and irrigation of small-scale farming in the existing irrigation system constitute the main priority of water resources supply above all other needs. ...

Regulation No. 23/2006 on technical guidance and procedures for regulating tariff of drinking water in regional administration-owned drinking companies, stipulated on 3 July 2006²⁸¹

Article 1

...

(8) Standard of Basic Need for Drinking Water shall be the need for water as much as 10 cubic meter/head of family/month or 60 liters/person/day or as much as other volume stipulated further by the Minister in charge of water resource affairs.

...

IVORY COAST

Water Code, Law No. 98-755 of 23 December 1998 (Unofficial translation)²⁸²

Article 59

The State is responsible for the management of water resources by preserving the quality of sources, preventing waste and guarantying water availability.

²⁸⁰ Available at: <http://faolex.fao.org/docs/texts/ins48775.doc>. Cf. as well the explanation at <http://faolex.fao.org/docs/texts/ins48775-elucidation.doc>.

²⁸¹ Available at: <http://faolex.fao.org/docs/pdf/ins67962.pdf>.

²⁸² French original version available at: <http://faolex.fao.org/docs/texts/ivc15630.doc>,

Article 70

The supply of water to the population, remains, at all times, the priority when considering the allocation of water resources.

The allocation of water resources must, at all times, take into consideration the socio-economic consideration of the populations.

Article 71

Once human water needs have been satisfied, the allocation of resources will be dealt in accordance with other uses.

KAZAKHSTAN

Water Code of the Republic of Kazakhstan, Law No. 481-2 of 09 March 2003, as last amended 27 July 2007 (unofficial translation)²⁸³

Article 9

The water legislation of the Republic Kazakhstan is based on the following principles: ...

- 2) the first priority is the provision of the population with drinking water in the necessary quantity and the guaranteed quality;
- 3) fair and equal access of the population to water; ...

Article 90

1. The surface and underground water resources ... whose water quality fulfils the applicable State standards and hygienic norms, are allocated for the drinking and household-economic water supply.

5. The use of underground water resources that are suitable for drinking water provision for other purposes is not permitted, with exception of the cases stipulated in the present code and the legislation of republic Kazakhstan about the nedrah.

KENYA

Water Act, Act No. 8 of 2002²⁸⁴

Article 32 - Considerations for the issue of permits

...

(2) The use of water for domestic purposes shall take precedence over the use of water for any other purpose, and the Authority may, in granting any permit, reserve such part of the quantity of water in a water resource as in its opinion is required for domestic purposes.

The National Water Services Strategy (NWSS), June 2007 draft²⁸⁵

3.4 Key principles of the National Water Services Strategy

The guiding principles for the water sector reform and therefore for the National Water Services Strategy are:

...

4. Water is a social and economic good – water and sanitation service provision for the poor shall be enabled by social tariffs (minimum 20 litres of water per person/day) ...

²⁸³ Original Russian version at: <http://www.pavlodar.com/zakon/?dok=02874&ogl=all>.

²⁸⁴ Available at: <http://faolex.fao.org/docs/pdf/ken37553-a.pdf>.

²⁸⁵ Available at: http://www.cohre.org/view_page.php?page_id=214.

KYRGISTAN

Law of the Republic of Kyrgyzstan on Water, Law No. 1422-XII of January 1994, as last amended 26 September 1995²⁸⁶

Article 15 – Types of water use

Water objects are given in use as a matter of priority for meeting the drinking and domestic needs of the population.

Article 25 – Use of water objects and water economy installations for drinking, domestic and other purposes

Water objects and water economy installations are given in use for drinking, domestic and other needs of the population according to the established order and quality, which must conform to the established sanitary norms.

The use of groundwater of drinking quality for purposes other than drinking and domestic water supply is, as a rule, prohibited. In regions where the necessary surface water sources are not available and underground water resources fit for drinking are sufficient, the specially authorized state organs may permit the use of these waters for purposes other than drinking and domestic water supply.

Article 48 – Districts and zones of sanitary protection

Districts and zones of sanitary protection are established for the purpose of protecting water objects and installations used for drinking and domestic water supply...

Article 50 – Water protection zones

Water protection zones are established around water intakes, dams, pumping stations, canals, treatment facilities and technical structures for the purpose of protecting water installations and preventing accidents in the territory of the Kyrgyz Republic. ...

Article 51 – Activities relating to the protection of water against exhaustion

For the purpose of maintaining the optimal regime of rivers, lakes, reservoirs, groundwater, preventing the erosion of soil, the silting of reservoirs, the worsening of the conditions of flora and fauna, the decrease in the vibration of water runoff and other harmful effects of water, water protection zones of forests are established, and forest-land reclamation, anti-erosion measures, hydrotechnical and other works are carried out in the order established by the legislation of the Kyrgyz Republic.

Water Code of the Kyrgyz Republic, Law No. 8 of 12 January 2005²⁸⁷

Article 24 - Priorities for water use

Until such time as Basin Plans are approved that specify a different order of priorities for the purposes of water use, the allocation of water, including underground water, for use on the basis of a Water Use Permission or Special Water Use Permission takes place in accordance with the following priorities:

²⁸⁶ Available at: <http://faolex.fao.org/docs/pdf/kyr5254E.pdf>.

²⁸⁷ Available at: <http://faolex.fao.org/docs/texts/kyr49854E.doc>

- the use of water for domestic/drinking water supply purposes; ...

LATVIA

Law on Water Management, 1 October 2002²⁸⁸

Article 2 - Purpose of the law

The purpose of this law is to establish a framework for the protection and management of surface water and groundwater, which:

1) promotes sustainable and rational use of water resources therefore ensuring a long-term protection of the water resources and provision of the sufficient supply of good quality surface water and groundwater to the population; ...

LESOTHO

Water Resources Act, 1978²⁸⁹

Article 3

...

(3) Domestic uses and the supply of population centres shall have priority over all other uses.

LITHUANIA

Law on Water, Law No. VIII-474 of 21 October 1997²⁹⁰

Article 12 - Uses of Water Resources and Water Bodies

...

2. The provision of the population with drinking water shall be the priority use of water resources and water bodies.

Article 14 - The Use of Water Resources and Water Bodies for Supplying the Population with Drinking Water

1. Ground water resources and water bodies the water of which meets the Republic of Lithuania drinking water standard, or is suitable for preparation of this kind of water, shall be used to satisfy the drinking water needs of the population.

...

4. Ground drinking water may be used for other than household or food industry needs only in instances when:

1) sufficient surface water of adequate quality is not available in the vicinity of a user, but sufficient quantities of ground drinking water are available;

2) a user consumes a limited quantity of water, while setting up of water supply networks and installations of surface bodies of water bodies is not cost effective at all;

3) fires need to be extinguished or consequences of other natural disasters need to be eliminated.

Law on drinking water, Law No. IX-433 of 7 July 2001²⁹¹

²⁸⁸ <http://faolex.fao.org/docs/texts/lat42197.doc>

²⁸⁹ Available at: <http://faolex.fao.org/docs/pdf/les1268.pdf>

²⁹⁰

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=55468&p_query=drinking%20water&p_tr2=2

²⁹¹ At:

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=192766&p_query=drinking%20water&p_tr2=2

Article 13 - Protection of Drinking Water Sources and Sanitary Safeguard Zones

...

2. Sanitary safeguard zones must be established of all categories of cities and towns, village water extraction sites and water sources of individual supply, from which drinking water is supplied to the population, food enterprises or is packaged.

MADAGASCAR

DECREE No. 2003- 941 concerning monitoring of water resources, control of water destined for human consumption and priorities of access to water resources (Unofficial translation)²⁹²

Article 1

The provision of drinking water shall remain, at all times, the element of priority in the allocation of water resources.

The allocation of water resources shall, at all times, take into account the social and economic needs of the population.

Article 2

When human water needs have been satisfied, the resource shall be allocated with regard to other uses.

MAURITANIA

Water Code, Law No. 2005-030 (Unofficial translation)²⁹³

Article 5

(1) As a priority, water resources are allocated to the populations.

(2) When human water needs have been satisfied and in so far as the sustainability of this supply has not been compromised, priority will be given, following local priorities, to farming, agriculture, forestry, fish farming, continental fishing, reforestation projects and, finally, to industrial, mining and industrial food complexes.

(3) Other needs shall be satisfied according to their economic interests and local priorities.

MEXICO

Law on National Waters, 1992, as last amended 29 April 2004 (Unofficial translation)²⁹⁴

Article 14 bis 5.

The national water policy shall be based on the following principles: ...

XXII. Domestic uses and public urban uses shall have preference in relation to any other use.

²⁹² French original version available at: http://www.madagascar-diplomatie.ch/files/Eau/Decret_2003-941_Surveillance_de_l_eau.doc.

²⁹³ French original version available at: <http://faolex.fao.org/docs/texts/mau69252.doc>.

²⁹⁴ Original Spanish version available at: <http://www.cddhcu.gob.mx/LeyesBiblio/pdf/16.pdf>.

General Law on Social Development, 20 January 2004 (Unofficial translation)²⁹⁵

Article 19

Priorities of public interest are: ...

IX. Infrastructure programmes and works for drinking water, drainage, ... , environmental sanitation ...

Water Law of the Distrito Federal, 2003 (Unofficial translation)²⁹⁶

Article 36

With the aim of increasing the water levels of aquifers, the Sistema de Aguas [Water System]:...

IV. Will be responsible for developing, in urban and rural areas, the capture, storage, and efficient use of run-off water as an alternate resource, developing regional programs for the orientation and use of this resource;...

Article 41

With the aim of preventing the contamination of water, the Sistema de Aguas [Water System], in addition to considering the resolutions contained in the Environmental Law, shall:...

I. Promote, and, where appropriate, execute and operate the infrastructure and the services necessary for the prevention and control of contamination and the improvement of water quality in the Distrito Federal;

II. Formulate integral programmes for the protection of water resources, considering existing relations between land uses and water quantity and quality;

III. In coordination with the other relevant authorities, ensure that water provided for human consumption complies with the corresponding norms for its quality, and that the use of residual waters, which under no circumstance can be set aside for human consumption, comport with norms for water quality established for such effect; ...

IV. Promote and implement the necessary measures to prevent that solid waste and toxic materials and substances contaminate surface or groundwater sources; ...

MOLDOVA

Water Code, Law No. 1532 of 22 June 1993, last amended 13 November 2003²⁹⁷

Article 23 - Main requirements to satisfy drinking and domestic needs of the population

Water sources are available to satisfy drinking and domestic needs of the population.

Article 43 - Water sources conceded for drinking, domestic and other needs

1. Water sources of a quality meeting the established sanitary requirements are conceded to satisfy drinking, domestic and other needs of the population also to safeguard the interests of food industry.

²⁹⁵ Original Spanish version available at: <http://www.cddhcu.gob.mx/LeyesBiblio/pdf/264.pdf>.

²⁹⁶ Spanish original at: <http://www.df.gob.mx/leyes/normatividad.html?materia=1&apartado=1&disp=122>.

²⁹⁷ Available at: <http://faolex.fao.org/docs/texts/mol9890.doc>.

Article 46 - Use of underground water of drinking quality for the needs not linked with drinking and domestic water supply

1. The use of underground water of drinking quality for the needs not linked with drinking and domestic water supply is not allowed.
2. In areas where necessary surface water sources are absent and where sufficient reserve of underground water of drinking quality exists, water resources management institutions and environment protection bodies can authorize the use of such water for the purpose not connected with drinking or domestic use.

MOROCCO

Water Law, Law No. 10-95, 1995 (Unofficial translation)²⁹⁸

Motifs

The development of water resources must allow for the availability of water in sufficient quantity and quality for the benefit of all users ...

Article 86

In the event of water shortage due to overexploitation or to exceptional events such as droughts, the administration shall ... enact temporary local regulations aiming to ensure as a matter of priority the provision of water to the population and to animals.

NICARAGUA

General law on the environment and natural resources, Law No. 217 of 6 June 1996 (Unofficial translation)²⁹⁹

Article 75

In the utilisation of water, the necessities of human uses and public services shall enjoy priority.

General National Water Law, 15 May 2007 (Unofficial translation)³⁰⁰

Article 13

... the present law is based on the following values and principles

...

d) Water is a natural resource that must be protected and administrated in a responsible manner. Permanent and continuous access to it constitutes a right intrinsically linked to life. To provide for its provision for human uses is a maximum national priority.

Article 66

Water utilised for human uses enjoys the highest and peremptory priority for the Nicaraguan State; it cannot be suspended or made dependent on any other use.

NEPAL

Water Resources Act (2049/1992), 17 December 1992³⁰¹

²⁹⁸ French original version available at: <http://www.water.gov.ma/semidenew/html/loi.htm>.

²⁹⁹ Spanish original at:

<http://legislacion.asamblea.gob.ni/Normaweb.nsf/0/1b5efb1e58d7618a0625711600561572?OpenDocument&Click=>.

³⁰⁰ Spanish original yet unpublished; on file with author.

7. Priority Order on the Utilization of Water Resources

(1) While utilizing water resources following priority order shall, in general, be followed

(a) Drinking water and domestic uses;

...

NIGER

Water Regime Law, Law No. 93-014 of 2 March 1993 (Unofficial translation)³⁰²

Article 7

The primary aim of the State, in this area, is to provide everyone with water in sufficient quantity and good quality

Article 8

The allocation of water resources must take into account the socio-economic needs of the populations such as:

- domestic needs
- public needs ...

Article 9

(d) during period of intensive drought, the local Authority may forbid activities which consume large amounts of water and which are not directly related to human consumption ...

Article 16

Withdrawals destined for the following purposes are considered domestic uses:

- the satisfaction of individual or family needs;
- the hygiene of persons, dwellings and domestic animals.

NIGERIA

National Water Supply and Sanitation Policy (adopted in 2000)³⁰³

The government of Nigeria has a national water supply policy whose aim is:

- [The] provision of potable water to all inhabitants of Nigeria by the year 2020.
- The present inadequate level of services should be increased to 120 litres per capita per day, and 60 litres per capita per day to urban, peri-urban and rural areas respectively by the year 2020.
- Increase the capacity of local, state and the federal government to assist communities to obtain basic water supply facilities that the communities themselves can maintain with the possible support of the private sector.

For the rural communities, the aim is to assist them obtain basic water supply facilities. Priority is given to those rural communities that have populations of 150 or more and that are prepared to pay at least 5% of the capital costs in cash or in kind. The communities must be prepared to meet all the operations and maintenance costs for the facilities.

³⁰¹ Available at <http://www.mowr.gov.np/wract.htm>.

³⁰² French original version available at: <http://faolex.fao.org/docs/pdf/ner1328.pdf>.

³⁰³ Available at: http://www.afro.who.int/des/phe/country_profiles/nigeria_policy.pdf,
<http://www.afro.who.int/wsh/countryprofiles/nigeria.pdf>; <http://www.fmwv.gov.ng/pos&s.htm>.

There is no defined policy at the national level for urban sanitation. The development and implementation of the programmes are based on the situations on ground.

PAKISTAN

Draft Safe Drinking Water Act, 2007

*The Act will reportedly acknowledge that safe drinking water is a fundamental human right. Water schemes are supposed to be based on the provision of a minimum of 20 litres per capita per day for rural households and 40 litres per capita for urban households.*³⁰⁴

PANAMA

Law governing the Use of Water, Law 35 of 22 September 1966 (Unofficial translation)³⁰⁵

Article 1.

The exploitation of the waters of the State shall be regulated for its utilisation in accordance with the social interest. Therefore, the objective of the utilisation, conservation and administration of the same is to achieve the maximum public well-being.

PARAGUAY

Law on Water Resources, Law 3239 of 10 July 2007 (Unofficial translation)³⁰⁶

Article 3

...

c) The water resources have multiple uses and functions ... uses for the consumption of the human population must always be given preference.

Article 18

The utilisation of the superficial and subterranean water resources for human uses shall have priority. The other uses will have the following order of priority:

- a) The satisfaction of the needs of aquatic ecosystems.
- b) Social use in the environment of the household ...

PERU

General Water Law, Law No. 17752 of 1969, as last amended 1981 (Unofficial translation)³⁰⁷

Article 27. Order of priorities in the use of water.

The order of preference regarding the use of water is as follows:

³⁰⁴ Summaries at: <http://www.worldwatercouncil.org/index.php?id=1749>;
<http://www.dawn.com/2006/06/12/nat14.htm>.

³⁰⁵ Spanish original available at [http://www.oas.org/dsd/environmentlaw/waterlaw/documents/Panama-Ley_sobre_el_uso_de_las_Aguas_\(1966\).pdf](http://www.oas.org/dsd/environmentlaw/waterlaw/documents/Panama-Ley_sobre_el_uso_de_las_Aguas_(1966).pdf).

³⁰⁶ Spanish original available at: <http://www.congreso.gov.py/senadores/leyes/ups/leyes/44473239-2007%20Recursos%20Hidricos.DOC>.

³⁰⁷ Spanish original available at: [http://www.oas.org/dsd/environmentlaw/waterlaw/documents/Per%C3%BA-Ley_General_de_Aguas_\(1969\).pdf](http://www.oas.org/dsd/environmentlaw/waterlaw/documents/Per%C3%BA-Ley_General_de_Aguas_(1969).pdf).

1. For the basic needs and provision of the population; ...

Article 40. Preferential use of water resources.

The State shall grant the use of water resources preferentially for domestic purposes and the provision of the population, which shall include the satisfaction of the basic and sanitary needs of the population as a human community.

General Law on the Environment, Law No. 28611 of 15 October 2005 (Unofficial translation)³⁰⁸

Article 67.- Basic sanitation

The public authorities at national, sectoral, regional and local level shall prioritise measures for basic sanitation that include the construction and administration of appropriate infrastructure; the provision and adequate management of potable water, ... promoting the universality, quality and continuity of sanitation services, as well as the establishment of tariffs that are adequate for and consistent with the cost of these services, their administration and improvement.

Article 114.- Water for human uses

Access to water for human uses is a right of the population. It is the duty of the State to ensure the supervision and protection of water resources that are used for the provision of the population, ... In case of water shortage, the State shall ensure that in respect of the use of water, the satisfaction of the needs of the population is given preference over other uses.

Draft General Water Law, March 2007 (Unofficial translation)³⁰⁹

Article 5.- Principles

The principles governing the sustainable and multisectoral use and management of water and associated goods are: ...

5. The Principle of Juridical Security

... Moreover, the state implements the Constitution and the laws, and shall neither affect nor alter the health and quality of the lives of the population, nor make an attempt to interfere with the free access to 30 liters of water daily to each person.

Article 53 – Classes of water use and orders of priority

The law recognizes the following classes of water use.

- 1) Primary use
- 2) Use by the population; and
- 3) Productive uses

The priority for the granting and exercise of the uses previously noted follow the order in which they were enumerated.

Article 54 – The Primary Use of Water

The primary use of water consists of its direct and effective utilization in natural sources and public channels with the aim of amply satisfying the basic human needs. It includes the use of water for the preparation of food, direct consumption,

³⁰⁸ Spanish original available at:

<http://www.servindi.org/pdf/Ley%2028611%20%20Ley%20General%20del%20Ambiente.pdf>.

³⁰⁹ On file with author.

and personal cleanliness; as well as the use in cultural ceremonies, religions, rituals, and non-lucrative environmental projects that coincide with the favorable opinion of the relevant environmental authority. In this respect, primary use also includes needs related to agricultural production necessary for basic subsistence.

Article 59 – Restrictions of the Use of Public Waters

Under conditions of water scarcity, local authorities, as well as regional and national authorities responsible for the regulation of the provision of potable water services, should dictate measures for its rationing in order to restrict use of water that is not set aside for the satisfaction of personal needs.

RUSSIAN FEDERATION

Water Code of the Russian Federation, Law No. 74-FZ of 3 June 2006, last amended 19 June 2007 (Unofficial translation)³¹⁰

Article 3

The water legislation and normative acts adopted in accordance with this legislation are based on the following principles:

- 1) the significance of water objects as the basis of life and human activity. ...
- 5) priority of use of water objects for the purposes of drinking and household water supply before uses for other purposes. Their allocation to uses for other purposes is allowed only if sufficient water resources are available.

Article 43

1. For the purposes of drinking and household water supply must be used the surface water objects and underground water objects, protected from pollution and blockage, whose suitability for the indicated purposes has been determined on the basis of sanitary-epidemiological examinations.

...

4. In territories where surface water objects are absent, but sufficient underground water resources that are suitable for purposes of drinking and household water supply are available, the use of underground waters for purposes not related to drinking and household water supply is allowed in the exceptional cases...

SAINT LUCIA

Water and Sewerage Authority Act, 1984³¹¹

Article 10.

(1) The Authority shall unless prevented by drought, other extraordinary event or unavoidable accident provide to the public ... a supply of potable water for domestic purposes ...

SENEGAL

Water Code, Law No. 81-13, 1981 (Unofficial translation)³¹²

³¹⁰ Available at:

<http://www.kodeks.net/index?tid=633200094&frame=noframe&where=LegRFsearch?d&nd=901982862>.

³¹¹ Available at: [http://www.oas.org/dsd/environmentlaw/waterlaw/documents/St._Lucia-Water_and_Sewerage_Authority_Act_\(1984\).pdf](http://www.oas.org/dsd/environmentlaw/waterlaw/documents/St._Lucia-Water_and_Sewerage_Authority_Act_(1984).pdf).

³¹² French original version available at: http://www.gouv.sn/textes/code_eau.pdf.

Article 75

The allocation of water resources must at all times take into consideration the socio-economic needs of the population.

The provision of water to the population remains at all times the priority element in the allocation of water resources.

Article 76

When human water needs have been satisfied, priority will be given to farming, agriculture, forestry, fish farming and reforestation projects, then, to industrial and industrial food complexes.

SOUTH AFRICA

Water Services Act, Act 108 of 1997, amended 2004³¹³

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.

National Water Act, Act 36 of 1998³¹⁴

Part 3 (articles 16 to 18) of the National Water Act deals with the Reserve, The Reserve, defined in article 1 - consists of two parts - the basic human needs reserve and the ecological reserve. The basic human needs reserve provides for the essential needs of individuals served by the water resource in question and includes water for drinking, for food preparation and for personal hygiene. The ecological reserve relates to the water required to protect the aquatic ecosystems of the water resource. The Reserve refers to both the quantity and quality of the water in the resource, and will vary depending on the class of the resource. The Minister is required to determine the Reserve for all or part of any significant water resource. If a resource has not yet been classified, a preliminary determination of the Reserve may be made and later superseded by a new one. Once the Reserve is determined for a water resource it is binding in the same way as the class and the resource quality objectives.

SRI LANKA

The Rural Water Supply and Sanitation Policy (RWSS Policy), 2001³¹⁵

3.2. Access to Basic Level of Water Supply

The Government of Sri Lanka supports all activities leading to provide access to potable water to all citizens. The Guidelines described below are the minimum requirements needed to ensure health and the levels of services. This does not limit the demand for higher standards by the users. Where the users demand for higher standards, they should contribute to the incremental capital cost.

³¹³ Available at: <http://www.wrc.org.za/downloads/legislature/WSA108-97.pdf>; www.polity.org.za/attachment.php?aa_id=1385.

³¹⁴ Available at: <http://www.info.gov.za/gazette/acts/1998/a36-98.pdf>.

³¹⁵ Available at: <http://www.waterboard.lk/scripts/ASP/Policies.asp>.

3.2.1. Quantity of water - The minimum requirement of water for direct consumption, preparation of food and personnel hygiene is considered to be 40 liters per person per day.

...

3.3 Basic Sanitation

The Government of Sri Lanka promotes all activities leading to provision of access to basic sanitation to all citizen[s]. In the day today life of the community, domestic water and sanitation are closely and inextricably linked to each other. However, traditionally sanitation has been given lower priority as a basic need in comparison to drinking water. Sanitation is a personal matter that requires the commitment of each individual as well as the community at large to prevent health hazards arising from shortfalls in the disposal of waste.

Basic Sanitation should ensure protection to both surface and ground water from pollution and the users from water borne diseases and other health hazards. In conformity with this requirement the basic facility for sanitation should be the Ventilated improved Pit Latrine. Access to the basic facility for sanitation should be the Ventilated improved Pit Latrine. Access to this basic facility depends on the site technologies manageable at the household and community level should be development and promoted as a cost effective means of encouraging improved sanitation.

National Policy on Water Supply and Sanitation (WSS Policy), 2002³¹⁶

3.5 Source Protection and Water Conservation

Objective

Adopt a holistic approach for source protection and water conservation to ensure a concerted effort to protect drinking water resources, ensure adequate supply, ... encourage the conservation, reclamation and reuse of water, and minimize the impact of wastewater discharges.

Strategies

- a. Water demand management programs shall be implemented by service providers including programs that educate consumers about water conservation and water saving techniques.
- b. In times of water scarcity, drinking water will have priority over other uses. ...
- c. The reuse and re-processing of water and use of alternative water sources for non-consumptive purposes shall be encouraged
- d. Government agencies, service providers and any person shall cooperate and participate in programs to protect drinking water sources and reduce the impact of wastewater discharges to inland and coastal waters.

TAJIKISTAN

Water Code of the Republic of Tajikistan, 29 March 2000, as last amended 3 March 2006³¹⁷

Article 30 – Priority in giving water bodies for drinking and social needs of population

Water bodies will be given for use firstly to satisfy drinking and social needs of population.

³¹⁶ Available at: <http://www.waterboard.lk/scripts/ASP/Policies.asp>.

³¹⁷ Available at: <http://faolex.fao.org/docs/pdf/taj34375E.pdf>.

Article 53 – Water and water bodies allocated for drinking, social and other needs of the population

Water bodies, the quality of which complies with the established sanitary requirements, will be allocated for drinking, social and other needs of the population.

Article 56 – Use of underground water of drinking quality for needs not related to drinking and the social water supply

Use of underground drinking water for needs not related to drinking and social water supply will be prohibited. In the districts, where there are no necessary surface water sources and enough underground water of drinking quality, special authorized state agencies on regulation of use and protection of water may allow the use of that water for purposes not related to drinking and social water supply.

Article 99 – Prohibition to discharge sewage to water bodies referred to as drinking categories

Sewage discharge into drinking water bodies shall be prohibited.

Article 125 – Regions, patches and sanitary water protection zones

Regions, patches and zones of sanitary water protection shall be established with the purpose of protecting water, being used for drinking and social water supply, medical, resorts and rehabilitation needs of the population according to the legislation of the Republic of Tajikistan.

Article 126 – Measures to protect water sources from exhaustion

Water protection forest zones shall be established to maintain favourable water mode of rivers, lakes, reservoirs, underground water and other water bodies in order to prevent water erosion of soil, silting of reservoirs and worsening of living conditions of water animals, in order to reduce fluctuation of sewage etc., where concerned legal entities and individuals regard-less of the form of property shall be obliged to conduct forest irrigation anti-erosion, hydro-technical and other measures according to the legislation of the Republic of Tajikistan.

Article 134 – Water use planning

Water use planning shall have to provide scientifically justified distribution of water between water users taking into account primary satisfaction of drinking and social needs of the population, water protection and prevention of their harmful influence.

TUNISIA

Water Code, Law No. 75-16, 1975, as last amended by Law 2001-116 (Unofficial translation)³¹⁸

Article 86

(2) The State is obliged, however, to reserve in time the amounts of water necessary to ensure a satisfactory – regarding both quantity and quality – provision of the population with potable water.

³¹⁸ French original version available at: <http://faolex.fao.org/docs/pdf/tun1309E.pdf>;
<http://faolex.fao.org/docs/pdf/tun29241.pdf>.

TURKMENISTAN

Water Code, 1 November 2004 (Unofficial translation)³¹⁹

Article 21

The use of water objects is allowed, first of all, for the satisfaction of the drinking and household needs of the population. Where a water object is assigned to several users, the interests of those, who are located in the lower reaches of the river or rivers and channels are considered.

For the satisfaction of drinking and everyday needs of the population those water resources are used whose qualitative characteristics correspond with the established state standards, the norms on ecological safety of water-use and sanitary standards.

...

Article 42

The use of underground waters of drinking water quality for needs that are not related to the drinking and household water supply as a rule is not allowed. Underground waters of drinking water quality must be used first of all for the satisfaction of the drinking and household needs of the population, and also the needs of the food industry.

In regions where the necessary surface water sources are absent and sufficient supplies of underground water of drinking water quality are present, specially authorized state organs can permit the use of these waters for purposes that are not related to drinking and household water supply.

UGANDA

The Water Statute, Statute No. 9 of 1995³²⁰

4. - Objective

The objectives of the Statute are

...

(b) to promote the provision of a clean, safe and sufficient supply of water for domestic purposes to all persons; ...

UKRAINE

Law of Ukraine on ensuring the sanitary and epidemic safety of the population, Law No. 4004-XII of 24 February 1994, as last amended 07 February 2002³²¹

Article 18

...

Sanitary protection zones with special sanitary regimes shall be established for business/drinking water supply systems and their sources. Procedures of establishment and regimes of such zones shall be determined by Ukrainian legislation.

UNITED STATES OF AMERICA

The Constitution of the State of Hawaii, 1950³²²

³¹⁹ Russian version available at: <http://faolex.fao.org/docs/texts/tuk54109.doc>.

³²⁰ Available at: <http://faolex.fao.org/docs/pdf/uga5251.pdf>.

³²¹ <http://faolex.fao.org/docs/texts/ukr38311.doc>.

Article XI

Section 7 – Water Resources

The State has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people.

...

UZBEKISTAN

Law on Water and Water Use, Law No. 837-XII of 6 March 1993³²³

Article 25 – Preferential granting of water objects for population needs

Water objects shall be given in use first for the satisfaction of drinking and domestic needs.

Article 40 – Water objects granted for drinking, domestic and other purposes of the population

Water objects of a quality which corresponds to determined sanitary requirements shall be granted for drinking, domestic and other purposes of the population.

Article 43 – Use of groundwater of drinking quality for purposes other than drinking and domestic water supply

The use of groundwater of drinking quality for purposes other than drinking and domestic water supply is, as a rule, prohibited. In regions where the necessary surface water sources are not available and underground water resources fit for drinking are sufficient, the environmental geology and mineral resources organs may permit the use of these waters for purposes other than drinking and domestic water supply, in accordance with the limits established at Article 30 of the present Law.

VENEZUELA

Water Law, 2 January 2007 (Unofficial translation)³²⁴

Article 5.

The principles governing the integral management of water resources, based on the recognition of the full sovereignty the Republic exercises over water, are the following:

...

6. The use and utilisation of water resources must be efficient, equitable, optimal and sustainable.

7. Users of water shall contribute in solidarity to the conservation of the water source to guarantee the sustainability of the quantity and quality of the waters.

8. It is the fundamental obligation of the state, together with the active participation of the society as a whole, to guarantee the conservation of the water sources, both at the surface and underground.

...

³²² Available at: <http://www.hawaii.gov/lrb/con/>. Provisions entered into force 1 January 1979.

³²³ <http://faolex.fao.org/docs/pdf/uzb5255E.pdf>.

³²⁴ Spanish original available at: <http://faolex.fao.org/docs/texts/ven69647.doc>.

11. The conservation of water, in all of its sources and physical states, prevails over any other economic or social interest.

5.2.3 Water Quality & Quality of Water and Sanitation Services

ANGOLA

Water Act, 21 June 2002 (unofficial translation)³²⁵

Article 10 - Objectives of water management policies

(2)

...

d. provide the population in a continuous and sufficient manner with potable water in order to satisfy their needs for domestic uses and for hygiene; ...

ARGENTINA

Water Code of the Province of Buenos Aires, Law 12.257 of 9 December 1998 (Unofficial translation)³²⁶

Article 58:

...

The Water Authority shall be able to obligate the licensee to employ or apply all the methods judged necessary to ensure the established quality.

It [the Water Authority] shall also guarantee the removal and ultimate disposal of wastewater in a manner that does not produce contamination nor cause damage to third parties.

ARMENIA

Law of the Republic of Armenia on provision of sanitary-epidemiological security of the population, 1992 (Unofficial translation)³²⁷

Article 16 - General requirements for the provision of sanitary-epidemiological security of the population concerning public water supply and consumption

According to hygienic statutory acts, the residents of cities and other settlements are provided with the necessary amount of drinking water for satisfying the physiological and economic needs.

The quality of water used for drinking, economical, industrial and technical needs must correspond to the sanitary regulation.

The State Governmental bodies must undertake measures for providing high quality water to the population through maintenance and development of the water supply system. ...

In order to prevent and eliminate the pollution of water sources for public consumption, the authorities of urban and regional municipal executive committees of the deputies define sanitary protection belts, under a special regime, according to the legislation of the Republic of Armenia.

If the quality of the water does not correspond to sanitary regulation, the consumption of the water by the enterprises, institutions, organizations and citizens will be terminated, in accordance with the decision of the State hygienic and anti-epidemiological service of the Republic of Armenia.

³²⁵ Portuguese original available at: <http://www.minea.gv.ao/Minea/Detalhes.cfm?Plano=22&>

³²⁶ Spanish original available at: <http://www.gob.gba.gov.ar/legislacion/legislacion/l-12257.html>

³²⁷ Available at: <http://faolex.fao.org/docs/texts/arm47094E.doc>

BELARUS

Water Code of the Republic of Belarus, Law No. 191-3 of 15 July 1998, as last amended 13 June 2007 (unofficial translation)³²⁸

Article 37

The water used for satisfaction of drinking and household needs of the population must correspond to the qualitative characteristics stipulated in applicable sanitary norms and rules.

BENIN

Water Code, Law No. 87-016 of 21 September 1987 (Unofficial translation)³²⁹

Article 40

Water supplied for public consumption must be potable. It must conform to bacteriological, physico-chemical and organic-optic norms. Potable water must not be harmful to a person's health. ...

BRAZIL

Law on Basic Sanitation, Law 11445 of 7 January 2007 (Unofficial translation)³³⁰

Article 43.

Service delivery shall comply with minimum quality standards, including regularity, continuity and those associated to the products offered, to user service and conditions for system operation and maintenance, according to regulatory and contractual rules. The Union shall define minimum standards for the potability of the water.

COLOMBIA

Law 142 of 11 July 1994, establishing the regime for public household services (Unofficial translation)³³¹

Article 136 - The Concept of a defect in the provision of the service.

The continuous provision of a service of good quality is the principal obligation of the company in a public service contract.

The non-fulfillment on the part of the company of the continuous provision of service is designated, for the purposes of this law, as a defect in the provision of the service.

The company can demand, in accordance with the uniform terms of the contract, the payment of a connection fee to commence the realization of the contract; but it cannot invoke controversies concerning ownership of the property to break its obligation while the subscriber or user complies with his/her own obligations.

³²⁸ Russian original available at: <http://pravo.by/webnpa/text.asp?RN=HK9800191>

³²⁹ French original version available at: <http://faolex.fao.org/docs/texts/ben1295.doc>

³³⁰ Portuguese original at: http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Lei/L11445.htm.

³³¹ Spanish original available at:

http://www.crt.gov.co/Documentos/Normatividad/Leyes/LEY_142_94.pdf.

Article 137 - The repairs of defects in the provision of service.

A defect in service, from the moment in which it presents itself, entitles the subscriber or user to the cancellation of the contract, or to its fulfillment with the following reparations:

137.1. - There are no charges for anything other than what was consumed or for the use of goods or services effectively received, if the defect occurs continuously during the term of fifteen (15) days or more within the same billing period. ...

137.3 - With respect to the compensation for damages, under no circumstance shall it be valued at less than the value of consumption from the day in which the user was affected and for each day in which the service has completely faltered, or in proportion to the duration of the defect; including the value of the fines, sanctions, or surcharge that the defect has caused the subscriber or user to incur; including, also, the value of the investments or expenses incurred by the subscriber or user in trying to make up for the service.

National Code on Renewable Natural Resources and Protection of the Environment, Decree 2811, 18 December 1974 (Unofficial translation)³³²

Article 134.

It is the State's responsibility to guarantee the quality of water for human uses and, in general, for other activities in which its use is necessary. ...

COSTA RICA

Law on the Regulating Authority for Public Services, Law 7593 of 9 August 1996, as amended 27 December 2002 (Unofficial translation)³³³

Article 14. Obligations of the service providers

The service providers are obliged to: ...

j) Provide the service in an adequate manner and with the regularity and security indicated by its nature, the license or the permit.

General Health Law, Law 5395 of 30 October 1973, as last amended by Law 7600 of 2 May 1996 (Unofficial translation)³³⁴

Article 265

Potable water shall mean, in terms of laws and regulations, water that has all the physical, chemical and biological characteristics that make it adequate for human consumption, ...

Article 267

Every water supply system destined for use and consumption of the population must deliver potable water, in a continuous manner, in sufficient quantity to satisfy the needs of the people and with the pressure necessary to allow for the correct functioning of the sanitary devices in use.

³³² Spanish original available at:

http://www.oas.org/dsd/FIDA/laws/legislation/colombia/colombia_codigo.pdf

³³³ Spanish original available at: http://www.aresp.go.cr/docs/01-2003-ML_Ley_%20Autoridad_Regul.pdf.

³³⁴ Spanish original available at: <http://www.ccad.ws/documentos/legislacion/CR/L-5395.pdf>.

EL SALVADOR

Health Code, Decree No. 955 of 1988, as last amended 1994 (Unofficial translation)³³⁵

Article 63.

Water destined for human consumption must have the sanitary quality that the Ministry determined as good ...

FINLAND

Water Services Act (119/2001)³³⁶

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.

GUATEMALA

New Health Code, Decreto 90-97 (Unofficial translation)³³⁷

Article 88. The Certification of Quality.

Every project for the provision of water, prior to its execution, should have a certificate extended in an appropriate manner by the Ministry of Health in which it shall be recorded that the water is suitable for human consumption. If the certificate is not extended in the time/period established in the corresponding regulations, it will be extended upon the responsibility of whoever will grant it to a functionary or employee that has not expressed an opinion in the stipulated period.

Article 90. Contaminated Water.

It is prohibited to use contaminated water for the cultivation of vegetables for human consumption according to the corresponding regulation. Control mechanisms will be established.

HONDURAS

Decree No. 118-2003, Framework Law for the Drinking Water and Sanitation Sector (Unofficial translation)³³⁸

Article 6. Definitions

For the purpose of the present law, the following shall mean:

6) CONTINUITY AND GENERALITY: drinking water and sanitation services must be provided in a continuous manner and be accessible to all users; ...

³³⁵ Spanish original at: http://www.mspas.gob.sv/pdf/codigo_salud.pdf

³³⁶ <http://www.finlex.fi/pdf/saadkaan/E0010119.PDF>

³³⁷ Original Spanish version at: <http://www.ccad.ws/documentos/legislacion/GT/DL-90-97.pdf>

³³⁸ Spanish original available at: <http://faolex.fao.org/docs/pdf/hon41347.pdf>

INDONESIA

Government Regulation No. 82 of 2001 concerning Water Quality Management and Water Pollution Control³³⁹

Article 30

- (1) Everyone is entitled to good water quality.
- (2) Everyone is entitled to access to information about the state of the water quality, water quality management, and water pollution control.
- (3) Everyone is entitled to participate in the water quality management and water pollution control in accordance with prevailing laws and regulations.

Article 33

The Government, Provincial Government and Regency / Municipal Government are required to provide information to the public about water quality management and water pollution control.

Government Regulation No. 16/2005 regarding Development of Drinking Water Supply Systems and Sanitation³⁴⁰

Section 8 – Quality, Quantity and Continuity Standards

- (1) Drinking water obtained from the drinking water supply system and to be distributed to the community/customers should comply with the requirements for the quality and quantity, and pressure requirements if the distribution is using piped network system.
- (2) The requirements for the quality stipulated in Article (1) is covering physical, chemical, and bacteriological requirements in accordance with quality standards determined by Minister for Health.
- (3) The requirement for the quantity stipulated in Article (1) is covering the guarantee for the supply of drinking water in accordance with the minimal basic needs daily, and measurement of the flows and use correctly.
- (4) The requirements of the pressure stipulated in Article (1) is to guarantee the continuation of drinking water flow in distribution network system.

MALAYSIA

Water Services Industry Act (Act 655), 20 July 2006³⁴¹

[As of December 2007 the Act had not yet entered into force]

41. Water quality

- (1) The water distribution licensee shall, when supplying water to any premises, ensure that at the time of supply the quality of water supplied complies with the minimum quality standards as prescribed by the Minister.
- (2) The water distribution licensee shall ensure, as far as it is reasonably practicable, in relation to each source or combination of sources from which the licensee supplies water to any premises, that there is no deterioration in the minimum quality standards of the water which is supplied from time to time from that source or combination of sources. ...

NICARAGUA

³³⁹ On file with authors.

³⁴⁰ On file with authors.

³⁴¹ Available at: <http://www.agc.gov.my/agc/oth/Akta/Vol.%2014/Act%20655.pdf>.

General law on drinking water and sanitation services, Law No. 297 of 2 Juli 1998 (Unofficial translation)³⁴²

Article 52

The licensee is obliged to guarantee the continuity and the quality of the services ...

PANAMA

Law for the reorganisation and modernisation of the Institute of National Acueducts and Sewerages, Law No. 77 of 28 December 2001 (Unofficial translation)³⁴³

Article 46.

IDAAN has the responsibility to guarantee its users the provision of potable water and sanitation services in a continuous, efficient and secure manner, ...

PARAGUAY

General law governing the regulatory and tariff framework for the public drinking water and sanitation services for the Republic of Paraguay, Law 1614 of 2000 (unofficial translation)³⁴⁴

Article 2.- Service.

The regulated service entails:

The provision of potable water: ...

Sanitation services: ...

Article 3.- Essential conditions for the service

The service defined in the terms of article 2 is declared a national public service within the ambit established in the Constitution and shall be provided in a manner that meets the conditions of continuity, regularity, quality, generality and equality in a way that safeguards their efficient provision to the users, the protection of public health and the environment and the rational utilization of the resources.

Decree 18880 of 2002 [further regulating issues covered by Law 1614 of 2000] (Unofficial translation)³⁴⁵

Article 62. Quality of Water Resources

(1) The licensee has the obligation to inform, bimonthly, the Secretary of the Environment or the government organization that is responsible for the preservation of water resources as well as ERSSAN, concerning anomalies detected with respect to the quality of either untreated groundwater or collected subterranean water, and also with respect to effluent dumped directly or indirectly into the water system. The licensee shall also propose decisions and/or actions that are incumbent upon the Paraguayan government (the state) in order to normalize the situation without damage to the corrective or preventative obligations that would have been contracted.

³⁴² Spanish original at: <http://www.inaa.gob.ni/Documentos/Juridico/Leyes/LEY%20297%20LGSAP.pdf>.

³⁴³ Spanish original available at: http://www.ersp.gob.pa/leyes_decretos/Ley77.pdf.

³⁴⁴ Spanish original available at: <http://www.erssan.gov.py/pagina/ley-1614.pdf>.

³⁴⁵ Spanish original available at: <http://www.erssan.gov.py/pagina/dec-18880.pdf>.

(2) The Regulations for Service Quality shall specify the characteristics of a monitoring system that the licensee shall adopt, as well as the technical criteria and frequency that shall determine what constitutes an anomaly.

(3) Anomalies consist of defects in quality with respect to the regulations in effect.(4) It shall be the responsibility of the licensee to immediately adopt corrective measures:

a) That prevent that the contamination in the collection of water from affecting the productive process of potable water and from being transferred to the networks of transport and distribution.

b) That detect and prevent, in the networks of the concession or of regular or secret users, domestic or industrial spills that could cause some abnormality in water quality.

(5) The Titular of Service and ERSSAN will have the obligation of helping dealers realize the actions listed above.

SENEGAL

Water Code, Law No. 81-13, 1981 (Unofficial translation)³⁴⁶

Article 51

Drinking water must satisfy the applicable norms for potability, specifically concerning their physical, chemical, biological and bacteriological characteristics.

SOUTH AFRICA

National Water Act, Act 36 of 1998³⁴⁷

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.

³⁴⁶ French original version available at: http://www.gouv.sn/textes/code_eau.pdf.

³⁴⁷ Available at: <http://www.info.gov.za/gazette/acts/1998/a36-98.pdf>.

Regulations Relating to Compulsary National Standards and Measures to Conserve Water, 2001³⁴⁸

Basic water supply

The minimum standard for basic water supply services is –

- (a) the provision of appropriate education in respect of effective water use; and
- (b) a minimum quantity of potable water of 25 litres per person per day or 6 kilolitres per household per month -
 - (i) at a minimum flow rate of not less than 10 litres per minute;
 - (ii) within 200 metres of a household; and
 - (iii) with an effectiveness such that no consumer is without a supply for more than seven full days in any year.

SRI LANKA

The Rural Water Supply and Sanitation Policy (RWSS Policy), 2001³⁴⁹

3.2.5. Quality - The quality of water supplied, as a basic service should conform to the currently accepted minimum standards with respect to health related microbiological and chemical contaminants.

3.2.6. Flexibility to Upgrade - The basic facilities provided should be sufficiently flexible to enable upgrading if and when desired by the users. The users should bear the entire cost of additional facilities for improved services over and above the basic facilities provided.

3.2.7. Safe Water Supply Systems - Following system will be the accepted methods of providing safe drinking water. However, under epidemic or other risk situations, special treatment may be required.

- a) Piped Water Supply System with Adequate Treatment
- b) Deep/Shallow Wells with Hand Pumps.
- c) Protected Dug Wells.
- d) Protected Rainwater catchments Systems

National Policy on Water Supply and Sanitation (WSS Policy), 2002³⁵⁰

3.6 Quality Assurance and Capacity Building

Objective

Enhance the service of quality through the implementation of the following programs in order to improve the capacity of service providers including community groups in building & operation of water supply & sanitation facilities.

Strategies

- a. Water quality of service provision shall be monitored by the Water Sector Regulatory Commission or its designate.

³⁴⁸ Available at: <http://www.dwaf.gov.za/Documents/Notices/Water%20Services%20Act/SEC9DREG-20%20April%202001.doc>, at 3.

³⁴⁹ Available at: <http://www.waterboard.lk/scripts/ASP/Policies.asp>.

³⁵⁰ Available at: <http://www.waterboard.lk/scripts/ASP/Policies.asp>.

- b. It shall be the responsibility of service providers to ensure compliance with national drinking water standards.
- c. A certification program shall be developed and implemented for water quality testing laboratories of service providers and others.
- d. A quality assurance program for construction, materials, and quality shall be developed and implemented for service providers.

5.2.4 Physical Accessibility

ANGOLA

Water Act, 21 June 2002 (Unofficial translation)³⁵¹

Article 10 Objectives of water management policies

(2)

- a. guarantee citizens' and collective entities' access to and use of water resources;
- ...

AUSTRALIA

Australian Utilities Act 2000 No. 65, 2002, last amended by A2007-22 of 6 September 2007³⁵²

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....

Section 85: Sewerage connection service

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

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

Section 86: Sewerage service

A sewerage utility must, on application by a person, and in accordance with the utility's standard customer contract, provide a sewerage service for the premises to which the application relates.

BANGLADESH

National Policy for Safe Water Supply and Sanitation (Local Government Division Ministry of L.G.R.D & Co-operatives), 1998³⁵³

³⁵¹ Available at: <http://www.minea.gv.ao/Minea/Detalhes.cfm?Plano=22&..>

³⁵² <http://www.legislation.act.gov.au/a/2000-65/default.asp>.

4. Strategy

The strategy of the National Drinking Water Supply and Sanitation Policy will be developed on the following principles:

...

e) Assigning priority to under-served and un-served areas; ...

7. Policy Principles

Basic needs – It is necessary to expand and improve the water supply and sanitation services in order to satisfy the basic needs of the people. The need to expand these facilities is greater in the case of under privileged groups and regions.

...

BELGIUM

Decree regarding the tarification and general condistions of the public distribution of water in the Walloon region, 12 February 2004 (Unofficial translation)³⁵⁴

Art. 2.

Every person holding a real right in an immovable has the right, on her request and on her cost, that this immovable is connected to the public water supply network. The possible extension of the network of the provider necessary for the connection of the immovable is at cost of the requester...

BENIN

Public Hygiene Code, Law No. 87-015 of 21 September 1987 (Unofficial translation)³⁵⁵

Article 20

A proprietor shall fit his/her household with a sewage system for excreta and domestic wastewaters, namely latrines, septic tanks and soakaways.

Article 93

Industrial units shall be fitted with a sewage system for solid wastes, liquid wastes and sanitation systems allowing for the personal hygiene of its personnel.

BRAZIL

Law on Basic Sanitation, Law 11445 of 7 January 2007 (Unofficial translation)³⁵⁶

Article 2

Public basic sanitation services shall be delivered in accordance with the following fundamental principles:

I - universal **access**;...

³⁵³ Available at:

http://www.sdnpsbd.org/sdi/international_days/wed/2006/bangladesh/documents/national_pol_safe_drinking_water_sanitation1998.pdf.

³⁵⁴ French original version available at: <http://environnement.wallonie.be/LEGIS/eau/caali009.htm>.

³⁵⁵ French original version available at: <http://faolex.fao.org/docs/texts/ben18701.doc>.

³⁵⁶ Portuguese original at: http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Lci/L11445.htm.

COSTA RICA

Law on the Regulating Authority for Public Services, Law 7593 of 9 August 1996, as amended 27 December 2002 (Unofficial translation)³⁵⁷

Article 14. Obligations of the service providers

The service providers are obliged to: ...

h) Grant, without discrimination, access to the service to those within their area who apply for it. ...

General Law on Potable Water, Law 1634 of 1953, as last amended by Law 7593 of 9 August 1996 (Authors Translation)³⁵⁸

Article 9.

Under no circumstances shall the owners of houses or premises deprive their tenants of access to drinking water services.

CHAD

Water Code, Law 016/PR of 18 August 1999 (Unofficial translation)³⁵⁹

Article 44

Any person wishing to be supplied with potable water must apply to the principal operator or the independent operator responsible for his/her area, who is responsible for drawing up a water sale contract, except if existing capacities for water catchment, treatment, storage for drinking water provision are insufficient.

In the latter case, the operator is responsible for finding ways to satisfy the application. In case of refusal, the operator must provide the applicant with the reasons for his/her decision.

CONGO (Republic of the Congo – Brazzaville)

Water Code, Law No. 13-2003, 10 April 2003 (Unofficial translation)³⁶⁰

Article 57

Anyone wishing to be supplied with potable water must apply to the operator responsible for that person's area, who is obliged to conclude with that person a contract on the sale of water, except if existing capacities for water catchment, treatment, or network supply systems are insufficient.

In the latter case, the operator is responsible for finding ways to satisfy the application. In case of refusal, the manager must provide the applicant with the reasons for his/her decision.

EL SALVADOR

Health Code, Decree No. 955 of 1988, as last amended 1994 (Unofficial translation)³⁶¹

³⁵⁷ Spanish original available at: http://www.aresp.go.cr/docs/01-2003-ML_Ley_%20Autoridad_Regul.pdf.

³⁵⁸ Spanish original available at:

www.sica.int/busqueda/busqueda_archivo.aspx?Archivo=leys_6883_1_27032006.pdf.

³⁵⁹ French original version available at: <http://faolex.fao.org/docs/texts/cha18685.doc>.

³⁶⁰ French original version available at: http://www.congoinvest.com/fr/pdf/code_eau.pdf.

³⁶¹ Spanish original at: http://www.mspas.gob.sv/pdf/codigo_salud.pdf

Article 100.

IV. Every developed or undeveloped property situated in an urban area, whatever its purpose may be, must be provided with water, drainage and sanitation services or the corresponding connections.

GUATEMALA

Law on Social Development, Decreto 42-2001 (Unofficial translation)³⁶²

Article 35. Migration, health and education.

The State promotes, through the Ministries of Public Health and Social Assistance and Education and other public sector entities related to the subject matter, that migrant workers and their families have **access** to health, education and **other basic services** that improve their living conditions in the locations of temporary residence.

New Health Code, Decreto 90-97 (Unofficial translation)³⁶³

Article 78. Universal access and coverage

The State shall, ... pursue a priority policy of public necessity, that guarantees that the population has universal access and coverage of drinking water services ...

Article 89: Connection of Services.

The proprietors or owners of land and water supplies situated in the urban area provided with central networks of potable water shall connect these services in accordance with municipal regulations; it is incumbent upon the municipalities to control compliance with this disposition.

Article 93. Access and coverage [sanitation]

The Ministry of Health, in conjunction with the institutions of the sector, the Municipalities and the organised community, promote the universal coverage of the population with services for the final disposal of excrements, the conduction and treatment of wastewater ...

GUINEA BISSAU

Water Code, Law No. 5-A/92 (Unofficial translation)³⁶⁴

Article 29 (Sanitation)

1. The sanitation in population centres aims to: ensure the immediate evacuation of used domestic and industrial water, susceptible to cause damages, and river waters susceptible to submerge living places, subject to public health requirements and environmental protection.
2. In the population centers with sanitary sewage collection, the connection of the households and other establishments to the system is mandatory. ...
5. The treatment of residual water before its evacuation is mandatory in the event that in its untreated state it might affect the good functioning of public sanitation system and purification facilities.

³⁶² Original Spanish version at:

http://www.segeplan.gob.gt/docs/pdesa/document/Ley_Desarrollo_Social.pdf

³⁶³ Original Spanish version at: <http://www.ccad.ws/documentos/legislacion/GT/DL-90-97.pdf>

³⁶⁴ Portuguese original version available at: <http://faolex.fao.org/docs/pdf/gbs39315.pdf>.

GUYANA

Public Utilities Commission Act, Act No. 10 of 1999³⁶⁵

Section 27. Commission may order extension of service

(1) ... the Commission may order the public utility to make such extension to its service as the Commission may deem reasonable and expedient.

HONDURAS

Decree No. 118-2003, Framework Law for the Drinking Water and Sanitation Sector (Unofficial translation)³⁶⁶

Article 6. Definitions

For the purpose of the present law, the following shall mean:

6) CONTINUITY AND GENERALITY: drinking water and sanitation services must be provided in a continuous manner and be accessible to all users;...

Article 22.

Priority shall be given, however without forbearing from the objectives of improvement of efficiency and quality, to the goals of maintaining and extending the coverage of drinking water and sanitation services in economically depressed areas, applying criteria of equity.

INDIA

Maharashtra Municipalities Act, 1965³⁶⁷

Under Section 62 of the Act, Municipal Councils are expected to provide at least 70 litres of drinking water per head per day.

MALAYSIA

Water Services Industry Act (Act 655), 20 July 2006³⁶⁸

36. Developing and maintaining water supply system

(1) It shall be the duty of every service licensee providing water supply services to maintain an efficient and economical water supply system.

(2) A water distribution licensee shall ensure that all arrangements have been made—

(a) for providing water supply to premises within its water supply distribution area and for making such supply available to persons who demand them; and

(b) for maintaining, improving and extending the water supply system in relation to the distribution of water, such that the water distribution licensee is and continues to be able to meet its obligations under this Act. ...

MALI

Decree No. 01-395/P-RM of 06 September 2001 determining the Modalities for the Management of Wastewater and Silt (Unofficial translation)³⁶⁹

³⁶⁵ Available at: <http://www.electricity.gov.gy/puca.pdf>

³⁶⁶ Spanish original available at: <http://faolex.fao.org/docs/pdf/hon41347.pdf>

³⁶⁷ Summary at: http://www.maharashtra.gov.in/english/gazetteer/WARDHA/local_municipalities.html.

³⁶⁸ Available at: <http://www.agc.gov.my/agc/oth/Akta/Vol.%2014/Act%20655.pdf>. As of December 2007 the entry into force of the Act was still pending.

³⁶⁹ French original version available at: <http://faolex.fao.org/docs/pdf/mli49663.pdf>.

Article 8

Dwellings situated in an area equipped with public sewage and an adduction water system must be connected to the sewage system. The connecting charges must be paid by the beneficiary.

Article 9

Dwellings situated in an area not equipped with public sewerage must be equipped with individual wastewater treatment installations.

MEXICO

Water Law of the Distrito Federal, 2003 (Unofficial translation)³⁷⁰

Article 6

In the formulation, execution, and monitoring of the policy of the integral management of water resources, the competent authorities will observe the following principles...

IV. The infrastructure and hydraulic services should be accessible for every person without discrimination, including the vulnerable or marginalized population; these services should be accessible always, especially when these persons make use of the legal resolutions concerning the use of the land on which they live as well as when they carry out their economic activities.

IX. The authorities have the obligation to support those persons who have difficulties to receive access to the water supply.

Article 67

In the case of domestic use, when the public service of potable water does not exist or is suspended, the Sistema de Aguas [Water System] shall consider possible manners/alternatives for the supply by means of carriage tankers or provisional and public pumps. The provision of this service will be free of charge.

In terms of the establishment of the public service of potable water in places that lack it, interested parties shall be notified by means of warnings that shall be placed on the corresponding streets.

NAMIBIA

Water Resources Management Act, Act No. 24 of 2004³⁷¹

3. Fundamental principles

This Act must be interpreted, and be reasonably and fairly applied, in a manner that is consistent with and promotes the following fundamental principles -

(a) equitable access to water resources by every citizen, in support of a healthy and productive life;

(b) access by every citizen, within a reasonable distance from their place of abode, to a quantity of water sufficient to maintain life, health and productive activities; ...

NICARAGUA

General law on drinking water and sanitation services, Law No. 297 of 2 Juli 1998 (Unofficial translation)³⁷²

³⁷⁰ Spanish original at: <http://www.df.gob.mx/leyes/normatividad.html?materia=1&apartado=1&disp=122>.

³⁷¹ Available at: <http://faolex.fao.org/docs/pdf/nam61956.pdf>.

³⁷² Spanish original at: <http://www.inaa.gob.ni/Documentos/Juridico/Leyes/LEY%20297%20LGSAP.pdf>.

Article 69

Any natural or legal person situated within the license area of the licensee has a right to be provided with the services by the licensee, ...

General National Water Law, 15 May 2007 (Unofficial translation)³⁷³

Article 13

... the present law is based on the following values and principles ...

c) Water is a vital, limited, vulnerable and finite resource the preservation and sustainability of which is a fundamental and irrefutable task of the State and society combined. To have access to it is an irrenouncable right of every human being.

Article 71

In such cases where there exists no permanent and continuous coverage of the aqueduct system for the provision of potable water, the institutions competent and responsible for this public service are obliged to temporarily guarantee the minimum provision in quantity and quality in any form and through any measure. The same institutions shall elaborate the basic projects for the provision of potable water at truly accessible costs, above all when destined for marginal sectors or populations living in precarious urban and rural settlements.

NIGER

Decree 2003-145/PRN/MHE/LCD of 18 June 2003 concerning the adoption of the regulation for drinking water services in Niger (Unofficial translation)³⁷⁴

Article 9 -Obligation to consent to subscription

(1) The SEEN must provide a subscription to any user who requests one for a premise or a dwelling located within the perimeter of the water connection subject to the modalities of the present article and articles 10-12 above.

(2) Outside the perimeter of the water connection, the SEEN must consider a subscription application submitted for any premise or property located within the perimeter of leasing, but outside the perimeter of the water connection.

This application will be considered subject to articles 11 and 12 below

Within a limit of time set in appendix VI. in its response to the user, the SEEN must detail the costs involved and the time span for connection, based on the type of subscription applied for.

In case of refusal, the SEEN must stipulate in writing the reasons for its decision.

PANAMA

Law for the reorganisation and modernisation of the Institute of National Acueducts and Sewerages, Law No. 77 of 28 December 2001 (Unofficial translation)³⁷⁵

Article 40.

Water and sanitation services are obligatory for every property within an area in which water distribution pipes and wastewater collectors are installed. ...

³⁷³ Spanish original yet unpublished; on file with author.

³⁷⁴ French original version available at: <http://faolex.fao.org/docs/pdf/ner65662.pdf>.

³⁷⁵ Spanish original available at: http://www.ersp.gob.pa/leyes_decretos/Ley77.pdf.

PARAGUAY

General law governing the regulatory and tariff framework for the public drinking water and sanitation services for the Republic of Paraguay, Law 1614 of 2000 (unofficial translation)³⁷⁶

Article 5. - Objectives of the regulatory framework.

...

b) promote the expansion of the service to the entire population and improve the actual quality levels with a view to achieve acceptable quality levels of the same; ...

Article 37. - Obligatory character of connection

a) the users that have availability of the service must obligatorily be connected to the public service of potable water and sanitation; ...

PERU

General Water Law, Law No. 17752 of 1969, as last amended 1981 (Unofficial translation)³⁷⁷

Article 39. Access to the use of water.

The Water Authority, jointly with the Sanitation Authority, will be able to set out whatever else it advises so that water as a vital element is accessible to every human being in a quantity sufficient for the satisfaction of basic needs.

For this purpose, the authority shall establish, when necessary, places or zones of free access to natural sources or artificial water sources, without alteration and avoiding their contamination.

General Law on Sanitation Services, Ley 26338 of 24 July 1994 (Unofficial translation)³⁷⁸

Article 2

For the purpose of the present law, the provision of Sanitation Services shall cover the regular provision of: services of potable water, the disposal of wastewater, rainwater and the excrements, in urban as well as in rural areas.

Article 11

Every person, natural or legal, residing within the area for which a service provider is responsible, has the right to be provided with the services offered by said entity,

...

Draft General Water Law, March 2007 (Unofficial translation)³⁷⁹

Article 5.- Principles

The principles governing the sustainable and multisectoral use and management of water and associated goods are: ...

³⁷⁶ Spanish original available at: <http://www.erssan.gov.py/pagina/ley-1614.pdf>.

³⁷⁷ Spanish original available at:

[http://www.oas.org/dsd/environmentlaw/waterlaw/documents/Per%C3%BA-Ley_General_de_Aguas_\(1969\).pdf](http://www.oas.org/dsd/environmentlaw/waterlaw/documents/Per%C3%BA-Ley_General_de_Aguas_(1969).pdf).

³⁷⁸ Spanish original available at: http://www.sunass.gob.pe/docs/normas%20legales/ley_26338.htm

³⁷⁹ On file with author.

5. The Principle of Juridical Security

... nor make an attempt to interfere with the free access to 30 litres of water daily to each person.

Article 56 – Free Access Zones for the Satisfaction of Primary Needs

The state guarantees free access to natural sources and man-made public channels, without altering them and avoiding their contamination, for the direct satisfaction of the primary needs of the population. Toward such an end, the relevant water authority will establish, when necessary, places and zones of free access.

Article 58 - Public Access to Potable Water Networks

The state guarantees to everyone access to potable water services at a reasonable cost in sufficient quantity and under conditions of security and quality for the satisfaction of personal and domestic needs. ...

SOUTH AFRICA

Water Services Act, Act 108 of 1997, amended 2004³⁸⁰

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.

³⁸⁰ Available at: <http://www.wrc.org.za/downloads/legislature/WSA108-97.pdf>;
www.polity.org.za/attachment.php?aa_id=1385.

(6) A water services authority may impose reasonable limitations on the use of water services.

Regulations Relating to Compulsary National Standards and Measures to Conserve Water, 2001³⁸¹

Basic water supply

The minimum standard for basic water supply services is –

...

(ii) within 200 metres of a household; ...

SRI LANKA

The Rural Water Supply and Sanitation Policy (RWSS Policy), 2001³⁸²

...

3.2.2. Haulage Distance - The maximum haul of water to the dwelling of any user should not exceed 200m. In steep terrain this should be reduced with consideration to the effort for hauling water.

National Policy on Water Supply and Sanitation (WSS Policy), 2002³⁸³

1.0 – Introduction

Providing safe drinking water and access to sanitation services is an essential or fundamental element of the Government's program for the economic and social development of Sri Lanka.

2.0 - Sector Visions and Goals

2.2 Goals in water supply

- Access to sufficient and safe drinking water is provided to 85% of the population of Sri Lanka by 2010 and 100% by 2025;
- Piped water supply is provided to 100% of the urban population and% of the rural population by 2010; and
- Service levels and the quality of water achieves national standards in urban and rural areas.

2.3 Goals in sanitation

- Access to adequate sanitation is available to 70% of the population of Sri Lanka by 2010 and 100% by 2025;
- Piped sewerage systems are provided in the major urban areas and selected growth centres; and
- Standard on-site sanitation is available to all those not connected to a sewerage system or other sanitation scheme.

TRINIDAD & TOBAGO

Water and Sewerage Act, 1980³⁸⁴

³⁸¹ At , available at: <http://www.dwaf.gov.za/Documents/Notices/Water%20Services%20Act/SEC9DREG-20%20April%202001.doc>, at 3.

³⁸² Available at: <http://www.waterboard.lk/scripts/ASP/Policies.asp>.

³⁸³ Available at: <http://www.waterboard.lk/scripts/ASP/Policies.asp>.

³⁸⁴ Available at: <http://faolex.fao.org/docs/pdf/tri2554.pdf>.

Article 5.

The undertakers shall provide in their mains and communications pipes a supply of wholesome water sufficient for the domestic purposes of all owners and occupiers of premises within the limits of supply who have been supplied with water for those purposes.

UNITED STATES OF AMERICA **California Public Utilities Code**³⁸⁵

739.8.

(a) Access to an adequate supply of healthful water is a basic necessity of human life, and shall be made available to all residents of California at an affordable cost.

VENEZUELA **Water Law, 2 January 2007 (Unofficial translation)**³⁸⁶

Article 5.

The principles governing the integral management of water resources, based on the recognition of the full sovereignty the Republic exercises over water, are the following: ...

3. Water is a social good. The State guarantees all urban, rural and indigenous communities access to water in accordance with their needs.

...

5.2.5 Affordability

ALGERIA **Water Law no. 05-12, 4 August 2005**³⁸⁷

Article 138

The price of water services is to be based on the principles of financial stability, social solidarity, incentives to water saving and the protection of the quality of water resources.

Executive Decree 05-13 establishing the rules for tarification for public water and sanitation services (Unofficial translation)³⁸⁸

Article 3

The pricing for the public services of drinking water and sanitation is to be differentiated according to the territorial tariff zones as defined in article 12 below. It is subject to scales of progressive tariffs taking into account the category of users and levels of water consumption.

ANGOLA **Water Act, 21 June 2002 (Unofficial translation)**³⁸⁹

³⁸⁵ Available at: <http://caselaw.lp.findlaw.com/cacodes/puc.html>.

³⁸⁶ Spanish original available at: <http://faolex.fao.org/docs/texts/ven69647.doc>.

³⁸⁷ French original version available at: <http://www.joradp.dz/HER/Index.htm>.

³⁸⁸ French original version available at: <http://faolex.fao.org/docs/pdf/alg49964.pdf>.

³⁸⁹ Portuguese original at: <http://www.minea.gv.ao/Minea/Detalhes.cfm?Plano=22&>.

Article 23 - Common uses

(1) Common uses are uses for the satisfaction of domestic, personal and familiar needs, including the watering of cattle and subsistence farming, without commercial purposes.

(2) Common uses are free of charge and are carried out through the traditional forms of water usage, without changing significantly water flow or quality. ...

ARGENTINA

Water Code of the Province of Córdoba, Law 5589/73, as amended by Law 8928/01 (Unofficial translation)³⁹⁰

Article 38: Enumeration of common uses.

The common uses authorized by this Code are the following:

1) Drinking, human hygiene, domestic uses and watering of plants, always under the condition that the extraction is done by hand, without and kind of machine of apparatus, without contamination of the water resources, ...

Article 40: Priority and absence of charges.

Common uses have absolute priority over any form of private use and concessions or permits shall in no case limit their exercise. Common uses are free of charge; rates can only be imposed if the provision of a service is required for their exercise.

Article 99: Compulsory and Irrevocable Concession.

When a concession concerns the reception of water for domestic use, it cannot be waived. Under no circumstances can the services enumerated in the title be suspended for a lack of payment nor for any other cause.

Water Code of the Province of Buenos Aires, Law 12.257 of 9 December 1998 (Unofficial translation)³⁹¹

Article 25:

Every individual may make use of public water free of charge and in conformity with general regulations to satisfy domestic needs of drinking and hygiene, ...

ARMENIA

Water Code of the Republic of Armenia, 2002³⁹²

Article 22 - Free water use

The following shall be considered as free water use:

1) Such a water use, which has no purpose of profit gaining; ...

BANGLADESH

National Water Policy, 1999³⁹³

4.14 Economic and Financial Management

...

³⁹⁰ Spanish original available at: http://www.cordobaambiente.cba.gov.ar/legislaciones_agua.html.

³⁹¹ Spanish original available at: <http://www.gob.gba.gov.ar/legislacion/legislacion/l-12257.html>.

³⁹² http://www.parliament.am/law_docs/290602HO373eng.pdf?lang=eng.

³⁹³ Available at: http://www.warpo.gov.bd/nw_policy.pdf.

d. The pricing structure will match the goals and needs of the water provider and the population served. Water rates will be lower for basic consumption, increasing with commercial and industrial use. The rates for surface and groundwater will reflect, to the extent possible, their actual cost of delivery.

National Policy for Safe Water Supply and Sanitation (Local Government Division Ministry of L.G.R.D & Co-operatives), 1998³⁹⁴

The value of water – Water has an organic, social and concurrently an economic value. To ensure that service provision is viable, the price of water should reflect its economic value, with the eventual objective of covering the cost of supply. However, the transition from the current level of subscription to new rate of payment should be gradual and there should be a safety net for hard-core poor communities.

BELGIUM

**Brussels-Capital Region:
Social Fund for Water**³⁹⁵

In 1998, the intermunicipal utility company established a Social Fund for Water to provide financial assistance to people having difficulties to pay their water bills. The fund is managed in cooperation with the O.C.M.W.s [Public Welfare Centres] of the 19 municipalities of the Brussels-Capital Region.

Decree regarding the establishment of a tax on the disposal of waste water, Council of the Brussels-Capital Region, 29 March 1996 (unofficial translation)³⁹⁶

The decree establishes a sanitation tax per m³ of wastewater disposed of. Article 7 provides that people with financial difficulties are reimbursed for these expenses.

Walloon region:

For drinking water there is a progressive block tariff system, with the first block of 30m³ per household and per year at a significantly reduced rate.³⁹⁷ There is a flat rate for sanitation. Consumers who do not exceed the first tranche of 30m³ are exempted from sanitation charges.

In addition, the 2003 Decree regarding the creation of a social fund for water in the Walloon region³⁹⁸ established a social fund, which provides financial assistance to those having difficulties to pay their water bills. The fund is financed by a tax of 0.0125 EURO per m³ of billed public water supply.

There is a flat rate for sanitation. Consumers who do not exceed the first tranche of 30m³ are exempted from sanitation charges.

Flamish region:

³⁹⁴ Available at:

http://www.sdnpsd.org/sdi/international_days/wed/2006/bangladesh/documents/national_pol_safe_drinking_water_sanitation1998.pdf.

³⁹⁵ See <http://www.weblex.irisnet.be/data/arccc/bqr/2001-02/00006/images.pdf>. In Dutch and French.

³⁹⁶ See

[http://www.juridat.be/cgi_loi/loi_a.pl?language=nl&caller=list&cn=1996032931&la=n&fromtab=wet&sql=dt='ordonnantie%20\(brussel\)'&tri=dd+as+rank&rech=1&numero=1](http://www.juridat.be/cgi_loi/loi_a.pl?language=nl&caller=list&cn=1996032931&la=n&fromtab=wet&sql=dt='ordonnantie%20(brussel)'&tri=dd+as+rank&rech=1&numero=1). Note: the decree has been repealed with effect of a yet to determine date, meaning that it is still in force.

³⁹⁷ See http://www.swde.be/xml/fiche_fr.html?FLASH=&NBCOL=3&IDC=500&IDD=.

³⁹⁸ Decree of the Walloon Regional Council of 20 February 2003. French original version at: <http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2003/03/19/80480.pdf>.

Article 34 of the Decree of the Flamish Council of 20 December 1996, amending the 1933 Law on the Protection of Drinking Water (unofficial translation)³⁹⁹

Article 1 bis – Special provisions for the Flanders region with regard to drinking water supply

...

§ 3. The municipalities, communal enterprises, intercommunal associations, and all other enterprises responsible for public water supply, are obligated, from 1 January 1997 on, to provide all households connected to the public water grid per annum with 15 m3 of tap water per person residing at the address of the connection to the public water grid free of charge.

Note: The price for water above this basic amount is constant. There is an exemption from sanitation charges for the poorest people.

Decree regulating the right to a minimum supply of electricity, gas and water, Parliament of Flanders, 19 December 1996⁴⁰⁰

Artikel 8

The costs for a minimum supply of electricity, water and gas in accordance with the provisions of this decree are to be borne by the relevant provider.

BRAZIL

Law on Basic Sanitation, Law 11445 of 7 January 2007 (Unofficial translation)⁴⁰¹

Article 29.

Public basic sanitation services shall be granted economic and financial sustainability, whenever possible, by means of remuneration through the billing of:

I - water supply and sanitary sewage services: preferably in the form of tariffs and other public dues, which may be established for each of the services or for both, jointly;

II - urban cleaning services and the management of urban solid waste: fees or tariffs and other public dues, in accordance with the service delivery regime or of its activities;

III - urban rainwater management services: in the form of taxes, including fees, in accordance with the service delivery regime or its activities.

§ 1 In compliance with the provisions of numerals I to III of the caption to this article, the implementation of tariffs, public dues and fees for basic sanitation services shall observe the following guidelines:

I - priority to fulfilling essential functions associated to public health;

II - expansion of access to services for low income citizens and localities;

...

§ 2 Tariff and non-tariff subsidies may be adopted for users and localities without enough payment capacity or economic scale for covering the integral cost of services.

³⁹⁹ French original version at:

http://www.juridat.be/cgi_loi/loi_a1.pl?language=fr&caller=list&cn=1996122037&la=f&fromtab=loi&sql=dt='decret+conseil+flamand'&tri=dd+as+rank&rech=1&numero=1.

⁴⁰⁰ Dutch original version available at: <http://jvp.vlaamsparlement.be/docs/stukken/1996-1997/g442-5.pdf>.

⁴⁰¹ Portuguese original at: http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Lci/L11445.htm.

Article 30.

In complying with the provisions of Article 29 of this Law, the remuneration structure and the collection of public basic sanitation services may take into account the following aspects:

- I - user categories, distributed by groups or increasing volumes of use or consumption;
- II - the use and quality standards required;
- III - minimum amount of consumption or use of service, aiming at warranting the social objectives, such as the preservation of public health, appropriate service to low income users and the protection of the environment;
- IV - the minimum cost required for making service available in an appropriate quantity and quality;
- V - significant cycles of increase in the demand of services, during different periods; and
- VI - the payment capacity of users.

Article 31.

The subsidies required for serving low income users and localities shall be, depending on the characteristics of the beneficiaries and on the origin of resources:

- I - direct subsidies, whenever destined to certain users; or indirect, when destined to the service provider;
- II - tariff subsidies, when they are integrated into the tariff structure; or fiscal subsidies, when deriving from the allocation of budgetary resources, including by means of subventions;
- III - internal subsidies for each holder or among localities, in the hypotheses of associated management and regional delivery.

Consumers Defence Code, Law 8078 of 11 September 1990, as last amended by Law 9870 of 23 November 1999 (Unofficial translation)⁴⁰²

Article 42.

In the collecting of debts, the defaulting consumer must not be ridiculed or exposed to any shameful situations or threats.

Article 42 of the Consumer Defence Code is the normative standard on which Brazilian courts have consistently based a prohibition of disconnections of water services to consumers unable to pay.

Draft Law 896/2001, State of Pernambuco (Unofficial Translation)⁴⁰³

Article 1:

... it is prohibited for a public water company or any other company that holds a concession for such services to interrupt the provision of services to small-scale users or to users who are confirmed to be unemployed for delay of payment.

BURKINA FASO

Decree No 2004-580/PRES/PM/MAHRH/MFB governing domestic water uses, 2004 (Unofficial translation)⁴⁰⁴

⁴⁰² Original Portuguese version available at: <http://www.planalto.gov.br/CCIVIL/Leis/L8078.htm>.

⁴⁰³ <http://www.alepe.pe.gov.br/diario/2001/09/27/pareceres.html>.

⁴⁰⁴ French original version available at: <http://faolex.fao.org/docs/texts/bkf49858.doc>.

Article 1

The present decree defines domestic water uses in accordance with article 50 of Law No. 002-2001/AN, 8 February 2001 ...

Article 2

The following is to be considered for domestic purposes: the withdrawal of natural water (surface water/and or underground water) intended exclusively for the satisfaction of human needs, within the limits of the quantities required for human dietary, hygienic and health needs, for washing and the production of vegetables or animal goods reserved for the consumption of a family is to be considered for domestic purposes.

Article 3

Within the meaning of the present decree, the threshold for domestic uses is fixed at a hundred (100) litres of (surface water, underground water) per person per day.

Article 4

All domestic water use less than or equal to the above threshold is exempted from a financial contribution as set out in article 47 of the law aforementioned.

In effect, the law provides that 100 litres of water for domestic uses per person per day are free of charge.

CANADA

Montréal Charter of Rights and Responsibilities, 2006⁴⁰⁵

Article 18 – Commitments

To foster the economic and social rights of citizens, Montréal is committed to: ...

g) Ensuring that no citizen is denied a supply of drinking water for economic reasons.

CHILE

Law 18778, Establishing a Subsidy for Payment for the Use of Drinking Water and Sewerage Services, 1989, last modified October 17, 1994⁴⁰⁶

*Summary: this law establishes a subsidy scheme for the payment of water and sewerage services that is targeted to assist low-income residential users (Article 1). The subsidy is currently applied to the first 20 cubic meters that are billed to users' permanent residence **per month**, covering both fixed and variable charges (Article 2 (1)). The remainder is to be paid by the users at the regular rate. Article 2 (2) (b) further provides that the subsidy shall cover no less than 25% and no more than 85% of the charge for those 20 cubic meters (Article 2 (2) (b)).*

Article 3 lays down the criteria for eligibility for the subsidy. According to this provision, applicants must (a) be unable to pay to pay the full cost of the services, considering their socio-economic conditions; (b) be up to date with their payments

⁴⁰⁵ Available at:

http://ville.montreal.qc.ca/pls/portal/docs/page/charte_mtl_en/media/documents/charte_droits_en.pdf.

⁴⁰⁶ This is a paraphrased version of the relevant articles in this law whose original title is LEY 18778 - Ley que establece subsidio al pago de consumo de agua potable y servicio de alcantarillado de aguas servidas, date of publication: 02.02.1989. The original Spanish version is available at: <http://www.bcn.cl/leyes/pdf/actualizado/30157.pdf>.

for the services to which this law applies; and (c) a submit a written application to the municipality that is competent for the residence concerned.

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. Such subsidy is to 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 is to 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).

COLOMBIA

Law 142 of 11 July 1994, establishing the regime for public household services (Unofficial translation)⁴⁰⁷

Article 87 - Criteria for the definition of a tariff system.

The tariff system will be guided by the criteria of economic efficiency, neutrality, solidarity, redistribution, financial sufficiency, simplicity, and transparency.

87.2 - By neutrality it is to be understood that each consumer will have the right to receive the same treatment with respect to cost as any other consumer, if the characteristics of the costs incurred by public service companies are equal. The exercise of this right should not prevent public service companies from offering pricing options, nor should it prevent the consumer from choosing that which suits his/her needs.

87.3 - By solidarity and redistribution it is to be understood that, with respect to the creation of a tariff system, measures will be adopted to assign resources to "solidarity and redistribution funds," so that higher income as well as commercial or industrial users can help users of lower means to pay the service fees which will cover their basic needs.

87.5 - By simplicity it is to be understood that the tariff formulas will be developed in such a manner as to facilitate their comprehension, application, and control.

87.6 - By transparency it is to be understood that the tariff system will be explicit and completely public for everyone involved in the service and for users.

Article 99 - Form of subsidies

The bodies mentioned in article 368 of the Constitution have the power to concede subsidies in their respective budgets in accordance with the following rules:

[see Article 99 (1) to 99 (9) for details on scope and modalities for provision of this subsidy]...

COSTA RICA

Law on the Regulating Authority for Public Services, Law 7593 of 9 August 1996, as amended 27 December 2002 (Unofficial translation)⁴⁰⁸

Article 14. Obligations of the service providers

The service providers are obliged to: ...

⁴⁰⁷ Spanish original available at:

http://www.crt.gov.co/Documentos/Normatividad/Leyes/LEY_142_94.pdf.

⁴⁰⁸ Spanish original available at: http://www.aresp.go.cr/docs/01-2003-ML_Ley_%20Autoridad_Regul.pdf.

k) Provide the service to its customers under conditions of equity and charge them a just and reasonable price for the service provided.

Article 31. Fixing of prices, tariffs or rates.

(2) The criteria of social equity, environmental sustainability, energy conservation and economic efficiency defined in the National Development Plan must constitute central elements for the fixing of prices, tariffs and rates for the public services.

Law establishing the Costarican Institute of Aqueducts and Sewerage, Law 2726 of 27 August 1961, as last amended by Law 6622 of 27 August 1981 (Unofficial translation)⁴⁰⁹

Article 4.

For the fixing of the tariffs criteria of distributive social justice shall be applied that take into account the social classes and the area to which the users belong, so that those with better capacity to pay subsidise those with less capacity, ...

The State and its institutions of social assistance may subsidise, completely or partially, areas or groups of users who because of their economic conditions are unable to pay the established tariffs.

DOMINICA

Water and Sewerage Act, 1989⁴¹⁰

Article 22 - Services of Company to be paid for

(3) There shall be no direct charge for water used by the public from public stand-pipes, but this service shall be considered an obligation of Government or the relevant municipal authority who shall pay to the Company the price of water served through public stand-pipes.

FINLAND

Water Services Act (119/2001)⁴¹¹

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.

(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.

⁴⁰⁹ Spanish original available at:

<http://www.dse.go.cr/02ServiciosInfo/Legislacion/PDF/Ambiente/Aguas/L-2726ICAA.pdf>.

⁴¹⁰ Available at: [http://www.oas.org/dsd/environmentlaw/waterlaw/documents/Dominica-Water_and_Sewage_Act_\(1989\).pdf](http://www.oas.org/dsd/environmentlaw/waterlaw/documents/Dominica-Water_and_Sewage_Act_(1989).pdf).

⁴¹¹ <http://www.finlex.fi/pdf/saadkaan/E0010119.PDF>

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 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.

GEORGIA

Water Law, Law No. 936-Ic of 1997 (unofficial translation)⁴¹²

Article 32

1. The common use of water is carried out with a view of satisfying non-industrial, personal (individual) drinking, household, ... needs without the application of constructions and devices that have an effect on the state of water. ...

3. The common use of water is free. ...

GUYANA

Public Utilities Commission Act, Act No. 10 of 1999⁴¹³

Section 32. Rates to be just and reasonable

(1) Every rate made, demanded or received by any public utility from persons making use of the service provided by it, shall be just and reasonable...

⁴¹² Available at: <http://faolex.fao.org/docs/texts/geo42199.doc>.

⁴¹³ Available at: <http://www.electricity.gov.gy/puca.pdf>.

Section 34. Prohibition against discrimination in the matter of rate

(1) No public utility shall provide to any person any service at a rate which is unduly preferential or discriminatory.

(2) Nothing in subsection (1) shall be deemed to prevent a public utility from demanding and receiving different rates from different classes of consumers.

Section 44. Burden of proof

(1) Subject to section 32 and 33, in any proceeding, upon the motion of the Commission involving, or in proceeding upon complaint by a consumer involving, any proposed increase in any rate charged by any public utility for any service, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

HONDURAS

Decree No. 118-2003, Framework Law for the Drinking Water and Sanitation Sector (Unofficial translation)⁴¹⁴

Article 36.

The tariffs applicable to drinking water and sanitation services provided to users with low family incomes, which are determined by means of socio-economic studies, shall be set in a manner that allows the partial recovery of the costs and shall, as long as the condition of social vulnerability of these families endures, be assigned as preferential tariffs.

INDONESIA

Law No. 7/2004 on Water Resources, promulgated 8 March 2004⁴¹⁵

Article 80

(1) Water resources users for the fulfilment of principal daily needs and for small-scale agriculture should not be charged any fees for water resources management.

(2) Water resources users other than those as intended under paragraph (1) should bear a fee for water resources management.

(3) The determination of the amount of water resources management fees as intended under paragraph (2) should be based on accountable and rational economic calculations.

(4) The determination of the unit value of water resources management service fees for each type of water resources use should be based on the consideration of the economic capacity of the user groups and the volume of water resources used.

(5) Determination of the unit value of water resources management service fees for the type of non-commercial use should be exempt from the rational economic calculations as intended under paragraph (3). ...

Regulation No. 23/2006 on technical guidance and procedures for regulating tariff of drinking water in regional administration-owned drinking companies, stipulated on 3 July 2006⁴¹⁶

Article 1

...

⁴¹⁴ Spanish original available at: <http://faolex.fao.org/docs/pdf/hon41347.pdf>

⁴¹⁵ Available at: <http://faolex.fao.org/docs/texts/ins48775.doc>. Cf. as well the elucidation at <http://faolex.fao.org/docs/texts/ins48775-elucidation.doc>.

⁴¹⁶ Available at: <http://faolex.fao.org/docs/pdf/ins67962.pdf>.

(8) Standard of Basic Need for Drinking Water shall be the need for water as much as 10 cubic meter/head of family/month or 60 liters/person/day or as much as other volume stipulated further by the Minister in charge of water resource affairs.

...

(12) Low Tariff shall be a subsidized tariff whose value is lower than the basic cost.

...

Article 2

Stipulation of the tariff shall be based on principles

(a) affordability and justice ...

(e) transparency and accountability ...

Article 3

(1) Tariff of the standard of basic need for drinking water shall be affordable to purchasing power of subscribers having the same income as Provincial Minimum Wage.

(2) Tariff shall meet the principle of affordability as meant in paragraph (1) if domestic expense on the fulfillment of the standard of basic need for drinking water does not exceed 4% (four percent) of the income of subscribers.

(3) Justice in the imposition of tariff shall be achieved through application of differentiation tariff and cross subsidy among group of subscribers.

Article 6

...

(3) Progressive tariff shall be imposed on subscribers whose consumption exceeds the standard of basic need for drinking water.

IRELAND

Local Government (Financial Provisions) Act, No. 29/1997⁴¹⁷

Section 12 - Removal of power of local authorities to make charges for supply of water for domestic purposes, etc.

(2) Section 65A of the 1878 Act is hereby amended by -

(a) the substitution of the following subsections for subsections (1), (1A) and (1B):

(1) A sanitary authority may make charges for water supplied, whether within or outside their functional area, by them, but after the 31st day of December, 1996, a sanitary authority may not make a charge for a supply by them of water for domestic purposes.

Section 12 of this Act in effect abolishes all charges for water supply and sewage disposal facilities for domestic users with effect from 1 January 1997, no matter how much water they use or sewage they produce. Other categories of users (agricultural, industrial, commercial) continue being charged.

KENYA

The National Water Services Strategy (NWSS), June 2007 draft⁴¹⁸

⁴¹⁷ Available at: <http://www.irishstatutebook.ie/1997/en/act/pub/0029/index.html>.

⁴¹⁸ Available at: http://www.cohre.org/view_page.php?page_id=214.

3.4 Key principles of the National Water Services Strategy

The guiding principles for the water sector reform and therefore for the National Water Services Strategy are:

...

4. Water is a social and economic good – water and sanitation service provision for the poor shall be enabled by social tariffs (minimum 20 litres of water per person/day) and users shall pay according to consumption – user pays principle.

LITHUANIA

Law on cash social assistance for low-income families (single residents), Law No. IX-1675 of 1 July 2003⁴¹⁹

Article 6 - Entitlement of families (single residents) to compensations

1. Families (single residents) shall be entitled to compensations provided they comply with the conditions set out in subparagraph 1 of this paragraph and at least one of the conditions set out in subparagraphs 2-4 of this paragraph, and each of the family members (single resident) over 18 years of age complies with at least one of the conditions laid down in subparagraphs 5, 6 and 7 of this paragraph, and the children between 16 and 18 years of age comply with at least one of the conditions laid down in subparagraph 8 of this paragraph: ...

3) costs of the factual quantity of cold water and sewage, but not exceeding the ratio established in Article 7 of this Law, exceed 2% of the income of a family (single resident);

4) costs of the factual quantity of hot water and sewage, but not exceeding the ratio established in Article 7 of this Law, when the centralized heating supply system is used to produce hot water, or costs of other energy or fuel used to produce the standard quantity of hot water as fixed in Article 7 of this Law exceed 5% of the income of a family (single resident); ...

Article 7 - Ratios for calculating compensations

1. The following ratios shall apply in calculating compensations: ...

2) hot water and sewage – 1.5 cubic meter for a family member (single resident) per month;

3) cold water and sewage – 2 cubic meters for a family member (single resident) per month, when centralized heating supply system is used to produce hot water, or 3.5 cubic meters for a family member (single person) per month, when other types of energy or fuel are used to produce hot water.

Article 8 - The Amount of Compensations

1. Families (single residents) shall be entitled to the following compensations, by applying a one-part tariff of heat (electric energy): ...

2) part of the costs of the factual quantity of cold water and sewage, but not exceeding the ratio set in Article 7 of this Law, exceeding 2% of the income of a family (single resident);

3) part of the costs related to the factual quantity used to produce hot water, but not exceeding the ratio set in Article 7 of this Law, exceeding 5% of the income of the family (single resident). The costs related to the production of hot water shall include the consumption of energy or fuel to heat water, not exceeding the set ratio, and the consumption of energy or fuel, ... to a dwelling, to maintain the temperature of hot water (circulation). When hot water is produced by using

⁴¹⁹ http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=253464&p_query=tariff%20water&p_tr2=2.

centralized heat supply, costs related to the production of hot water shall also cover the costs of cold water used to produce hot water (including the costs of sewage).

MADAGASCAR

Water Code, Law No. 98-029 (Unofficial translation)⁴²⁰

Article 54

The tariff and cost recovery policies for potable water and sanitation services must adhere to the following principles:

...

- investment and exploitation costs, on the one hand, and users' ability to pay, on the other hand, shall be taken into account in the principles of water tariffication and the determination of sanitation costs ...

- tariff systems must include provisions allowing domestic consumers with the lowest incomes access to the universal supply of potable water.

MALI

Water Code, Law No. 02-006 of 31 January 2002 (Unofficial translation)⁴²¹

Article 54

...

The tariffs for water volumes used by domestic consumers must include a social allocation at a preferential rate for which the level in cubic metres cannot exceed a ceiling set by a Regulation Commission directive.

Consumption above this social allocation can be charged at progressive tariffs by allocation units that are compatible with users' ability to pay, the structure of consumption, and the financial viability of the activity.

Supply to street fountain managers is a wholesale supply and the tariff applied must be that applicable to the social allocation for domestic consumption.

The supply to street fountains and the initial social domestic allocation is exempt from all taxes and supplementary local taxes.

MAURITANIA

Water Code, Law No. 2005-030 (Unofficial translation)⁴²²

Article 3

The management of water resources must be integral, sustainable and equitable. ...

The management of water resources is subject to the following principles: ...

(5) the principle that the users of public water and sanitation services cover a significant proportion of the costs generated by the services, based on the users' capacity to contribute.

Water Tariff Scheme, 2000⁴²³

In urban areas, the tariff scheme applied to households using a private connection is divided in three domestic rates, one industrial rate and a street fountain tariff: (i) one social rate of consumption below 10 m³/per month which enjoys a subsidised

⁴²⁰ French original version available at: <http://faolex.fao.org/docs/pdf/mad19324.pdf>.

⁴²¹ French original version available at: <http://faolex.fao.org/docs/pdf/mli34988.pdf>.

⁴²² French original version available at: <http://faolex.fao.org/docs/texts/mau69252.doc>.

⁴²³ French original version available at: <http://www.hydraulique.gov.mr/NR/rdonlyres/548AF834-1034-4CF2-8D9F-23B8ECF61A35/0/Rapportpaepa.doc>.

price of 93,5 MRO/m³ (the subsidy is about 60% of the average cost of water, which is about 232 MRO/m³); (ii) a domestic rate averaging 10 and 20 m³/ per month which enjoys a price of 185 MRO/m³ 9 that is a subsidy of 20%); (iii) a superior domestic rate corresponding to a consumption above 20 m³/per month at 232 MRO/m³; (iv) a single industrial rate at a 194 MRO/m³ rate ; and (v) a tariff for street fountains, of approximately 86 MRO/m³.

MEXICO

Water Law of the Distrito Federal, 2003 (Unofficial translation)⁴²⁴

Article 6

In the formulation, execution, and monitoring of the policy of the integral management of water resources, the competent authorities will observe the following principles...

X. The authorities must adopt measures that include the use of techniques and low-cost technologies, a policy of appropriate prices for marginalized zones or common housing, as well as the adoption of institutional mechanisms oriented toward labor benefits for the access to quality hydraulic services.

XI. The determination of payment for hydraulic services should be based on the principle of equity, assuring that these services are accessible to everyone including vulnerable social groups; ...

Article 67

In the case of domestic use, when the public service of potable water does not exist or is suspended, the Sistema de Aguas [Water System] shall consider possible manners/alternatives for the supply by means of carriage tankers or provisional and public pumps. The provision of this service will be free of charge. ...

NICARAGUA

General law on drinking water and sanitation services, Law No. 297 of 2 Juli 1998 (Unofficial translation)⁴²⁵

Article 40

(1) The State shall establish a rational subsidy system for the use of drinking water and sanitation services, exclusively intended for the low income sectors of the population whose consumption is limited to basic needs. ...

(2) The State shall be able to establish cross subsidies between its systems and its users, if this should be necessary to give access to a drinking water and sanitation service to the socio-economic segments of the population whose ability to pay is insufficient to cover the costs of those provisions; however, such subsidy must be removed when these conditions change or a system of direct State subsidies is implemented.⁴²⁶

⁴²⁴ Spanish original at: <http://www.df.gob.mx/leyes/normatividad.html?materia=1&apartado=1&disp=122>.

⁴²⁵ Spanish original at: <http://www.inaa.gob.ni/Documentos/Juridico/Leyes/LEY%20297%20LGSAP.pdf>.

⁴²⁶ The details of the tariff system are regulated in the following instruments: Dispositions regarding the fixing of the tariffs in the drinking water and sanitation sector, Decree No. 45-98 (Unofficial translation), available at:

[http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/1DB0BFC0A47F3277062570A10057A328?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/1DB0BFC0A47F3277062570A10057A328?OpenDocument). and Implementation rules for the decree for the fixing of tariffs for drinking water and sanitation, Resolution No. 001 of 1998 (Unofficial translation), available at: <http://www.inaa.gob.ni/Documentos/Juridico/Leyes/Resolucion%20001.pdf>.

Article 45

The licensee has the following rights ...

(4) To suspend, 15 days after having given notice, the services to users that owe two or more monthly bills and charge the costs for the suspension.

General National Water Law, 15 May 2007 (Unofficial translation)⁴²⁷

Article 5

It is the obligation and undeniable priority of the State to promote, provide, and adequately regulate the provision of potable water to the Nicaraguan people in sufficient quantity and quality and at differentiated costs, while also supporting the sectors with less economic resources.

The provision of this vital service to consumers in an evident state of extreme poverty cannot be blocked, save in case of act of God, which must, in any case, provide them with alternatives for temporary water supply, alternatives provided either at fixed points or in mobile stations. Moreover, these services cannot be blocked to hospitals, health centers, schools, orphanages, nursing homes, penitentiaries, fire stations, nor public markets.

PANAMA

Law for the reorganisation and modernisation of the Institute of National Acueducts and Sewerages, Law No. 77 of 28 December 2001 (Unofficial translation)⁴²⁸

Article 43.

The potable water services provided by IDAAN [Institute of National Acueducts and Sewerages] to persons with a family income that, as has been proved, is below the basic basket of goods, are considered social cases and shall be subsidised by the State in accordance with the following parameters: ...

1. The subsidy shall be granted to poor families or to those of extreme poverty at a discount in the value of the monthly fee which these people shall pay-off. (ESTAS)
2. The subsidy granted to each family shall be revised and updated every two years.
3. The subsidy shall be limited to a maximum of eighty-five percent (85%) and a minimum of twenty percent (20%) of the basic family consumption. ...

PARAGUAY

Tariff Regulations for Licensees with respect to Law No. 1614/2000 (Unofficial translation)⁴²⁹

Article 58. Application of consumption subsidies

A subsidy shall be applied to payment for the consumption of potable water or the use of a sewage system – including the payment of the connection fee – that shall favor residential users with scant resources.

The subsidy can be applicable to the fixed and/or variable charges and/or charges for connection corresponding to the household where its beneficiaries live in a permanent manner.

⁴²⁷ Spanish original yet unpublished; on file with author.

⁴²⁸ Spanish original available at: http://www.ersp.gob.pa/leyes_decretos/Ley77.pdf.

⁴²⁹ Original Spanish version at: http://www.erssan.gov.py/pagina/reg_de_tarifas_para_concesionarios.DOC.

Article 59. The Amount of the Subsidy

The monthly total of the subsidy for a household attributed with variable charges cannot exceed the lowest value resulting from the application of the percentage of the subsidy that shall be based on the following values:

- a) The variable charge corresponding to effective consumption.
- b) The variable charge corresponding to a household's total monthly consumption equivalent to fifteen (15) cubic meters.

The monthly total of the subsidy for each household with fixed charges shall be established so as to apply to those charges the percentage of the subsidy that is determined.

The percentage of subsidies for fixed and variable charges shall be determined in conformity with the relevant research conducted by ERSSAN. This percentage should be the same for beneficiaries who present comparable/similar socio-economic status. Said percentages shall be distributed separately among the fixed and variable charges.

The subsidy on the connection costs shall correspond to 50% of the value established in Article 98 of the present regulation.

Article 60. Conditions for access to the subsidy.

To be eligible for the subsidy, it shall be necessary to comply with the following requirements:

- a) That, taking into account their socio-economic conditions, it is impossible for the family of users living in the property to pay the full amount of the value of the service provisions.
- b) In order to determine the socio-economic level of each eligible residential user for the purposes of granting of the subsidy, the information referring to the income level of the family, household and estate should be considered, provided by the General Department of Statistics, Surveys and Censuses (DGEEC), information from which objective indicators of the socio-economic situation can be established.
- c) Users must not have fallen behind with payment of the service in question.
- d) Those indicated by ERSSAN or by the Titular of Service.

...

In any case, for the definition of users eligible for the subsidy, groups of users that live in urban sectors that have the character of underprivileged urban sectors can be considered. For this purpose, the Titular of the service shall present to ERSSAN the records that allow for the categorization of an urban sector as an area characterized by inhabitants of scant resources. ERSSAN shall authorize the application of the subsidy in urban sectors.

PERU

Draft General Water Law, March 2007 (Unofficial translation)⁴³⁰

Article 58 - Public Access to Potable Water Networks

The state guarantees to everyone access to potable water services at a reasonable cost in sufficient quantity and under conditions of security and quality for the satisfaction of personal and domestic needs.

When entities providing water services should cut or stop the supply of water on account of the non-fulfilment of payment, they shall install mechanisms that permit the minimum permanent flow of water to households that will guarantee the survival of the user. Independently of this obligation, the EPS and JASS will provide free access to 30 liters of water daily per person.

⁴³⁰ On file with author.

RWANDA

Interministerial Decree No. OI/MINICOM/MINECOFIN/97 of 30 May 1997 amending interministerial Decree No. OI/MICOMART/MINIFIN/96 of 29/07/1996 fixing the price for the sale of water, electricity and related services offered by ELECTROGAZ and determining the modalities for recovery and use of revenues (Unofficial translation)⁴³¹

The decree establishes an increasing block tariff system, with a first tranche of 25m3 per month at a significantly reduced rate. In addition, it provides a maximum price for water from streets fountains (8 FRW per 20 litres jerrycan).

RUSSIAN FEDERATION

Housing Code, Law No. 188-F3 of 29 December 2004 (unofficial translation)⁴³²

Article 159

1. **Subsidies for** the payment for living quarters and **public services** (hereinafter - subsidy) are given to citizens if their expenditures for the payment for living quarters and public services, calculated on the basis of the size of the regional standard of the normative dimension of living quarters utilized for calculating the subsidies, and the amount of the regional standard for the cost of housing and public services, ... exceed the maximum permissible share of the expenditures of citizens for the payment of living quarters and public services in the joint family income. ...

SAINT KITTS AND NEVIS

Nevis Water Rates⁴³³

Increasing block-tariff and cross-subsidy between domestic and non-domestic uses. Two categories of social users. Consumers falling under the category "most needy" receive 2,000 gallons per month free of charge.

SENEGAL

Water Service Regulation, Decree No. 98-1025, 1998 (Unofficial translation)⁴³⁴

Article 7

(2) Social connection

Only those buildings exclusively used for living purposes and equipped with a 15mm water meter are capable of benefiting from a social connection.

The realisation to social connections is only possible within the overall programme, financed wholly or partly by the SONES, following an extension procedure as defined in article 8. They will be connected following an investigation regarding the new subscribers' willingness to pay.

The benefit of provision free of charge or the social connection subsidy will automatically be revoked in the event the subscriber has obtained a social connection by making an incomplete or fraudulent declaration, or subsequently interfered with the use of the connection. In those cases, the termination of the

⁴³¹ French original version available at: <http://faolex.fao.org/docs/pdf/rwa12746.pdf>.

⁴³² Russian original available at: <http://www.consultant.ru/popular/housing/>.

⁴³³ Available at: <http://www.cbwmp.org/nevis.htm>.

⁴³⁴ French original version available at: <http://faolex.fao.org/docs/html/Sen16034.htm>.

subscription shall be immediate. The subscriber shall retrieve the right to subscription following payment of the actual value of the connection, notwithstanding the possibility of a legal action that the Water Service may decide to take.

Accordingly, the subscriber shall expressly authorise the waters service provider to periodically verify the adequacy of the internal systems, subject to the conditions of the granting of the social connection.

ANNEX I

Social rate for subscribers entitled to social tariff. Full or single rate for other subscribers and for temporary subscribers.

Rates charges for the Senegalese Water Service⁴³⁵

Social rate for first 20 m3.

SIERRA LEONE

Water Company Act, Act No. 6 of 2001⁴³⁶

Article 37

(2) The company may fix different rates for different areas or different classes of consumers.

Article 38

The company shall direct its rating policy towards ensuring that – ...

c) rates charged for water supplied to industrial and commercial concerns are higher than those charged for domestic supply in the same locality...

SOUTH AFRICA

Water Services Act, Act 108 of 1997, amended 2004⁴³⁷

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 ...

Free Basic Water Policy, 2000

In September 2000, the South African President announced the implementation of a Free Basic Water policy, which allows all households to obtain 6,000 litres of water per month free of charge. This quantity is calculated on the basis of 25 litres

⁴³⁵ Original French at: <http://www.sde.sn/h2otarif.htm>.

⁴³⁶ Available at: <http://www.sierra-leone.org/Laws/2001-6.pdf>.

⁴³⁷ Available at: <http://www.wrc.org.za/downloads/legislature/WSA108-97.pdf>;
www.polity.org.za/attachment.php?aa_id=1385.

per person per day for a household of eight persons.⁴³⁸ The South African Department of Water Affairs and Forestry estimates that, as of 30 November 2007, 76.8% of the population, including 70.1% of people living in poverty, have been served by the free basic water policy.⁴³⁹

Johannesburg Schedule of Water Tariffs 2006-2007⁴⁴⁰

The first tranche of 6,000 litres per family per month is free of charge. An increasing block tariff applies to water use beyond that basic amount.

SRI LANKA

National Policy on Water Supply and Sanitation (WSS Policy), 2002⁴⁴¹

3.3 Tariffs, Operational Costs and Subsidies

Strategies ...

d. A sewerage tariff that covers operation and maintenance costs shall be introduced in areas served by a sewerage collection system and charged to the user based on water consumption.

e. The water tariff structure shall make appropriate provisions for low-income urban and rural consumers including an appropriate lifeline tariff to ensure the affordability of a level of water sufficient for basic consumption and hygiene.

TAJKISTAN

Water Code of the Republic of Tajikistan, 29 March 2000, as last amended 3 March 2006⁴⁴²

Article 31 – Fees for water use

General water use in RT [Republic of Tajikistan] is free of charge.

TURKMENISTAN

Water Code, 1 November 2004 (unofficial translation)⁴⁴³

Article 29

Except for the cases for which water charges are provided by national legislation, water use is free of charge.

Presidential decree on free gas, electricity, water and salt, 1993⁴⁴⁴

In 1993, President Niyazov decreed that each household should be given a monthly gift of 50 cubic metres of free gas, 25 kilowatt hours of electricity and 250 litres of water.

⁴³⁸ See Department of Water Affairs and Forestry, *Regulations Relating to Compulsory National Standards and Measures to Conserve Water*, 2001, available at: <http://www.dwaf.gov.za/Documents/Notices/Water%20Services%20Act/SEC9DREG-20%20April%202001.doc>, at 3.

⁴³⁹ Department of Water Affairs and Forestry, 'Free Basic Water Project: Implementation Status, 31 October 2007, <http://www.dwaf.gov.za/FreeBasicWater> .

⁴⁴⁰ Available at: http://www.joburg-archive.co.za/2006/pdfs/services/water_tariffs.pdf. There is also a free lifeline tariff for electricity covering 50 kWh per month.

⁴⁴¹ Available at: <http://www.waterboard.lk/scripts/ASP/Policies.asp>.

⁴⁴² Available at: <http://faolex.fao.org/docs/pdf/taj34375E.pdf>.

⁴⁴³ Russian version available at: <http://faolex.fao.org/docs/texts/tuk54109.doc>.

⁴⁴⁴ See: <http://www.un.org/ga/children/turkmenistanE.htm>.

At a recent meeting of the Khalk Maslakhaty (People's Council), he pledged that the term of the free use of gas, electricity, water and salt policy is prolonged until 2020.

UNITED KINGDOM
Water Industry Act, 1991⁴⁴⁵

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 ...

⁴⁴⁵ As amended in 1999, <http://www.hmso.gov.uk/acts/acts1999/19990009.htm#2> and <http://www.hmso.gov.uk/acts/en/99en09-b.htm>.

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....

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.

UNITED STATES OF AMERICA
California Public Utilities Code, 1993⁴⁴⁶

Section 739.8.

(a) Access to an adequate supply of healthful water is a basic necessity of human life, and shall be made available to all residents of California at an affordable cost.

(b) The commission shall consider and may implement programs to provide rate relief for low-income ratepayers.

(c) The commission shall consider and may implement programs to assist low-income ratepayers in order to provide appropriate incentives and capabilities to achieve water conservation goals.

(d) In establishing the feasibility of rate relief and conservation incentives for low-income ratepayers, the commission may take into account variations in water needs caused by geography, climate and the ability of communities to support these programs.

VENEZUELA
Organic Law on the Provision of Potable Water and Sanitation Services, 31 December 2001 (Unofficial translation)⁴⁴⁷

Under the title "Subsidies Regime", this law provides a broad set of principles and guidelines that are to be implemented in subsidies regulations, including the necessity to finance the minimum necessary consumption for an average family or that subsidies must be focused on low-income families (Article 95). The law further regulates the different kinds of subsidies that may 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 subscribers with a low capacity to pay. Each subscriber's bill is to clearly 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 higher than the cost of providing efficient services, in order to contribute to financing basic consumption of subscribers with a lower capacity to pay (Article 102).

5.2.6 Participation and Access to Information

ANGOLA
Water Act, 21 June 2002 (Unofficial translation)⁴⁴⁸

Article 9

Principles for the management of water resources

1. The management of water resources is governed by the following principles:

- a. the right to water of the citizen and of collective entities; ...
- e. institutional coordination and participation of communities; ...

⁴⁴⁶ Available at: http://www.legaltips.org/california/california_public_utilities_code/.

⁴⁴⁷ Spanish original available at: <http://www.asambleanacional.gov.ve/ns2/leyes.asp?id=206>.

⁴⁴⁸ Portuguese original available at: <http://www.minea.gv.ao/Minea/Detalhes.cfm?Plano=22&>.

2. The implementation of these principles shall be ensured by the State and by all stakeholders in the management and use of water, in accordance with this Law and its regulations.

ARMENIA

Water Code of the Republic of Armenia, 2002⁴⁴⁹

Article 20 – Public Participation

(2) Should any person be aware of or become aware of a situation where water resource quality or water use poses a potential threat to human health or security, or cause water resource pollution, that person shall notify the Water Resources Management and Protection Body of the occurrence and location. The polluter of the water resource has a duty to notify the Water Resources Management and Protection Body about the pollution. The Water Resources Management and Protection Body shall immediately disclose this information to the public in a manner insuring that all persons at risk have an adequate opportunity to learn about the level of risk and the potential consequences.

(3) In order to get information on the water sector any person is entitled to apply to the appropriate body and to obtain within 30 days that information, except for cases established by the legislation. The procedure for the provision of information shall be established by the Government.

Article 106 - Participation of Non-Governmental Organizations and Citizens in the Protection of Water Resources and Water Systems

Non-Governmental Organizations and citizens are entitled to participate in the discussions relevant to the water resources and water systems and provide comments by procedures established by legislation.

In the conduct of activities aimed at the protection of water resources and water systems the state authorized management bodies [have] a right to take into consideration the recommendations of public organizations and citizens.

Law of the Republic of Armenia on provision of sanitary-epidemiological security of the population, 1992⁴⁵⁰

Article 9 - Rights and liabilities of enterprises, institutions and organizations on provision of sanitary-epidemiological security

The enterprises, institutions and organizations that act within the area of the Republic of Armenia have the rights to:

- 1) Obtain information on the sanitary-epidemiological situation, the environment, the state of health of the population and sanitary regulation.
- 2) Participate in the development, discussion and implementation of Governmental decisions concerning the provision of sanitary-epidemiological security of the population. ...

Article 10 - Rights and liabilities of citizens on provision of sanitary-epidemiological security

The citizens have the rights to:

...

- 2) Obtain direct and complete information on the sanitary-epidemiological condition of the environment.

⁴⁴⁹ http://www.parliament.am/law_docs/290602HO373eng.pdf?lang=eng.

⁴⁵⁰ <http://faolex.fao.org/docs/texts/arm47094E.doc>.

3) Participate in the processes of decision-making, project development, discussion and acceptance concerning the provision of sanitary-epidemiological security of the population, and control their implementation.

...

Article 25 - Public, hygienic and anti-epidemiological control

The non-governmental and political non-governmental organizations and citizen groups are authorized by the legislation of the Republic of Armenia to implement public control aimed at protection of the sanitary legislation of the Republic of Armenia and provision of sanitary-epidemiological security but must inform the State hygienic and anti-epidemiological service of the Republic of Armenia about the results of the activities performed.

AUSTRALIA

Australian Utilities Act 2000 No. 65, 2002, last amended by A2007-22 of 6 September 2007⁴⁵¹

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.

Section 53 of this Act states that the ICRC is required to ensure that all documentation related to decisions on licence provision to utility providers is made available for inspection by members of the public at its offices, at other places determined by ICRC, and on its website. At the ICRC's office, a member of the public may inspect such a document without charge or make a copy of it for a fee.

AZERBAIJAN

Law on sanitary and epidemiological well-being of the population, Law No. 371 of 1992 (Unofficial translation)⁴⁵²

⁴⁵¹ Available at: <http://www.legislation.act.gov.au/a/2000-65/default.asp>.

⁴⁵² <http://faolex.fao.org/docs/texts/aze47716.doc>

Article 6

Citizens of the Azerbaijan Republic have the right to obtain the existing complete, reliable and free information about the stage of morbidity, the epidemiological situation and the radiological situation, the state of environment and their influence on human health, about the results of carried out hygienic and other special examinations, about taken by public organs and officials the decisions, realization of which is connected with influence on the health of population and the environment.

Article 7

Citizens of the Azerbaijan Republic have the right to participate in the preparation and the control over the realization of decisions, adopted by the organizations and officials, both individually, and collectively, the implementation of which is has influence on the health of the population and the environment.

BANGLADESH

National Water Policy, 1999⁴⁵³

4.16 Stakeholder Participation

...

d. All opportunities are explored and efforts undertaken to ensure that the landless and other disadvantaged group are directly involved in participatory management of local water resources. ...

BELARUS

Water Code of the Republic of Belarus, Law No. 191-3 of 15 July 1998, as last amended 13 June 2007 (unofficial translation)⁴⁵⁴

Article 11

Citizens and public associations have the following rights, established in due order, in the field of water use and conservation:

to participate in the examination by the local Soviets of Deputies, and the administrative state organs, of the questions related to use and water conservation;

to take part in carrying out of actions on rational use and protection of water resources;

...

to exercise public control over use and protection of waters;

to obtain, in the order established by the legislation of the republic of Belarus, information about the state of water objects, about the sources of water pollution and about the measures for the protection of water;

...

Article 37

...

Water consumers have the right to demand from the owner of water (water-supplier) information on the quality of the potable water used for the satisfaction of drinking and household needs.

⁴⁵³ Available at: http://www.warpo.gov.bd/nw_policy.pdf.

⁴⁵⁴ Russian original available at: <http://pravo.by/webnpa/text.asp?RN=HK9800191>

Law on drinking water supply, Law No. 271-Z of 24 June 1999, as last amended 20 July 2006 (Unofficial translation)⁴⁵⁵

Article 34

Information on drinking water quality is provided to applicants free of charge without delay on first application, or to all consumers of drinking water through mass media or by another method in the cases indicated in the second part of present article.

In the cases of detection of the nonconformity of the quality of drinking water with normative requirements, which can entail a threat to the health of the natural persons, the owners of the systems of drinking water supply, drinking water supply companies and the organs of state sanitary supervision are obliged to inform the users of drinking water about this immediately...

BRAZIL

Law on Basic Sanitation, Law 11445 of 7 January 2007 (Unofficial translation)⁴⁵⁶

Article 9

The service holder shall draft the corresponding public basic sanitation policy, and, for that end, shall:

...

VI - establish an information system for the services that is combined with the National System of Information on Sanitation; ...

Article 11

The following are conditions for the validity of contracts for the delivery of public basic sanitation services: ...

IV - holding a previous public hearing and consultation about the bidding announcement, in case of concession, and on the draft contract. ...

§ 3 Contracts may not include clauses that jeopardize regulatory and inspection activities or access to information on the contracted services. ...

Article 26.

Publicity shall be granted to reports, studies, decisions and equivalent instruments referring to the regulation or inspection of services, as well as to the rights and duties of users and service providers; anyone shall have access to them, irrespective of direct interest. ...

§ 1 Documents considered as being confidential due to relevant public interest shall be excluded from the provision of the caption to this article, upon previous and motivated decision.

§ 2 The publicity referred to under the caption to this article shall become effective, preferably, by means of a website on the world wide web - Internet.

Article 27.

Users of public basic sanitation services, in accordance to the legal, regulatory and contractual rules, are granted:

I - broad access to information on the services rendered;

⁴⁵⁵Russian original at: <http://pravo.by/webnpa/text.asp?RN=H19900271>.

⁴⁵⁶ Portuguese original at: http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Lci/L11445.htm.

- II - previous knowledge of all their rights and duties and penalties to which they may be subject to;
- III - access to a service delivery manual and user service manual, prepared by the service provider and approved by the corresponding regulatory entity;
- IV - access to periodical reports on the quality of the services rendered.

Article 47.

The social control over public basic sanitation services may include the participation of collegiate bodies with a consultative character, at the level of the states, the Federal District and municipalities, assuring representation by:

- I - service holders;
- II - governmental bodies related to the basic sanitation sector;
- III - public basic sanitation service providers;
- IV - basic sanitation service users;
- V - technical entities, civil society and consumer defense organizations related to the basic sanitation sector.

Article 51.

The drafting and revision process of the basic sanitation plans must foresee its joint publicizing along with the studies that support them, the receiving of suggestions and criticism by means of public consultations or hearings and, whenever foreseen in the legislation of the service holder, an analysis and opinion by the collegiate body established in accordance with art. 47 of this Law.

Sole paragraph. The dissemination of proposals for basic sanitation plans and of the studies that support them shall take place by making its content fully available to all interested parties, including on the Internet, and by means of public hearing.

Article 53.

The National System for Information on Basic Sanitation - SINISA is established hereby, and its objectives are:

- I - to collect and systematize data regarding the conditions of public basic sanitation service delivery;
- II - to provide for statistics, indicators and other relevant information for characterizing the demand and supply of public basic sanitation services;
- III - to allow and facilitate the monitoring and evaluation of the efficiency and efficacy of the delivery of basic sanitation services.

§ 1 All information available to SINISA shall be made public and accessible to all, and must be published on the Internet.

§ 2 The Union shall support service holders in setting up information systems on basic sanitation, in compliance with the provisions of numeral VI of the caption to art. 9 of this Law;

COLOMBIA

Law 142 of 11 July 1994, establishing the regime for public household services (Unofficial translation)⁴⁵⁷

Article 5 - The responsibility of municipalities in the provision of public services

5.2 - To ensure...the participation of users in the management and financing of the entities that provide public services in the municipality. ...

⁴⁵⁷ Spanish original available at:

http://www.crt.gov.co/Documentos/Normatividad/Leyes/LEY_142_94.pdf.

Article 9 - Rights of users

The users of public services have the right to...

9.4. - To request and obtain complete, precise and timely information about all activities and direct and indirect operations that are carried out for the provision of public services...

Article 53 - Systems of Information

It is the responsibility of the Office of the Superintendent, in the development of its inspection and surveillance functions, to establish information systems that must organize and keep updated public service companies so that their presentation to the public is credible.

In any case, the evaluations of public service companies made by external auditors should be published annually at the very least and in major media outlets in the territory where the service is provided, if such media outlets should exist there. This evaluation should be distributed widely among users.

The entities responsible for providing public utilities should, in a precise manner, periodically report on the utilization of the budgetary subsidies that were given.

Article 62 - Organization

... in all of the municipalities there shall be "Committees for Development and for the Social Control of Public Utilities," composed of users, subscribers, or potential subscribers to one or more public services.

The initiative for the creation of these committees belongs to the users, subscribers, or potential subscribers...The committees will be given their own regulations and shall convene at the place, date, and time agreed upon by their members.

Once a committee is constituted, it is the obligation of municipal authorities and of public service companies before whom the committees solicit recognition to recognize these committees.

Each one of these committees shall choose among its members and by majority decision a "Member of Control" who will act as its representative before public service providers...before territorial bodies and before national authorities in matters concerning said public services...

Article 63 - Functions

... with the aim of ensuring the participation of users in the management and financing of companies providing public utilities, the Committees on Development and Social Control of public household services will exercise the following special functions:

63.1 - To propose to companies providing public utilities the plans and programs that are considered necessary to resolve deficiencies in the provision of public utilities.

63.3 - To solicit the modification or reform of decisions adopted in the matter of stratification. ...

63.4 - To study and analyze the sum of subsidies that the municipality ought to grant, with its budgetary resources, to low income users; to examine the criteria and mechanisms for the delivery of those subsidies; and to propose adequate measures to this effect.

63.5 - To solicit...the imposition of fines on companies that provide public utilities in their territory...when damages to users arise from the provision.

Article 64 - Functions of the "Vocal de Control" ["Member of Control"]

The members of these committees will realize the following functions.

64.1 - To inform users of their rights and duties with respect to matters of public utilities, as well as to help these users defend and realize those rights and duties respectively.

64.2 - To receive and evaluate user reports concerning the operation of companies providing public utilities; as well as to promote, before both these companies and the municipal authorities, departmental and national corrective measures that will be within each of their respective realms of responsibility.

64.3 - To give due attention to every request and to process complaints and charges raised in the committee by any committee member.

64.4 - To hand over to the committee reports on previous subjects, to receive its opinions, and to prepare necessary actions.

It is the obligation of public utility companies to process and respond to the applications of these members.

Article 65 - The authorities and the participation of users.

For the adequate implementation of civic participation the following is incumbent upon the authorities:

65.1 - The municipal authorities should carry out the broad and continuous task of working with the community to introduce the basic functional elements of the committees as well as to prepare and advise them permanently in their operation.

65.2 - The departments will have at their charge the promotion and coordination of the system of participation, by means of action applicable throughout all of their territory.

In coordination with the municipalities and the Superintendent's Office, they should ensure the training of the members, providing them with basic instruments that permit them to better organize their work and to rely on the information necessary to represent the committees.

65.3 - The Superintendent's Office will have at its charge the design and implementation of a system of oversight and control that will enable it to aid in the tasks of the committees on development and social control of public utilities.

Article 80 - Functions concerning the participation of users.

The Office of the Superintendent will have...the following functions to support the participation of users:

80.1 - To design and put into operation a system of surveillance and control that allows it to support the tasks of the committees on development and social control of public utilities.

80.2 - To ensure the training of members, providing them with the basic instruments that will allow them to better organize their financing work and to rely on the necessary information to represent their committees.

80.3 - To provide the necessary technical support for the promotion of the participation of the community in tasks related to surveillance

80.4 - To sanction companies that fail to respond in a timely or adequate manner to the complaints made by users.

Draft Water Law, 17 January 2005 (Unofficial translation)⁴⁵⁸

⁴⁵⁸ Spanish original available at: [http://www.oas.org/dsd/environmentlaw/waterlaw/documents/Colombia-Proyecto de Ley del Agua \(2005\).pdf](http://www.oas.org/dsd/environmentlaw/waterlaw/documents/Colombia-Proyecto de Ley del Agua (2005).pdf)

Article 3.4. Transparency.

The management of water resources by environmental authorities must be public and objective.

COSTA RICA

Law on the Regulating Authority for Public Services, Law 7593 of 9 August 1996, as amended 27 December 2002 (Unofficial translation)⁴⁵⁹

Article 30. Change of tariffs

The providers of public services, legally constituted organizations of consumers, and any other relevant public entity shall be able to present applications for the change of charges and prices. The Regulatory Authority will be obligated to receive and process those petitions, only when, with their presentation, they keep with the formal requirements that the regulation shall establish. This authority will be able to modify, approve, or reject these petitions...

Article 35. Access to technical studies

The Regulatory Authority shall grant to consumers and users of public services regulated by this law, the Office of the Public Advocate, and the ministers governing such services access to the technical research on which this establishment is based.

Article 36. Convocations

For the points indicated in this article, the Regulatory Authority shall convene a hearing in which persons with a legitimate interest in speaking shall be able to participate. With that aim, the Regulatory Authority will arrange to publish, in the official newspaper La Gaceta and in two periodicals with national circulation, the points which shall be enumerated as follows:

- a) The applications for the common fixing of costs and tariffs for public services. ...
- c) The formulation and revision of technical norms applicable to the public services subject to regulation.
- d) The formulation and revision of the models for the fixing of prices and costs, which are to conform with Article 31 above.

After the publication a hearing will be arranged within a period of thirty calendar days for the presentation of opposition/objections with a basis in technical research. The oppositions/objections shall be formulated in writing and shall be sustained orally with arguments grounded in the pertinent facts and law. In this hearing those who have the floor form the opposition, as is stipulated in the regulations.

The Regulatory Authority will establish a registry of associations for the defense of consumers and users, associations for community development, and other social organizations that will be able to oppose, when they have a legitimate interest, the contents of the publications.

Draft Law on Water Resources, proposal No. 14585, 2005 (Unofficial translation)⁴⁶⁰

Article 2. General Principles

...

⁴⁵⁹ Spanish original available at: http://www.aresp.go.cr/docs/01-2003-ML_Ley_%20Autoridad_Regul.pdf.

⁴⁶⁰ Spanish original available at: <http://www.conare.ac.cr/proyectos/14585%20dic.htm>. The draft was approved by the Comisión Permanente Especial de Ambiente on 14/4/2005 and is currently under debate in parliament.

ñ) Citizen participation: The State shall develop mechanisms to guarantee the opportune and informed community participation and realise public consultations and decision-making procedures in the fields of conservation, management and use of water resources.

p) Gender equity: Women play a central role in the provision, management and protection of water.

Article 47. Transparency and citizen control in allocation of resources

...

(2) Every citizen who so requests shall have a right to be informed by the directorate [la Dirección] and the institutions providing public services related to the utilisation of water resources, about the state of collection of the charges established in the present law, charges collected, defaulting persons or entities and the allocation of the resources carried out in conformity with the objectives established in the present law.

DOMINICAN REPUBLIC

Law No. 64-00, General Law on the Environment and Natural Resources, 2000 (Unofficial translation)⁴⁶¹

Article 6.

... The State shall guarantee the participation of the communities and the inhabitants of the country in the conservation, management and sustainable use of the natural resources and the environment, as well as access to truthful and accurate information about the situation and the state of the same.

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 policy⁴⁶²

This directive is included in the National Standards Section as European Directives have the force of national law in EU Member States. Under Article 24 of the Directive, Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 22 December 2003 and were to immediately inform the European Commission.

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: ...

GEORGIA

Water Law, Law No. 936-Ic of 1997 (Unofficial translation)⁴⁶³

⁴⁶¹ Spanish original available at: <http://www.medioambiente.gov.do/cms/archivos/legislacion/ley64.pdf>.

⁴⁶² http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=32000L0060&model=guichett.

⁴⁶³ Available at: <http://faolex.fao.org/docs/texts/geo42199.doc>.

Article 13

1. Natural and legal persons participate in the activities to guarantee the protection, rational and regular use of water in line with the order established by the legislation of Georgia. ...

3. Natural and legal persons have the right:

a) to obtain complete, timely and objective information (besides the information, which contains State or commercial secrets) from the State organs about the state of the water;

...

c) to contribute to the implementation of the corresponding State programs;

g) to take direct part in the work on water conservation;

d) to introduce proposals regarding improvement in water conservation.

GUATEMALA

Draft General Water Law, Draft Law No. 3118 of 1 August 2005 (Unofficial translation)⁴⁶⁴

Article 2. Principles.

...

f) Principle of participation of the population. The State shall promote the participation of the population in decisions that affect the population as concerns quality, quantity, opportunity [to access] or other aspect of the resource.

HONDURAS

Decree No. 118-2003, Framework Law for the Drinking Water and Sanitation Sector (Unofficial translation)⁴⁶⁵

Article 6. Definitions

For the purpose of the present law, the following shall mean:

8) TRANSPARENCY: Principles according to which the provision of services, investment plans, financial results and the tariffs shall be explicit and public; ...

Article 25.

The users of the public drinking water and sanitation services enjoy, inter alia, the following rights: ...

2) To receive information about the provision of the services, tariff system and method of payment, plans regarding expansion and improvement of services, and any other circumstances that may be of their interest, with sufficient detail form to enable them to exercise their rights as users; ...

Draft General Water Law, 2005 (Unofficial translation)⁴⁶⁶

Principles:

The following principles are applicable within the normative framework of water management: ...

⁴⁶⁴ Original Spanish version at: <http://www.ccad.ws/documentos/agua/3118.pdf>.

⁴⁶⁵ Spanish original available at: <http://faolex.fao.org/docs/pdf/hon41347.pdf>

⁴⁶⁶ Available at:

http://rds.hn/uploads/files/DOC_609_ANALISIS_DEL_PROYECTO_LEY_GENERAL_DE_AGUAS.pdf.

e) The utilization and conservation of water is based on citizen participation involving users, planners, regulators at all levels, within an equitable framework;...

INDIA

National Water Policy, 2002⁴⁶⁷

Participatory Approach to Water Resources Management

12. Management of the water resources for diverse uses should incorporate a participatory approach; by involving not only the various governmental agencies but also the users and other stakeholders, in an effective and decisive manner, in various aspects of planning, design, development and management of the water resources schemes. Necessary legal and institutional changes should be made at various levels for the purpose, duly ensuring appropriate role for women. Water Users' Associations and the local bodies such as municipalities and *gram panchayats* should particularly be involved in the operation, maintenance and management of water infrastructures / facilities at appropriate levels progressively, with a view to eventually transfer the management of such facilities to the user groups / local bodies.

INDONESIA

Law No. 7/2004 on Water Resources, promulgated 8 March 2004⁴⁶⁸

Article 70

(1) The Government and regional government should organize the empowerment of water resources stakeholders and institutional owners in a well-planned and systematic manner to improve water resources management performance.

(2) Empowerment as intended under paragraph (1) should be conducted in water resources planning, construction execution, supervision, operation and maintenance, by involving the role of the people.

(3) Community groups on their own initiative may organize empowerment efforts for their respective needs guided by the purposes of empowerment as intended under paragraphs (1) and (2).

(4) Empowerment as intended under paragraph (1) should be conducted in the form of education and training, research and development as well as counselling.

Article 82

In the execution of water resources management, the people are entitled to:

- a. Obtain information related to water resources management;
- b. Obtain proper compensation for loss incurred as a result of the execution of water resources management;
- c. Obtain the benefits of water resources management;
- d. Declare their objection against the announced water resources management plan within a certain period in accordance with local conditions;
- e. File reports and claims with the related authority for loss incurred to them regarding the execution of water resources management; and/or
- f. File a suit with the court regarding various water resources issues that inflict a loss in their lives.

⁴⁶⁷ Available at: <http://wrrmin.nic.in/>.

⁴⁶⁸ Available at: <http://faolex.fao.org/docs/texts/ins48775.doc>. Cf. as well the explanation at <http://faolex.fao.org/docs/texts/ins48775-elucidation.doc>.

KAZAKHSTAN

Water Code of the Republic of Kazakhstan, Law No. 481-2 of 09 March 2003, as last amended 27 July 2007 (Unofficial translation)⁴⁶⁹

Article 62

Natural persons have the right:

- 1) to use bodies of water in the order established by the legislation of the Republic of Kazakhstan to carry out measures for their protection ...;
- 2) to apply to the State bodies and organizations with inquiries, complaints, applications and proposals concerning the use and protection of bodies of water and to require their consideration;
- 3) to submit proposals for public ecological examinations in the field of use and protection of water resources and to participate in it;

...

- 5) to realise the other rights stipulated by laws of the republic of Kazakhstan in the field of use and protection of water resources.

KYRGISTAN

Water Code of the Kyrgyz Republic, Law No. 8 of 12 January 2005⁴⁷⁰

Article 6 - Principles for the management of water resources

The management of water resources is based on the following principles:

Participatory Principle – All interested stakeholders should participate in planning and decision-making processes;

...

Principle of Openness – Information on the condition and use of water bodies and water resources should be accessible to the public.

Article 21 - Rights and duties of water users

...

4. Water users have the right: ...

to participate in decision making on water resource management; ...

to information concerning the quantity, quality and use of water resources in accordance with the provisions of this Code; ...

Article 93 - Content of the Single Water Information System

The Single Water Information System comprises:

the Register of Water User Permissions and Special Water Use Permissions;

the Register Permissions on discharge of wastes and polluted matters to water bodies, water economy constructions and lands of water funds;

the State Water Cadastre;

other information identified by the Government of the Kyrgyz Republic.

Article 96 - Public access to information systems

The representatives of public shall have access to the Single Information System except cases identified in item 2 of Article 97.

⁴⁶⁹ Original Russian version at: <http://www.pavlodar.com/zakon/?dok=02874&ogl=all>.

⁴⁷⁰ Available at: <http://faolex.fao.org/docs/texts/kyr49854E.doc>

Law on drinking water, Law No. 33 of 25 March 1999, as last amended 28 June 2003 (Unofficial translation)⁴⁷¹

Article 19

Consumers of drinking water supplied by the systems for household drinking water supply have the right to demand from the suppliers adequate information about the quality of drinking water, its conformity with requirements of standards, sanitary rules and regulations, and also the certificate of conformity. ...

On identification of the nonconformity of the water quality with specific parameters, evidencing a threat to public health, the suppliers of water and controlling bodies must ensure the immediate notification of the water consumers through the media together with information about the precautionary measures that can avoid the emerging danger.

...

Bodies for the protection of the rights of consumers at the local State administration and public consumer organizations can cooperate with State organs for sanitary-epidemiological supervision and the organs of standardization, metrology and certification in the implementation of control of the quality of drinking water, the collection and the data analysis from the population about the claims for its quality; to bring action to the court regarding compensation for damage occurred as a result of the consumption of the water which does not correspond to the required quality standards, and the violation of the rights of users in the field of household drinking water supply of population.

LATVIA

Law on Water Management, 1 October 2002⁴⁷²

Article 6 - Rights of the user of water resources

The user of water resources shall have the following rights:

...

4) to receive information about the environmental objectives established for water bodies, production of management plans and programmes of measures and to take part in the public consultation on the management plans.

Article 23 - Information to the general public

(1) The State Geology Survey shall encourage active involvement of general public in the implementation of this Law, in particular, in the development, review and updating of the river basin management plans, ensuring that, for each river basin district, the following information is published and made available for comments to the public, including water users:

- 1) a timetable and work programme for the production of the plan, including a statement of the measures for involvement of the public to be taken - at least three years before the beginning of the period to which the plan refers;
- 2) an overview of the significant water management issues identified in the particular river basin district - at least two years before the beginning of the period to which the plan refers;
- 3) draft copies of the management plan - at least one year before the beginning of the period to which the plan refers.

⁴⁷¹ Russian version available at: <http://www.gsen.in.kg/upload/docs/ZakonW.doc>.

⁴⁷² <http://faolex.fao.org/docs/texts/lat42197.doc>.

(2) Upon request of any natural or legal person the State Geology Survey and other involved institutions shall give access to the background documents and information used for the production of the draft management plan.

(3) In order to allow active public involvement and consultation, the time for comments on the documents referred to in Paragraph one, shall be at least six months.

MALAYSIA

Water Services Industry Act (Act 655), 20 July 2006⁴⁷³

68. Consumer standards

(1) The Commission may, on its own initiative or upon the recommendation of the Water Forum, prepare or caused to be prepared consumer standards which shall include model procedures for—

- (a) reasonably meeting consumer requirements;
- (b) the handling of customer complaints and disputes including a mediation process other than a court, and procedures for the compensation of customers in case of a breach of the consumer standards; and
- (c) the protection of consumer information.

(2) The matters which the consumer standards may address may include—

- (a) the provision of information to consumers regarding services, rates and performance;
- (b) service levels and quality of service to be provided to consumers;
- (c) the provision of fault repair services;
- (d) customer charging, billing, collection and credit practices; and
- (e) any other matters of concern to consumers.

69. Water Forum

(1) The Commission shall designate a body to be known as the “Water Forum” for the purposes of this Act by notifying the body in writing, if the Commission is satisfied that—

- (a) the membership of the body is open to all persons;
- (b) the body is capable of performing as required under the relevant provisions of this Act; and
- (c) the body has a written constitution. ...

70. Functions of the Water Forum

(1) The Water Forum shall have all the functions imposed on it under this Act and, without prejudice to the generality of the foregoing, the Water Forum shall have the following functions:

- (a) to give feedback and make recommendations to the Commission on any matters concerning the interest of consumers of the water supply services and sewerage services;
- (b) to represent the interests of consumers of the water supply services and sewerage services;
- (c) to promote consumer’s interest in relation to the tariffs and standards of water supply services and sewerage services;

⁴⁷³ Available at: <http://www.agc.gov.my/agc/oth/Akta/Vol.%2014/Act%20655.pdf>. As of December 2007 the entry into force of the Act was still pending.

- (d) to identify and keep under review matters affecting the interests of consumers and ensure that the water supply services and sewerage services companies are aware of, and responsive to, concerns about their services;
 - (e) to publicise the existence, functions and work of the Water Forum in protecting the interests of consumers; and
 - (f) to carry out any functions as may be determined by the Commission.
- (2) The Commission shall have due regard to the recommendations of the Water Forum in the exercise of its powers and the performance of its functions under this Act.

MEXICO

Water Law of the Distrito Federal, 2003 (Unofficial translation)⁴⁷⁴

Article 6

In the formulation, execution, and monitoring of the policy of the integral management of water resources, the competent authorities shall observe the following principles...

V. The approach and management of water ought to be motivated by a plan based on the participation of users, the planners, and those responsible for the making of decisions.

VII. Every person has the right to receive and consent to information related to the management of water resources and the provision of hydraulic services;...

Article 9

The Executive Council of the Water System [Consejo Directivo del Sistema de Aguas] shall consist of thirteen proprietary members and their respective substitutes, in accordance with the following provision:

...

II. A representative of legally constituted social organizations, a representative of organizations from the private sector, and a representative of academic or research institutions will be brought together around the subject of the present law. These representatives shall be proposed by the Secretary of the Environment and will all spend 3 years in their posts. Their participation shall be of an honorary character, and they shall have speaking rights.

Article 21

The policy instruments for the integrated management of water resources as well as those for the applicable contents in the Environmental Law are as follows....

IV. Social participation;...

Article 22

The planning of water resources and of hydraulic services in the Federal District shall be comprised of...

I. The integration, treatment, update, and diffusion of basic information regarding the management of water resources and hydraulic services;

II. The conducting of research that will allow for the coordinating and updating of the documented history concerning the availability, quality, and demand of water in the Federal District;...

⁴⁷⁴ Spanish original at: <http://www.df.gob.mx/leyes/normatividad.html?materia=1&apartado=1&disp=122>.

Article 30

The Sistema de Aguas [Water System] and the delegations, in the context of their respective responsibilities, shall promote the participation of all sectors of society involved in the management of water, by means of:

- I. Their participation in the promotion and assistance in the shaping, consolidation and operation of groups spanning distinct sectors for the design and implementation of programs concerning the subject of water.
- II. The diffusion of information and the promotion of cultural, educational, and training activities related to the environment.
- III. The promotion of pilot projects and demonstrations designed to produce pieces of information to support programs concerning water resources, hydraulic services, and the treatment and reuse of residual waters; and
- IV. Their participation in the other actions as determined by the regulation of the present law.

MOZAMBIQUE

Resolution No. 7/95 [approving the National Water Policy] (Unofficial translation)⁴⁷⁵

2. Main Policies

...

b) Participation of beneficiaries

The participation of beneficiaries during the phases of planning, implementation and management of the operation and maintenance facilitates the effective utilization of resources and infrastructures and the availability of adequate service levels. The objective is to provide services that answer to the wishes of the beneficiaries and their capacity to pay, as well as improving the sustainability of the systems. ...

NAMIBIA

Water Resources Management Act, Act No. 24 of 2004⁴⁷⁶

3. Fundamental principles

This Act must be interpreted, and be reasonably and fairly applied, in a manner that is consistent with and promotes the following fundamental principles -

...

(f) openness and transparency, by making available water resources information accessible to the public;

...

NEW ZEALAND

New Zealand Local Government Act 2002, No. 84, 24 December 2002⁴⁷⁷

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 ...

⁴⁷⁵ Portuguese original available at: <http://faolex.fao.org/docs/pdf/moz22146.pdf>.

⁴⁷⁶ Available at: <http://faolex.fao.org/docs/pdf/nam61956.pdf>.

⁴⁷⁷ Available at: http://www.legislation.govt.nz/browse_vw.asp?content-set=pal_statutes.

- (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...

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 the delivery mode of a 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.

NICARAGUA

General National Water Law, 15 May 2007 (Unofficial translation)⁴⁷⁸

Article 13

... the present law is based on the following values and principles ...

f) The State is obliged to ensure that all concerned groups and interests participate in the formulation and implementation of the National Water Policy ...

NIGER

Framework law of 18 December 1998 on environmental management (Unofficial translation)⁴⁷⁹

Article 5

Every person has a right to be informed on that person's environment and to participate in the decision-making processes that relate to the environment.

PARAGUAY

General law governing the regulatory and tariff framework for the public drinking water and sanitation services for the Republic of Paraguay, Law 1614 of 2000 (unofficial translation)⁴⁸⁰

Article 35. - Rights of the users.

The users have the following rights, without this list being exhaustive:

...

d) to receive from the provider general and adequate information about the service;

e) To know the pricing and tariff system, as well as the tariffs and their successive modifications with sufficient anticipation of its effective date; ...

Law on Water Resources, Law 3239 of 10 July 2007 (Unofficial translation)⁴⁸¹

⁴⁷⁸ Spanish original yet unpublished; on file with author.

⁴⁷⁹ French original version available at: <http://faolex.fao.org/docs/texts/ner19572.doc>.

⁴⁸⁰ Spanish original available at: <http://www.erssan.gov.py/pagina/ley-1614.pdf>.

⁴⁸¹ Spanish original available at: <http://www.congreso.gov.py/senadores/leyes/ups/leyes/44473239-2007%20Recursos%20Hidricos.DOC>.

Article 3

...

h) The management of water resources must take place in the framework of sustainable development, must be decentralized, participative and have a gender perspective.

Article 4

The National Water Resource Policy shall be guided by the following fundamental objectives:

...

c) To facilitate and maintain adequate, integrated knowledge of the water resources in terms of the quantity, quality, and opportunity of their use, as well as the knowledge of their essential character in shaping human activity, dynamizing the scientific, systematic, operational and technological investigation by means of or with the relevant organizations.

...

k) To promote in the heart of the society knowledge of the methods and necessary technologies for the adequate management, use, and conservation of water resources, and with attention to those things that, more than any other natural resource, are set aside for common use.

...

n) To favor and develop, gradually though actively, the participation of users by means of the organizations of their communities or those that are created and recognized as such within the mark of this law, as much in the planning of the development of water resources as in its administration and the control of its applications.

PERU

General Law on the Environment, Law No. 28611 of 15 October 2005 (Unofficial translation)⁴⁸²

Article 2.- Right to access to information

Every person has the right to adequate and opportune access to public information about policies, norms, measures, works and activities that could affect the environment directly or indirectly, without necessity to invoke a justification or interest to motivate such request.

Article 3. - Right to participate in environmental management

Every person has the right to participate responsibly in the decision making process, as well as in the definition and application of the policies and measures related to the environment and its components. These policies and measures will be adopted in each level of government. The state coordinates the decisions and actions of environmental management collaboratively with civil society.

Organic Law for the Sustainable Use of Natural Resources, Law No. 26821 of 26 June 1997 (Unofficial translation)⁴⁸³

⁴⁸² Spanish original available at:

<http://www.servindi.org/pdf/Ley%2028611%20%20Ley%20General%20del%20Ambiente.pdf>.

⁴⁸³ Spanish original available at: <http://www.cepes.org.pe/legisla/aguas/normas-comp/ley26821.htm>.

Article 5

The citizens have a right to be informed and to participate in the definition and adoption of policies related to the conservation and sustainable use of natural resources. Their right to formulate petitions and promote individual or collective initiatives before the competent authorities in accordance with the respective law is recognised.

Draft General Water Law, March 2007 (Unofficial translation)⁴⁸⁴

Article 5.- Principles

The principles governing the sustainable and multisectoral use and management of water and associated goods are: ...

4. Principle of participation of the population

The State shall promote the strengthening of institutions and the technical development of water user organizations, create mechanisms for the participation of civil society in the taking of decisions that affect the quality, quantity, opportunity or any other aspect of the the resource.

RUSSIAN FEDERATION

Water Code of the Russian Federation, Law No. 74-FZ of 3 June 2006, last amended 19 June 2007 (Unofficial translation)⁴⁸⁵

Article 3

The water legislation and normative acts adopted in accordance with this legislation are based on the following principles:

...

6) participation of citizens, public associations in resolution of the questions, concerning rights to the water objects, and also their duties on protection of water objects. Citizens and public associations have the right to participate in the preparation of decisions the implementation of which can affect water objects in their use and protection.

Government bodies, institutions of local government, subjects of economic and other activity are obligated to ensure the possibility of such participation in the order and in the forms established by the legislation of the Russian Federation.

Law on the sanitary-epidemiological well-being of the population, Law No. 52-FZ of 30 March 1999, as last amended 18 June 2007 (Unofficial translation)⁴⁸⁶

Article 8

Citizens have the right: ...
to obtain, in accordance with the legislation of the Russian Federation, from organs

⁴⁸⁴ On file with author.

⁴⁸⁵ Available at:

<http://www.kodeks.net/index?tid=633200094&frame=noframe&where=LegRFsearch?d&nd=901982862>.

⁴⁸⁶ Russian original available at:

<http://www.kodeks.net/index?tid=633200094&frame=noframe&where=com-pus-fullegrf?find=&flist=%cd%e0%f7%e0%f2%fc+%ef%ee%e8%f1%ea&w=0%3b1%3b10%3b11%3b2%3b3%3b4%3b5%3b6%3b9&sarea=1&a0=&a1=&a4=9000344&a4type=1&a5=&a5type=1&a6=&a6type=1&a7type=1&a7from=&a7to=&a14=&a14type=1&a15type=1&a15from=&a15to=&a17=&a20type=1&a20from=&a20to=&a8=&a8type=1&sort=7>.

of state, organs of local governments, the organs carrying out state sanitary-epidemiological supervision, and from legal persons information on the sanitary-epidemiological situation, the state of the living environment, quality and safety of the industrial and technological production, foodstuffs, goods for personal and household needs, and potential health hazards related to works carried out and services performed;

to exercise public control over the fulfilment of sanitary regulations;

to bring to the organs of state, the organs of local governments, and the organs carrying out state sanitary-epidemiological supervision, proposals on the realisation of the sanitary-epidemiological well-being of the population; ...

SÃO TOMÉ AND PRINCIPE

Law on the Environment, Law No. 10/1999 (Unofficial translation)⁴⁸⁷

Article 7 – Principle of Participation

1. The citizens and the different social groups shall participate in the formulation and implementation of environment and development policies.

2. The State is responsible for ensuring the participation of citizens and stakeholders in the decision-making process.

Article 8 – Principle of access to information

1. The right to information is an essential requirement for the participation of citizens in the decision-making process on environment and development.

2. Everyone has the right to adequate access to information concerning the environment, held by authorities.

...

4. The State must facilitate and promote the awareness and public participation, widely providing information.

SOUTH AFRICA

Water Services Act, Act 108 of 1997, amended 2004⁴⁸⁸

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–

(i) the reasons therefor; and

(ii) 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

⁴⁸⁷ Portuguese original version available at:

http://www.parlamento.st/Legisl/Leg%20cult_Social/Frames_legisl_Cult.htm.

⁴⁸⁸ Available at: <http://www.wrc.org.za/downloads/legislature/WSA108-97.pdf>;

www.polity.org.za/attachment.php?aa_id=1385.

(j) 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.

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).

Section 51. Establishment and disestablishment of water services committees

(1) Subject to subsections (2). (3) and (4) the Minister may by notice in the *Gazette*–

- (a) establish a water services committee;

Section 54. Conditions for provision of services

(2) A water services committee must invite comment from the inhabitants of its service area before setting conditions.

...

(4) Conditions set by a water services committee must be accessible to the inhabitants of the service area in question service area before setting conditions.

Section 55. Governance of water services committees

...

(2) The Minister must appoint the chairperson and members of the committee after taking into account any nominations made by members of the community served or to be served by the committee.

(3) When appointing a member, the Minister must have regard to-

(a) the need for the committee to be representative of the inhabitants of the service area in question; ...

Section 67. Establishment of national information system

(1) The Minister must ensure that there is a national information system on water services.

(2) The information system may form part of a larger system relating to water generally.

(3) The public is entitled to reasonable access to the information contained in the national information system, subject to limitations necessitated by the rights enshrined in Chapter 2 of the Constitution.

(4) The Minister must take reasonable steps to ensure that information provided is in an accessible format.

National Water Act, Act 36 of 1998⁴⁸⁹

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.

SRI LANKA

The Rural Water Supply and Sanitation Policy (RWSS Policy), 2001⁴⁹⁰

2.0 Principles of the Policy:

....

⁴⁸⁹ Available at: <http://www.info.gov.za/gazette/acts/1998/a36-98.pdf>.

⁴⁹⁰ Available at: <http://www.waterboard.lk/scripts/ASP/Policies.asp>.

VI. Sector approaches should be based on participatory approach involving users, planners and policy makers at all levels
XI. Women should play a central role in decision making process of the sector.

XIII. All sector activities should be in harmony with the environment.

4.0 Sector Partners and the responsibilities

...

4.4 Community based Organizations (CBOs)

The functions of CBOs will be to:

- i) Assess the needs, the demand and the aspirations of the communities for water supply, sanitation facilities and services.
- ii) Assess the technical feasibility and economic viability of different options for providing water supply and sanitation facilities. ...
- v) Ensure the participation of user community and other partners at all stages of the process.

4.5 Non Governmental Organization (NGOs)

Subject to the regulations imposed and standards set by the Government, Provincial Council

- i) Facilitate sector development activities with the concurrence of the local authorities.
- ii) Assess the needs demand and the aspiration of the community for water supply and sanitation facilities.
- iii) Assess the technical feasibility, economic viability of different options for providing water supply and sanitation facilities.
- vi) Ensure participation of the user community and other partners at all stages of the process.

TAJIKISTAN

Water Code of the Republic of Tajikistan, 29 March 2000, as last amended 3 March 2006⁴⁹¹

Article 13 – Participation of legal entities and individuals in the implementation of measures on rational use and protection of water

Individuals and legal entities functioning in the territory of RT, regardless of the form of property, can be allowed to participate in arrangements for the rational use and protection of water.

Law on State Sanitary Supervision, Law No. 987 of 20 July 1994, as last amended 01 February 1996⁴⁹²

Article 5 – The rights of the citizens of the Republic of Tajikistan

...

3. The citizens of the Republic of Tajikistan at the reference in the appropriate institution have the right to the receive of complete and reliable information:
 - About state of the environment and health of the population, epidemiological conditions of the acting sanitary rules;

⁴⁹¹ Available at: <http://faolex.fao.org/docs/pdf/taj34375E.pdf>.

⁴⁹² Available at: <http://faolex.fao.org/docs/pdf/taj19381E.pdf> (English version prior to amendments);
Russian version with amendments: <http://faolex.fao.org/docs/texts/taj62261.doc>.

- About accepted measures on provision of sanitary-epidemiological prosperity and their results;
- About quality of the produced goods of people consumption, including foodstuff and drinking water.

4. The citizens of the Republic of Tajikistan directly or through their agents or through public associations have the right to participate in elaboration, discussion formulation and decision process regarding the provision of sanitary-epidemiological prosperity of the population.

TURKMENISTAN

Water Code, 1 November 2004 (Unofficial translation)⁴⁹³

Article 11

Public associations, in accordance with their regulations, and also citizens, assist and directly participate in the work of state organs in respect of actions aimed at the rational use and protection of water resources in accordance with the legislation of Turkmenistan.

Article 21

...

Water consumers have the right to require from the owner of waters (water-supplier) information about the quality of drinking water. ...

Sanitary Code, Law No. 710-12 of 19 May 1992 (unofficial translation)⁴⁹⁴

Article 10

Each citizen of Turkmenistan has the right to obtain, whether directly or through the representative, public organizations, media, or other lawful method, the available complete, reliable and free information about the morbidity, the epidemic situation and the radiological situation, the state of the environment and its influence on the health of the population, the results of carried out health and hygiene and other special examinations and applicable sanitary standards, rules and hygienic norms, with exception of those cases in which this information is related to ... information which contains state, official or commercial secrets.

Article 11

Each citizen of Turkmenistan has the right, directly or through the representative, public associations, or in another manner, to participate in the preparation, performance and the control of the implementation of the decisions, taken by organs and officials both collectively and individually, the realization of which has influence on the health of the population and the environment.

UZBEKISTAN

Law on Water and Water Use, Law No. 837-XII of 6 March 1993⁴⁹⁵

⁴⁹³ Russian version available at: <http://faolex.fao.org/docs/texts/tuk54109.doc>.

⁴⁹⁴ Russian version available at: <http://faolex.fao.org/docs/texts/tuk54053.doc>.

⁴⁹⁵ <http://faolex.fao.org/docs/pdf/uzb5255E.pdf>.

Article 10 – Participation of public associations, collectives and individuals in the conduct of arrangements relating to the rational utilization and protection of water

Public associations and collectives, in accordance with their respective charters, shall assist the state organs in the implementation of arrangements relating to the rational utilization and protection of water.

The state organs shall consider the proposals of public associations, collectives and individuals when carrying out these arrangements.

VENEZUELA

Water Law, 2 January 2007 (Unofficial translation)⁴⁹⁶

Article 5.

The principles governing the integral management of water resources, based on the recognition of the full sovereignty the Republic exercises over water, are the following: ...

5. The integral management of water must take place in a participatory form.

...

7. Users of water shall contribute in the conservation of the water source to guarantee the continuity of the quantity and quality of the waters.

8. It is the fundamental obligation of the state, together with the active participation of the society as a whole, to guarantee the conservation of the water sources, both at the surface and underground.

...

Article 9.

The State shall promote the participation of social organisations in the integral management of water by means of distribution of information to involve the citizens into water-related problems and their solutions.

5.2.7 Non-Discrimination and Attention to Marginalised and Vulnerable Groups**BOLIVIA**

Law No. 2066 on Water and Sanitation Services, 11 April 2000 (unofficial translation)⁴⁹⁷

Article 22:

The providers of water or sanitation services, whatever their nature may be, are obliged to offer the service to every user who demands it within their concession area, depending on the terms established in the concession contracts for the extension of the coverage of the service.

The providers of water or sanitation services may not discriminate between users of the same tariff category in the provision of the services.

CANADA

Canadian Human Rights Act, 1985, as amended 1998⁴⁹⁸

Article 3. Prohibited grounds of discrimination

(1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.

⁴⁹⁶ Spanish original available at: <http://faolex.fao.org/docs/texts/ven69647.doc>.

⁴⁹⁷ Spanish original available at: <http://www.aguabolivia.org/legisaguasX/Leyes/LEYAGUAPOTAB.htm>.

⁴⁹⁸ Available at: <http://laws.justice.gc.ca/en/H-6/index.html>.

Article 5. Denial of good, service, facility or accommodation

It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public

(a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or

(b) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination.

Québec Charter of Human Rights and Freedoms, 1975, as amended 19 April 2006⁴⁹⁹

Article 12

No one may, through discrimination, refuse to make a juridical act concerning goods or services ordinarily offered to the public.

British Columbia Human Rights Code, 1996, as amended 31 March 2003⁵⁰⁰

Article 8

(1) A person must not, without a bona fide and reasonable justification,

(a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or

(b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public

because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex or sexual orientation of that person or class of persons.

Ontario Human Rights Code, 1990, as amended 2006⁵⁰¹

Article 1

Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability.

COLOMBIA

Law 142 of 11 July 1994, establishing the regime for public household services (Unofficial translation)⁵⁰²

Article 34 - Prohibition of discriminatory, abusive or restrictive practices.

Public service companies, in all their acts and contracts, must avoid privileges and unjustified discrimination...

Draft Water Law, 17 January 2005 (Unofficial translation)⁵⁰³

⁴⁹⁹ Available at: <http://www.cdpcj.qc.ca/en/commun/docs/charter.pdf>.

⁵⁰⁰ Available at: http://www.bchrt.bc.ca/human_rights_code/default.htm.

⁵⁰¹ Available at: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90h19_e.htm.

⁵⁰² Spanish original available at:

http://www.crt.gov.co/Documentos/Normatividad/Leyes/LEY_142_94.pdf.

⁵⁰³ Spanish original available at: [http://www.oas.org/dsd/environmentlaw/waterlaw/documents/Colombia-Proyecto_de_Ley_del_Agua_\(2005\).pdf](http://www.oas.org/dsd/environmentlaw/waterlaw/documents/Colombia-Proyecto_de_Ley_del_Agua_(2005).pdf)

Article 3.5. Equity.

All persons have the right to access to the use of water, without discrimination of any kind.

CONGO (Republic of the Congo – Brazzaville) Water Code, Law No. 13-2003, 10 April 2003 (Unofficial translation)⁵⁰⁴

Article 53

The public water service is based on the principle of equality; differences of treatment in the management of the service can only be made in so far as they are justified by an objective difference in circumstances with respect to the service provided. ...

COSTA RICA Law on the Regulating Authority for Public Services, Law 7593 of 9 August 1996, as amended 27 December 2002 (Unofficial translation)⁵⁰⁵

Article 5. Functions

The Regulating Authority shall fix prices and tariffs for the public services defined in the present article; in addition, it shall watch over compliance with the norms regarding quality, quantity, reliability, continuity and optimal performance, as determined in Article 25 of this law. The public services mentioned above are: ...

c) Provision of water and sanitation services, including drinking water, collection, treatment and disposal of black water, waste water and rainwater.

Article 12. Prohibition of discrimination

Service providers may not establish any kind of discrimination against a certain group, sector, class or individual consumer. The differential tariffs established for social reasons shall not constitute discrimination.

GUYANA Public Utilities Commission Act, Act No. 10 of 1999⁵⁰⁶

Section 32. Rates to be just and reasonable

(1) Every rate made, demanded or received by any public utility from persons making use of the service provided by it, shall be just and reasonable...

Section 34. Prohibition against discrimination in the matter of rate

(1) No public utility shall provide to any person any service at a rate which is unduly preferential or discriminatory.

(2) Nothing in subsection (1) shall be deemed to prevent a public utility from demanding and receiving different rates from different classes of consumers.

HONDURAS Decree No. 118-2003, Framework Law for the Drinking Water and Sanitation Sector (Unofficial translation)⁵⁰⁷

⁵⁰⁴ French original version available at: http://www.congoinvest.com/fr/pdf/code_eau.pdf.

⁵⁰⁵ Spanish original available at: http://www.aresp.go.cr/docs/01-2003-ML_Ley_%20Autoridad_Regul.pdf.

⁵⁰⁶ Available at: <http://www.electricity.gov.gy/puca.pdf>.

⁵⁰⁷ Spanish original available at: <http://faolex.fao.org/docs/pdf/hon41347.pdf>

Article 6. Definitions

For the purpose of the present law, the following shall mean: ...

7) EQUALITY, EQUITY AND SOLIDARITY: Principles according to which users of the services who are in the same situation must be treated in the same manner; ...

MEXICO

Water Law of the Distrito Federal, 2003 (Unofficial translation)⁵⁰⁸

Article 6

In the formulation, execution, and monitoring of the policy of the integral management of water resources, the competent authorities shall observe the following principles...

IV. The water infrastructure and services shall be accessible for every person without discrimination, including the vulnerable or marginalized population, if these persons comply with the legal provisions regarding the use of the land on which they live and carry out their economic activities.

MOZAMBIQUE

Resolution No. 7/95 [approving the National Water Policy] (Unofficial translation)⁵⁰⁹

2. Main Policies

a) Basic needs

The satisfaction of basic needs is a priority and requires the expansion of water supply and sanitation coverage, especially for rural populations and low-income groups.

NICARAGUA

Law on the autonomy of the regions of the Atlantic coast of Nicaragua, Law No. 28 of 1987 (Unofficial translation)⁵¹⁰

Article 11

The inhabitants of the Communities of the Atlantic coast have a right to:

3 – Use and enjoy the community waters, forests and lands ...

Article 36

The lands, waters, and forests that have traditionally belonged to the Communities of the Atlantic Coast constitute community property, and they are subject to the following provisions:

1. Community lands are inalienable; they cannot be donated, sold, encumbered nor mortgaged, and are inextinguishable.

NIGER

Decree 2003-145/PRN/MHE/LCD of 18 June 2003 concerning the adoption of the regulation for drinking water services in Niger (Unofficial translation)⁵¹¹

⁵⁰⁸ Spanish original at: <http://www.df.gob.mx/leyes/normatividad.html?materia=1&apartado=1&disp=122>.

⁵⁰⁹ Portuguese original available at: <http://faolex.fao.org/docs/pdf/moz22146.pdf>.

⁵¹⁰ Spanish original at:

<http://www.raanasdiraas.org/documentos%20pdf%20todos/ley%20de%20autonomia.pdf>.

⁵¹¹ French original version available at: <http://faolex.fao.org/docs/pdf/ner65662.pdf>.

Article 10 - Supply to properties within the perimeter of the water connection

The SEEN cannot, except for specific provisions (unsuitability of installations to the needs requested, for example), refuse a subscription to regular owners or lessees of a building adjacent to a public or private road in which a local network connection to public water is already installed, except if the competent road authorities are opposed to it.

If the installations do not meet the needs requested, the necessary reinforcement shall be provided and paid for by the SPEN in so far as they can be integrated in its annual work programme.

The same applies to land or buildings owners located within the perimeter of the water connection, and adjacent to public road suitable for motor vehicles and which are not yet equipped with water supply pipes. ...

Article 17 - Equality of treatment for users

The SEEN must treat all users strictly equally, specifically when it concerns the supply and price of potable water, subject to the nature of the SEEN's offer and the user's application, this application thus defined by the nature of the subscription.

SOUTH AFRICA

National Water Act, Act 36 of 1998⁵¹²

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; ...

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;

⁵¹² http://www.dwaf.gov.za/Documents/Legislature/nw_act/NWA.pdf.

- (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.

Water Services Act, Act 108 of 1997⁵¹³

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; ...

5.2.8 Monitoring and Remedies CHECK TITLE

ARGENTINA

Water Code of the Province of Buenos Aires, Law 12.257 of 9 December 1998 (Unofficial translation)⁵¹⁴

Article 58:

...

The regulation shall establish mechanisms through which effective monitoring will be made possible, both of the water source on which the supply system relies and of the network itself (capacity, control network, registration site, etc.); the regulation shall also establish the obligation to construct and maintain at cost adequate installations for the rational use and/or adoption of measures to protect and conserve the environment.

ARMENIA

Law of the Republic of Armenia on provision of sanitary-epidemiological security of the population, 1992⁵¹⁵

⁵¹³ <http://www.dwaf.pwv.gov.za/Documents/Legislature/wsa97.PDF>

⁵¹⁴ Spanish original available at: <http://www.gob.gba.gov.ar/legislacion/legislacion/l-12257.html>.

⁵¹⁵ <http://faolex.fao.org/docs/texts/arm47094E.doc>.

Article 11 - Guarantees for exercising the rights of the enterprises, institutions and organizations

The enterprises, institutions and organizations acting in the area of the Republic of Armenia, as well as citizens have the rights to lodge complains against the actions and/or inactivity of the State officials that have resulted or can result in limitation of their rights, according to the 9th and 10th articles of this law [dealing, inter alia, with participation and access to information].

The complain[t] is transferred to the superior instance and then to the People's Court, according to the statutes defined by the Law of the Republic of Armenia.

Article 10 - Rights and liabilities of citizens on provision of sanitary-epidemiological security

The citizens have the rights to:

...

4) Receive reimbursement for the harm caused to their health as a result of violation of the sanitary regulation, according to statutes defined by the Government of the Republic of Armenia. ...

AUSTRALIA

Australian Utilities Act 2000 No. 65, 2002, last amended by A2007-22 of 6 September 2007⁵¹⁶

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 Part] ... 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;

⁵¹⁶ <http://www.legislation.act.gov.au/a/2000-65/default.asp>.

(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; ...

BELARUS

Water Code of the Republic of Belarus, Law No. 191-3 of 15 July 1998, as last amended 13 June 2007 (unofficial translation)⁵¹⁷

Article 11

Citizens and public associations have the following rights, established in due order, in the field of water use and conservation:

...

to bring in a court of law actions for the compensation of damages caused by the interference with the rights of citizens resulting from the pollution and (or) the blockage of waters.

BELGIUM

Decree regulating the provision of drinking water via the piped water system, Council of the Brussels-Capital Region, 8 September 1994 (Unofficial translation)⁵¹⁸

Art. 5

...

In case the water is provided for domestic uses to a natural person residing in a residential building that is connected, the service provider cannot disconnect the supply unilaterally. In such case the service provider requests the disconnection before the competent court one month after obtaining information from the mayor or chairperson of the O.C.M.W. [Public Welfare Centre] of the municipality of the consumer.

...
The mayor or the chairperson of the O.C.M.W. must be informed about the court order allowing the disconnection of the supply before the supply is actually disconnected.

In deviation from what is provided in paragraph one, the service provider may not unilaterally discontinue the provision if the water supply is for public or publicly subsidised hospitals, day-care centres, shelters, educational institutions, ...

Decree regulating the right to a minimum supply of electricity, gas and water, Parliament of Flanders, 19 December 1996⁵¹⁹

Article 6

The service provider can only disconnect the minimum supply of electricity, gas or water in the following cases: ...

⁵¹⁷ Russian original available at: <http://pravo.by/webnpa/text.asp?RN=HK9800191>

⁵¹⁸ French original version available at: http://www.juridat.be/cgi_loi/loi_E.pl?cn=1994090832

⁵¹⁹ Dutch original version available at: <http://jsp.vlaamsparlement.be/docs/stukken/1996-1997/g442-5.pdf>.

2° in case of evident unwillingness of fraud of the subscriber, after the local advisory committee, referred to in article 7, issued an advice in which it reaches the same conclusion.

Article 7

A local advisory committee, the composition of which shall be determined by the Government of Flanders, shall be formed in every municipality.

The local advisory committee shall within fourteen days after reception of the request and after conduction of an investigation issue a motivated advice about, according to the case:

1° the request of the provider to disconnect the provision of the minimum supply of electricity, gas or water for evident unwillingness or fraud of the subscriber; ...

Artikel 8

The costs for a minimum supply of electricity, water and gas in accordance with the provisions of this decree are to be borne by the relevant provider.

BRAZIL

Law on Basic Sanitation, Law 11445 of 7 January 2007 (Unofficial translation)⁵²⁰

Article 11

The following are conditions for the validity of contracts for the delivery of public basic sanitation services: ...

III - the existence of regulation rules that establish means for compliance to the guidelines of this Law, including the appointment of the regulatory and inspection entity; ...

V - social control mechanisms for service planning, regulation and inspection activities. ...

VI - hypotheses for intervention and for the resuming of services.

§ 3 Contracts may not include clauses that jeopardize regulatory and inspection activities or access to information on the contracted services. ...

Article 12

In public basic sanitation services in which more than one provider carries out an interdependent activity with another, the relationship between them shall be ruled by a contract and one single entity shall be in charge of regulatory and inspection functions.

§ 1 The regulatory entity shall define, at least:

I - the technical standards for quality, quantity and regularity of services provided to users and among the several different providers involved;

II - the economic and financial rules regarding tariffs, subsidies and payments for services rendered to users and among the several different providers involved; ...

COLOMBIA

Law 142 of 11 July 1994, establishing the regime for public household services (Unofficial translation)⁵²¹

⁵²⁰ Portuguese original at: http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Lei/L11445.htm.

⁵²¹ Spanish original available at:

http://www.crt.gov.co/Documentos/Normatividad/Leyes/LEY_142_94.pdf.

Article 137 - The repairs of defects in the provision of service.

A defect in service, from the moment in which it presents itself, entitles the subscriber or user to the cancellation of the contract, or to its fulfillment with the following reparations:

(1) There are no charges for anything other than what was consumed or for the use of goods or services effectively received, if the defect occurs continuously during the term of fifteen (15) days or more within the same billing period.

...

(3) With respect to the compensation for damages, under no circumstance shall it be valued at less than the value of consumption from the day in which the user was affected and for each day in which the service has completely faltered, or in proportion to the duration of the defect; including the value of the fines, sanctions, or surcharge that the defect has caused the subscriber or user to incur; including, also, the value of the investments or expenses incurred by the subscriber or user in trying to make up for the service.

Article 152 - The Right to Petition and Appeal.

It is in the essence of the contract of public services that the subscriber or user can present to the company petitions, complaints, or appeals relating to the contract of public services.

Article 153 - On the Petition and Appeal Office.

All the public utility providers shall establish an "office for petitions, complaints, and appeals," which has the obligation to receive, process, attend and respond to the petitions or claims and appeals, verbal or written, presented by users, subscribers, or potential subscribers in relation to the service or the services provided by said company.

These "offices" will have the detailed account of the petitions and appeals presented as well as of the steps or responses given.

The petitions and appeals will be processed in accordance with norms in effect concerning the right to petition.

COSTA RICA

Law on the Regulating Authority for Public Services, Law 7593 of 9 August 1996, as amended 27 December 2002 (Unofficial translation)⁵²²

Article 27. Handling of complaints

The Regulating Authority shall handle, investigate into and resolve, ..., any complaint regarding the provision of the public services regulated in this law.

FINLAND

Water Services Act (119/2001)⁵²³

Section 22: General supply conditions

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

⁵²² Spanish original available at: http://www.aresp.go.cr/docs/01-2003-ML_Ley_%20Autoridad_Regul.pdf.

⁵²³ <http://www.finlex.fi/pdf/saadkaan/E0010119.PDF>

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

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...

GEORGIA

Water Law, Law No. 936-Ic of 1997 (Unofficial translation)⁵²⁴

Article 13

...

3. Natural and legal persons have the right:

...

b) to bring an action in the appropriate court of law against natural and legal persons (including the organs of State) that violate the legislation of Georgia in the sphere of protection and use of water; ...

GUYANA

Public Utilities Commission Act, Act No. 10 of 1999⁵²⁵

Section 25. Duty to provide adequate service

(1) Subject to subsection (2), every public utility shall maintain its property and equipment in such condition as to enable it to provide, and shall make every reasonable effort to provide, service to the public in all respects safe, adequate, efficient, reasonable and non-discriminatory...

Section 26. Proper service established on complaint

(1) Where the Commission, after a hearing upon its own motion or upon a complaint, finds that the service provided by a public utility is not in accordance with section 25, the Commission shall by order determine and prescribe the adequate or reasonable service to be provided by the public utility, ... and, ..., may also direct the public utility to pay to any consumer compensation for loss or damage suffered by the consumer on account of the failure of the public utility to comply with section 25. ...

Section 52. Complaint

(1) A complaint under this Act against a public utility may be made by the Minister or any person (including any other public utility) having an interest in the subject matter. ...

⁵²⁴ Available at: <http://faolex.fao.org/docs/texts/geo42199.doc>.

⁵²⁵ Available at: <http://www.electricity.gov.gy/puca.pdf>.

Section 55. Representative complaint

(1) The Commission may permit one or more persons to make a complaint against a public utility, on behalf of a class of consumers or all consumers in relation to that public utility. ...

Section 57. Fixing of hearing

(1) Where a public utility satisfies a complaint against it within the time specified therefor or extended by the Commission, the complaint shall be dismissed by the Commission.

(2) Where a public utility does not satisfy the complaint within the time specified therefor or extended by the Commission, the complaint shall be dismissed by the Commission, and it appears to the Commission from a consideration of the complaint and answer thereto, or otherwise, that reasonable ground exists for investigating the complaint, the Commission shall fix a date, time and place for investigation and hearing of the matter. ...

Section 58. Hearings to be public

Subject to the confidentiality restrictions contained in section 83 (5), all hearings before the Commission shall be public and the parties to the proceedings shall be entitled to be heard in person or by counsel.

Section 59. Decision of Commission

(1) After the conclusion of the hearing, the Commission shall make an order in writing which shall state the time within which the order is to be complied with.

HONDURAS

Decree No. 118-2003, Framework Law for the Drinking Water and Sanitation Sector (Unofficial translation)⁵²⁶

Article 13.

...

(2) Every service provider must have a costumers' office in order to receive complaints and provide information about the services delivered.

Article 25.

The users of the public drinking water and sanitation services enjoy, inter alia, the following rights:

1) To receive the service in the form and under the conditions established in the service provision entered into with the provider, which shall at least determine: ...
b) administrative procedures for the presentation of complaints and other formalities.

...

3) To be heard by the provider regarding inquiries and complaints formulated in case the quality of the water and of the services should be worse than determined, or if they should deteriorate to whatever kind of irregular conduct or omission that affects or damages their rights; ...

INDONESIA

Law No. 7/2004 on Water Resources, promulgated 8 March 2004⁵²⁷

⁵²⁶ Spanish original available at: <http://faolex.fao.org/docs/pdf/hon41347.pdf>

Article 82

In the execution of water resources management, the people are entitled to:

- a. Obtain information related to water resources management;
- b. Obtain proper compensation for loss incurred as a result of the execution of water resources management;
- c. Obtain the benefits of water resources management;
- d. Declare their objection against the announced water resources management plan within a certain period in accordance with local conditions;
- e. File reports and claims with the related authority for loss incurred to them regarding the execution of water resources management; and/or
- f. File a suit with the court regarding various water resources issues that inflict a loss in their lives.

Article 91

Government agencies in charge of water resources affairs should take measures for the interest of the people if there is any indication that the people suffer any loss as a result of water pollution and/or water source damage that affects the lives of the people.

Article 92

(1) Organizations that operate in water resources activities are entitled to file claims against individuals or business entities that commit activities resulting in the damage of water resources and/or their infrastructures, for the purposes of the sustainability of water resources functions.

(2) Claims as intended under paragraph (1) are limited to those aimed at the implementation of certain measures related to the sustainability of water resources functions and/or claims to repay for actual costs incurred.

(3) Organizations that are entitled to file for claims as intended under paragraph (1) should fulfill the following requirements:

- a. Constituting a social organization having legal entity status and operating in water resources activities.
- b. Mentioning the incorporation aims in the articles of association for purposes related to the sustainability of water resources functions; and
- c. Having conducted activities in accordance with their articles of association.

Government Regulation No. 16/2005 regarding Development of Drinking Water Supply Systems and Sanitation⁵²⁸

Section 48 – Customer Rights and Obligations

(1) Every customer of drinking water service and sanitation have the right to:

- a. Attain service for which fulfill service minimum standard;
- b. Get information of establishment and service aspect;
- c. Propose accusation to the court against problems of development establishment of drinking water supply system and sanitation that cause financial loss.
- d. Get compensation for the detriment as effect of dereliction in fulfilling its obligation. ...

KAZAKHSTAN

Water Code of the Republic of Kazakhstan, Law No. 481-2 of 09 March 2003, as last amended 27 July 2007 (Unofficial translation)⁵²⁹

⁵²⁷ Available at: <http://faolex.fao.org/docs/texts/ins48775.doc>. Cf. as well the elucidation at <http://faolex.fao.org/docs/texts/ins48775-elucidation.doc>.

⁵²⁸ On file with authors.

Article 62

Natural persons have the right:

...

4) to apply for the cancellation in the administrative or judicial order of decisions regarding the arrangement, the building, the reconstruction and the putting into commission of enterprises and other construction, which do not correspond to requirements in the field of uses and protection of water resources, or about limitation and curtailment of economic and other activity of natural and legal persons, that exert a negative influence on the bodies of water;

KYRGISTAN

Law on drinking water, Law No. 33 of 25 March 1999, as last amended 28 June 2003 (Unofficial translation)⁵³⁰

Article 19

...

Bodies for the protection of the rights of consumers at the local State administration and public organizations of consumers **may**:

- cooperate with State organs for sanitary-epidemiological supervision and the organs of standardization, metrology and certification in the realization [implementation] of control of the quality of drinking water, the collection and the data analysis from the population about the claims for its quality;
- bring action to the court about the compensation for the damage, occurred as a result of the consumption of the water, which does not correspond to the required quality, and violation of the rights of consumers in the field of the household drinking water supply of the population.

LIBERIA

Environment Protection and Management Law of the Republic of Liberia, 2002⁵³¹

Section 5 - Protecting the Right to a Clean and Healthy Environment

1) Any person assert their right to a clean and healthy environment in fulfilment of section (34) of the Agency Act by:

- a) Petitioning the Agency to take action;
- b) Bringing action before the Environmental Court established under section (32) of the Agency act.

2) An aggrieved person shall submit a petition for redress on a prescribed form and in a manner prescribed by the Agency detailing the issues to be resolved and attaching any supporting documents available to the person and the Agency shall respond within 21 days upon receipt of the petition.

3) If the agency does not respond within 21 days, and/or if the Agency action does not give redress, the aggrieved person may appeals to the Environmental Court in accordance with section (36) of the Agency Act; ...

9) An aggrieved person or citizen, if not satisfied with an Environment Court's decision, may appeal to the Environmental Court established under section (34) of the Agency Act from which decisions may be appealed to Supreme Court of Liberia.

⁵²⁹ Original Russian version at: <http://www.pavlodar.com/zakon/?dok=02874&ogl=all>.

⁵³⁰ Russian version available at: <http://www.gsen.in.kg/upload/docs/ZakonW.doc>.

⁵³¹ Available at: <http://faolex.fao.org/docs/texts/lbr53038.doc>.

Environment Protection Agency Act, 2002⁵³²

Section 32

1) Every person in Liberia has the right to a clean and healthy environment and a duty to take all appropriate measures to protect and enhance it through the Agency, the judicial process, the Environmental Court established under this Act and any appropriate organizations established for the purpose in accordance with this Act and any other written law; ...

Section 33 - Establishment of the Environmental Court of Appeals

1) There is established on the level of Judicial Circuit, a specialized Intermediate Court to be known as the environmental Court of Appeals and be referred to herein as the Appeals Courts, which shall have jurisdiction of all appeals from the Environmental Administrative Court established under this Act.

Section 36 - Appeals to the Environmental Administrative Court

...

2) Where an act or omission to act has caused or is likely to cause harm to human health or the environment, any person, including the Agency, on their own behalf may bring an action before the Court to ensure compliance with this Act; ...

MALAYSIA

Water Services Industry Act (Act 655), 20 July 2006⁵³³

[As of December 2007 the Act had not yet entered into force]

33. Dealing with consumers

A service licensee providing water supply services or sewerage services has a general duty to —

- (a) deal reasonably with consumers; and
- (b) adequately address consumer complaints.

68. Consumer standards

(1) The Commission may, on its own initiative or upon the recommendation of the Water Forum, prepare or caused to be prepared consumer standards which shall include model procedures for—

- (a) reasonably meeting consumer requirements;
- (b) the handling of customer complaints and disputes including a mediation process other than a court, and procedures for the compensation of customers in case of a breach of the consumer standards; ...

70. Functions of the Water Forum

(1) The Water Forum [see article 69 of the same regulation] shall have all the functions imposed on it under this Act and, without prejudice to the generality of the foregoing, the Water Forum shall have the following functions:

- (a) to give feedback and make recommendations to the Commission on any matters concerning the interest of consumers of the water supply services and sewerage services;
- (b) to represent the interests of consumers of the water supply services and sewerage services;

⁵³² Available at: <http://faolex.fao.org/docs/pdf/lbr61872.pdf>.

⁵³³ Available at: <http://www.agc.gov.my/agc/oth/Akta/Vol.%2014/Act%20655.pdf>.

...

(d) to identify and keep under review matters affecting the interests of consumers and ensure that the water supply services and sewerage services companies are aware of, and responsive to, concerns about their services; ...

91. Establishment of Appeal Tribunal

There shall be established an Appeal Tribunal for the purpose of reviewing any of the following matters on appeal:

(a) any directions given by the Commission under this Act or its subsidiary legislation; ...

Suruhanjaya Perkhidmatan Air Negara Bill (National Water Services Commission Act, Act 654), 2006⁵³⁴

15. Functions of the Commission

The Commission shall have all the functions imposed on it under the water supply and sewerage services laws and shall also have the following functions:

...

(e) to advise the Minister on a fair and efficient mechanism for the determination of tariffs that is fair to both consumers and licensees and to implement tariffs that have been established through appropriate mechanism and tools;

(f) to ensure the national development goals pertaining to coverage, supply and access to water supply services and sewerage services are achieved; ...

MEXICO

Water Law of the Distrito Federal, 2003 (Unofficial translation)⁵³⁵

Article 122

Every person, social group, NGO, association, and society can report before the Solicitor General every fact, act, or omission that produces or can produce ecological imbalances or harms to the environment or to natural resources, or that contravenes the provisions of the present law and the other resolutions that regulate matters related to the protection of the environment and the preservation and restoration of the ecological equilibrium, in the terms established in the Organic Law of the Solicitor General.

Article 35. - Rights of the users.

The users have the following rights, without this list being exhaustive:

...

b) To present in writing every type of claim and petition made before the provider, who will have the obligation to answer it in a proper manner and in a period of time that cannot exceed thirty days since the date of its presentation.

c) To appeal before ERSSAN [Regulatory Body for Water and Sanitation Services] when the provider did not give a timely or satisfactory response to the claims and petitions presented, or when a direct appeal before ERSSAN would have been appropriate; ...

h) To report to ERSSAN any irregular conduct or omissions on the part of providers or other users that could affect their rights or damage the service or the environment; ...

⁵³⁴ Available at: <http://www.parlimen.gov.my/billindexbi/pdf/DR42006E.pdf>.

⁵³⁵ Spanish original at: <http://www.df.gob.mx/leyes/normatividad.html?materia=1&apartado=1&disp=122>.

NAMIBIA

Water Resources Management Act, Act No. 24 of 2004⁵³⁶

26. Reliability of Water Supply

(1) The Minister must ensure that all Namibians are provided with an affordable and a reliable water supply that is adequate for basic human needs.

(2) For the purposes of ensuring the adequacy, affordability and reliability of water supply, the Minister must -

(a) develop reliable standards of performance and facilities that are applicable to any person who supplies water for domestic, commercial, industrial or agricultural use;

(b) periodically review the performance of every person who supplies water for domestic, commercial, industrial or agricultural use to evaluate compliance with the standards of performance developed pursuant to subparagraph (a);

(c) take corrective action with regard to any water supplier who fails to meet a standard of performance, that may include ...

NEW ZEALAND

New Zealand Local Government Act 2002, No. 84, 24 December 2002⁵³⁷

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 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.

⁵³⁶ Available at: <http://faolex.fao.org/docs/pdf/nam61956.pdf>.

⁵³⁷ http://www.legislation.govt.nz/browse_vw.asp?content-set=pal_statutes.

(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.

SOUTH AFRICA

Water Services Act, Act 108 of 1997, amended 2004⁵³⁸

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 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...

⁵³⁸ Available at: <http://www.wrc.org.za/downloads/legislature/WSA108-97.pdf>; www.polity.org.za/attachment.php?aa_id=1385.

5.2.9 International Cooperation NEW

ANGOLA

Water Act, 21 June 2002 (Unofficial translation)⁵³⁹

Article 19

International cooperation

In its international relations Angola must seek the following objectives:

- a) adoption of coordinated measures on the management of water courses of a same basin, taking into consideration the interests of all basin states;
- b) fair and reasonable sharing of common interest water or its ensemble usage, according to the interests and duties assumed by the Republic of Angola;
- c) control over water quality and soil erosion.

BELGIUM

"Access to water for everyone", Resolution of the Belgian Parliament, House of Representatives, Doc 51 1666/003, 14 April 2005 (unofficial translation)⁵⁴⁰

...

Requests the Federal Government:

1. to confirm that access to safe water in adequate quantity and quality is a basic human right and to take an initiative to include this right explicitly into the Belgian Constitution; to have this same right also included into relevant international treaties and above that to insist that governments are at all levels under the obligation to guarantee this basic right; ...
2. to continue efforts to increase resources for development cooperation...
3. to use a significantly larger share of these resources to provide - as a matter of priority - the the most deprived sections of the population with access to drinkable water and sanitation facilities, and to also urge the European Commission and competent international bodies to do so;
4. to base actions on the following principles: ...
- f) that the principles of universal, equitable and non-discriminatory access to safe water and sanitary facilities must in be adhered to under all circumstances ...

Communique of the Walloon Government of 16 March 2006⁵⁴¹

The Walloon Government is currently in the process of adopting legislation establishing a fund for international water solidarity, the purpose of which is to provide financial assistance to water projects in developing countries. The fund is to be financed by water providers, who shall contribute a tax of EUR 0.0125 for every m3 of drinking water supplied in the Walloon region.

FRANCE

Law No. 2005-95 of 9 February 2005 concerning international cooperation for territorial collectivities and water agencies relating to water supply and sanitation (unofficial translation)⁵⁴²

⁵³⁹Portuguese original at: <http://www.minea.gv.ao/Minea/Detalhes.cfm?Plano=22&>.

⁵⁴⁰Dutch original at: <http://www.dekamer.be/FLWB/pdf/51/1666/51K1666003.pdf>.

⁵⁴¹ French original available at: http://gov.wallonie.be/code/fr/comm_detail.asp?Primary_Key=1691. At para 53.

⁵⁴² Available at: <http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=COPX0407421L>.

Art. 1

The following Article L. 1115-1-1. is inserted after article L. 1115-1 of the General Code for Territorial Collectivities:

Art. L. 1115-1-1. – municipalities, public establishments for inter-communal cooperation and mixed syndicates responsible for the public service of potable water supply and sanitation services can, with 1% of the resources being allocated to the budgets of these services as a limit, carry out cooperation measures with foreign territorial collectivities as well as arrangements related to them, within the conditions provided in Art. L. 1115-1-1, carry out measures of emergency assistance for such collectivities and arrangements, as well as carry out measures of international solidarity with the domains of water and sanitation.

Art. 2

Article L. 213-6 of the environment code is supplemented with the following line: Taking into account France's international obligations and within the scope of conventions submitted for advice to the basin committee, the agency can undertake international cooperation measures in the fields of water and sanitation, within the limit of 1% of its resources, should the case arise and following the applicable regulations for each category of personnel, with the participation of its employees.

KYRGISTAN

Law on drinking water, Law No. 33 of 25 March 1999, as last amended 28 June 2003 (Unofficial translation)⁵⁴³

Article 26

Basic principles, from which the Kyrgyz republic proceeds for the realization of international cooperation in the field of drinking water supply to the population are:

...

the acknowledgement of the unconditional right of each person to the provision of drinking water in the necessary quantity and the appropriate quality, providing for its safety and harmlessness, and the responsibility of the State to ensure this right;

...

PARAGUAY

Law on Water Resources, Law 3239 of 10 July 2007 (Unofficial translation)⁵⁴⁴

Article 8.

The management of water resources shared with other countries will be guided and/or directed by treaties, conventions, and other international agreements approved and ratified by the National Congress and that are in effect.

The management of water resources within the national territory should consider the realization of all the obligations that the Paraguayan government (the state) has assumed in the international community by virtue of the treaties and agreements that it has ratified or those to which it has adhered; in particular, agreements pertaining to human rights.

⁵⁴³ Russian version available at: <http://www.gsen.in.kg/upload/docs/ZakonW.doc>.

⁵⁴⁴ Spanish original available at: <http://www.congreso.gov.py/senadores/leyes/ups/leyes/44473239-2007%20Recursos%20Hidricos.DOC>.

6. DECISIONS & COMMENTS OF INTERNATIONAL BODIES

Human rights treaty-monitoring bodies, which are made up of independent experts, have provided legal interpretations of the right to water and sanitation in international and regional treaties. General Comments by UN treaty-body committees are authoritative interpretations or elaborations of specific rights articulated in an international treaty.⁵⁴⁵ At regular intervals, such bodies monitor each State Party's performance with respect to a specific treaty and release concluding observations on the extent to which States have been complying with their obligations. Where an individual complaints mechanism is available, international bodies can respond to such a complaint by giving their views on whether or not a treaty has been violated.⁵⁴⁶

The legal value of these documents is addressed in Section 3 above (under Status of Various International Instruments).

Subsection 6.1 reproduces General Comment No. 15 on the Right to Water by the UN Committee on Economic, Social and Cultural Rights. Subsection 6.2 lists other General Comments by UN human rights treaty bodies that have referred to the right of all to safe drinking water. Subsection 6.3 lists the decisions of UN treaty bodies on individual country situations relating to the right to water and sanitation. Subsection 6.4 includes decisions of regional treaty bodies on individual complaints relevant to the right to water and sanitation. In Subsections 6.2 to 6.4, specific references to the right to water and sanitation or a specific entitlement to water, either explicit or implicit, are printed in bold italic type.

⁵⁴⁵ See note 2 above.

⁵⁴⁶ See note 14 above.

6.1 General Comment No. 15 on the Right to Water

**UN Committee on Economic, Social and Cultural Rights:
General Comment No. 15 on Right to Water, 2002⁵⁴⁷**

The Right to Water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)

I. INTRODUCTION

1. Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights. The Committee has been confronted continually with the widespread denial of the right to water in developing as well as developed countries. Over one billion persons lack access to a basic water supply, while several billion do not have access to adequate sanitation, which is the primary cause of water contamination and diseases linked to water.⁵⁴⁸ 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)).⁵⁴⁹ The right to water is also inextricably related to the right to the highest attainable standard of health (art.

⁵⁴⁷ The Right to Water: 26/11/02. CESCR General Comment No. 15,

<http://www.unhchr.ch/html/menu2/6/gc15.doc>

N.B. All the subsequent notes in this subsection (6.1), notes 116 to 144, are taken without change from the original text of General Comment No. 15, where they have the corresponding note numbers 1 to 30. (There is no note 27 in the original text.)

⁵⁴⁸ 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.

⁵⁴⁹ See paras. 5 and 32 of the Committee's General Comment No. 6 (1995) on the economic, social and cultural rights of older persons.

12, para. 1)⁵⁵⁰ and the rights to adequate housing and adequate food (art. 11, para. 1).⁵⁵¹ 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.⁵⁵² For instance, Article 14, paragraph 2, of the Convention on the Elimination of All Forms of Discrimination Against Women stipulates that States parties shall ensure to women the right to “enjoy adequate living conditions, particularly in relation to [...] water supply”. Article 24, paragraph 2, of the Convention on the Rights of the Child requires States parties to combat disease and malnutrition “through the provision of adequate nutritious foods and clean drinking-water”.

5. The 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

⁵⁵⁰ 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.

⁵⁵¹ 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.

⁵⁵² See art. 14, para. 2 (b), 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.

resources required to prevent starvation and disease, as well as water required to meet the core obligations of each of the Covenant rights.⁵⁵³

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)).⁵⁵⁴ 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.⁵⁵⁵

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.⁵⁵⁶ 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.⁵⁵⁷

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

II. NORMATIVE CONTENT OF THE RIGHT TO WATER

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

11. The elements of the right to water must be *adequate* for human dignity, life and health, in accordance with articles 11, paragraph 1, and 12. The adequacy of water should not be interpreted narrowly, by mere reference to volumetric

⁵⁵³ See also World Summit on Sustainable Development, Plan of Implementation 2002, paragraph 25 (c).

⁵⁵⁴ This relates to both *availability* and to *accessibility* of the right to adequate food (see General Comment No. 12 (1999), paras. 12 and 13).

⁵⁵⁵ 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”.

⁵⁵⁶ See also para. 15, General Comment No. 14.

⁵⁵⁷ 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.

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.⁵⁵⁸

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.⁵⁵⁹ These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.⁵⁶⁰ The quantity of water available for each person should correspond to World Health Organization (WHO) guidelines.⁵⁶¹ 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.⁵⁶² 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.⁵⁶³ 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;

⁵⁵⁸ 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.

⁵⁵⁹ 'Continuous' means that the regularity of the water supply is sufficient for personal and domestic uses.

⁵⁶⁰ 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.

⁵⁶¹ 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.

⁵⁶² 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.'

⁵⁶³ 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.⁵⁶⁴

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;

⁵⁶⁴ See para. 48 of this General Comment.

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

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

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

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

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

(g) Prisoners and detainees are provided with sufficient and safe water for their daily individual requirements, taking note of the requirements of international humanitarian law and the United Nations Standard Minimum Rules for the Treatment of Prisoners;⁵⁶⁵

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

III. STATES PARTIES' OBLIGATIONS

General legal obligations

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

⁵⁶⁵ 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).

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.⁵⁶⁶ If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party's maximum available resources.

Specific legal obligations

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

(a) Obligations to respect

21. The obligation to *respect* requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to water. The obligation includes, inter alia, refraining from engaging in any practice 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.⁵⁶⁷ 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.⁵⁶⁸

(b) Obligations to protect

23. The obligation to *protect* requires States parties to prevent third parties from interfering in any way with the enjoyment of the right to water. Third parties

⁵⁶⁶ See General Comment No. 3 (1990), para. 9.

⁵⁶⁷ For the interrelationship of human rights law and humanitarian law, the Committee notes the conclusions of the International Court of Justice in *Legality of the Threat or Use of Nuclear Weapons (Request by the General Assembly)*, ICJ Reports (1996) p.226, para. 25.

⁵⁶⁸ 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.

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.

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.⁵⁶⁹ 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

⁵⁶⁹ See footnote 5 above [footnote 103 in this guide], 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.

as climate changes, desertification and increased soil salinity, deforestation and loss of biodiversity;⁵⁷⁰ (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.⁵⁷¹ In accordance with the rights to health and adequate housing (see General Comments No. 4 (1991) and 14 (2000)) States parties have an obligation to progressively extend safe sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children.

International obligations

30. Article 2, paragraph 1, and articles 11, paragraph 1, and 23 of the Covenant require that States parties recognize the essential role of international cooperation and assistance and take joint and separate action to achieve the full realization of the right to water.

31. To comply with their international obligations in relation to the right to water, States parties have to respect the enjoyment of the right in other countries. International cooperation requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries. Any activities undertaken within the State party's jurisdiction should not deprive another country of the ability to realize the right to water for persons in its jurisdiction.⁵⁷²

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.⁵⁷³ 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

⁵⁷⁰ See the Convention on Biological Diversity, the Convention to Combat Desertification, the United Nations Framework Convention on Climate Change, and subsequent protocols.

⁵⁷¹ 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.'

⁵⁷² 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.

⁵⁷³ 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.

respect the right, through legal or political means, such steps should be taken in accordance with the Charter of the United Nations and applicable international law.

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

35. States parties should ensure that the right to water is given due attention in international agreements and, to that end, should consider the development of further legal instruments. With regard to the conclusion and implementation of other international and regional agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to water. Agreements concerning trade liberalization should not curtail or inhibit a country's capacity to ensure the full realization of the right to water.

36. States parties should ensure that their actions as members of international organizations take due account of the right to water. Accordingly, States parties that are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should take steps to ensure that the right to water is taken into account in their lending policies, credit agreements and other international measures.

Core obligations

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

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

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

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

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

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

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

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

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

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

38. For the avoidance of any doubt, the Committee wishes to emphasize that it is particularly incumbent on States parties, and other actors in a position to assist, to provide international assistance and cooperation, especially economic and technical which enables developing countries to fulfil their core obligations indicated in paragraph 37 above.

IV. VIOLATIONS

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

40. To demonstrate compliance with their general and specific obligations, States parties must establish that they have taken the necessary and feasible steps towards the realization of the right to water. In accordance with international law, a failure to act in good faith to take such steps amounts to a violation of the right. It should be stressed that a State party cannot justify its non-compliance with the core obligations set out in paragraph 37 above, which are non-derogable.

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

42. Violations of the right to water can occur through *acts of commission*, the direct actions of States parties or other entities insufficiently regulated by States. Violations include, for example, the adoption of retrogressive measures incompatible with the core obligations (outlined in para. 37 above), the formal

repeal or suspension of legislation necessary for the continued enjoyment of the right to water, or the adoption of legislation or policies which are manifestly incompatible with pre-existing domestic or international legal obligations in relation to the right to water.

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

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

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

(b) Violations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to water by third parties.⁵⁷⁴ 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.

⁵⁷⁴ 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.⁵⁷⁵ 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

⁵⁷⁵ 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.), *Praxisbandbuch 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.

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).⁵⁷⁶ 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.

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

⁵⁷⁶ Principle 10 of the Rio Declaration on Environment and Development (*Report of the United Nations Conference on Environment and Development*, see footnote 5 above [footnote 119 in this guide]), states with respect to environmental issues that "effective access to judicial and administrative proceedings, including remedy and redress, shall be provided".

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 Housing⁵⁷⁷

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 disabilities⁵⁷⁸

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 persons⁵⁷⁹

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. 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

⁵⁷⁷ *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).

⁵⁷⁸ *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).

⁵⁷⁹ *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).

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.

General Comment No. 8 - Economic Sanctions⁵⁸⁰

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 Education⁵⁸¹

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 health⁵⁸²

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) [F]unctioning 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,

⁵⁸⁰ *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).

⁵⁸¹ *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).

⁵⁸² *The right to the highest attainable standard of health*: 11/09/2000. CESCR General Comment 14,

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/40d009901358b0e2c1256915005090be?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/40d009901358b0e2c1256915005090be?Opendocument).

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 ...

12(d) ...[A]s well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, *inter alia*, skilled medical personnel, 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.

6.3 Sub-Commission Guidelines on the Realization of the Right to Drinking Water and Sanitation

Sub-Commission on the Protection and Promotion of Human Rights: Realization of the right to drinking water and sanitation - Report of the Special Rapporteur, El Hadji Guissé⁵⁸⁴

Introduction

1. At its fifty-sixth session, the Sub-Commission, in its decision 2004/107, dated 9 August 2004, decided to request Mr. El Hadji Guissé, the Special Rapporteur, to prepare a set of draft guidelines for the realization of the right to drinking water supply and sanitation and to submit them to it at its fifty-seventh session.

2. The draft guidelines set out in the present report are intended to assist government policymakers, international agencies and members of civil society working in the water and sanitation sector to implement the right to drinking water and sanitation. They are also designed to help States to formulate and implement human rights policies, including with respect to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the Universal Declaration of Human Rights, as well as to meet, if not exceed, the goals set out in the United Nations Millennium Declaration and the Johannesburg Plan of Implementation adopted by the World Summit on Sustainable Development of halving, by the year 2015, the proportion of people unable to reach or to afford safe drinking water supply and the proportion of people without access to basic sanitation.

⁵⁸³ *The Right to Life*: 30/04/82. CCPR, General Comment 6,

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/84ab9690ccd81fc7c12563ed0046fae3?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/84ab9690ccd81fc7c12563ed0046fae3?Opendocument).

⁵⁸⁴ Realization of the right to drinking water and sanitation - Report of the Special Rapporteur, El Hadji Guissé, UN Doc. E/CN.4/Sub.2/2005/25, 11 July 2005,

http://www.ohchr.org/english/issues/water/docs/SUB_Com_Guisse_guidelines.pdf.

3. These draft guidelines highlight the main and most urgent components of the right to water and sanitation. They do not attempt to provide an exhaustive legal definition of the right to water and sanitation. The draft guidelines are consistent with the relevant international documents on the right to water, in particular general comment No. 15 (2002) on the right to water, adopted by the Committee on Economic, Social and Cultural Rights, and the final report of the Special Rapporteur 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.2/2002/20). Since General Assembly resolution 54/175 of 17 December 1999 and general comment No. 15 (2002) both refer to the "right to water", we propose using the term "right to water" rather than "right to drinking water supply" for the sake of consistency.

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

Considering that water is the source of life,

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

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

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

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

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

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

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

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

1. The right to water and sanitation

- 1.1 Everyone has the right to a sufficient quantity of clean water for personal and domestic uses.
- 1.2 Everyone has the right to have access to adequate and safe sanitation that is conducive to the protection of public health and the environment.
- 1.3 Everyone has the right to a water and sanitation service that is:
 - (a) Physically accessible within, or in the immediate vicinity of the household, educational institution, workplace or health institution;
 - (b) Of sufficient and culturally acceptable quality;
 - (c) In a location where physical security can be guaranteed;
 - (d) Supplied at a price that everyone can afford without compromising their ability to acquire other basic goods and services.

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

- 2.1 Each level of government in a State, including the national Government, regional governments and the local authorities, has a responsibility to move progressively and as expeditiously as possible towards the full realization of the right to water and sanitation for everyone, using practical and targeted measures and drawing, to the maximum extent possible, on all available resources.
- 2.2 National Governments should ensure that other levels of government have the necessary resources and skills to discharge their responsibilities.
- 2.3 States should at all levels of government:
 - (a) Give priority in water and sanitation policies and programmes to the persons without any basic access;
 - (b) Adopt and implement a plan of action for the full realization of the right to water and sanitation which establishes specific targets, indicators and time frames and identifies the necessary national and international resources;
 - (c) Formally recognize the right to water and sanitation in relevant laws and regulations;
 - (d) Refrain, and ensure that private persons and organizations refrain, from interfering with the enjoyment of the right to water and sanitation or any other human rights, unless such interference is permitted by law and includes appropriate procedural protection. No one whose access to water and sanitation may be legally curtailed after the appropriate procedures have been followed should be deprived of the minimum essential amount of water or of minimum access to basic sanitation services;
 - (e) Establish a regulatory system for private and public water and sanitation service providers that requires them to provide physical, affordable and equal access to safe, acceptable and sufficient water and to appropriate sanitation and includes mechanisms to ensure genuine public participation, independent monitoring and compliance with regulations.

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

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

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

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

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

4. Availability and equitable distribution of water

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

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

4.3 The priority in water distribution shall be for essential personal and domestic uses for all. In order to realize the right to adequate nutrition and the right to earn a living through work, marginalized or disadvantaged farmers and other vulnerable groups should be given priority in access to water resources for their basic needs.

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

5. Improving access to drinking water supply

5.1 States should progressively ensure that everyone has access to water and sanitation services and that these services are equitably distributed. Where available resources are not sufficient to guarantee the delivery of high-quality services, States should invest in services that give priority to the needs of those without basic access, normally through low-cost services that can be upgraded, rather than through expensive services that would only benefit a small section of the population.

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

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

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

6. Affordability

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

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

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

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

7. Water quality

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

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

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

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

7.5 States should provide financial and technical assistance, including information and

training, to communities which depend on small-scale water supply systems, particularly low-income communities.

8. Participatory rights

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

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

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

9. Remedies and monitoring

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

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

10. International obligation and duty of solidarity

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

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

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

10.4 International organizations, including United Nations specialized agencies, trade and financial institutions, and the States members of such bodies should

ensure that their policies and actions respect the right to water and sanitation. States should take account of the right to water and sanitation when formulating and implementing international agreements that have an impact on this right.

6.4 OHCHR Report on Access to Water and Sanitation

In its second session in 2006, in a decision co-sponsored by more than thirty states and taken without a vote, the Human Rights Council mandated the Office of the United Nations High Commissioner for Human Rights [OHCHR], taking into account the views of States and other stakeholders, "to conduct ...a detailed study on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments..."⁵⁸⁵ to be submitted prior to the sixth session of the Council in 2007.

The OHCHR report⁵⁸⁶ - which received dozens of contributions from, inter alia, UN member States, Intergovernmental Organizations, local governments and civil society organizations⁵⁸⁷ - in effect summarises and further explains the main components of and obligations arising from the right to water and sanitation as elaborated in General Comment No. 15 and the Sub-Commission Guidelines. Importantly, the Report concludes that:

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

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

⁵⁸⁵ See Human Rights and Access to Water, UN Doc. A/HRC/2/L.3/Rev.3, 21/11/2006, available at: <http://daccessdds.un.org/doc/UNDOC/LTD/G06/150/86/PDF/G0615086.pdf?OpenElement>.

⁵⁸⁶ Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments, UN Doc. A/HRC/6/3. 16/08/2007. Available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/136/55/PDF/G0713655.pdf?OpenElement>.

⁵⁸⁷ The complete contributions received by OHCHR are available at: <http://www2.ohchr.org/english/issues/water/contributions.htm>.

affordable for all and can be collected within a reasonable distance from a person's home.

6.5 Decisions Of International Courts and Committees

This subsection lists excerpts of Concluding Observations relevant to the right to water which have been adopted by the UN Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Elimination of Racial Discrimination (CERD) and the Committee on the Rights of the Child (CRC). Concluding Observations are adopted following a review of each country's report under, respectively the *International Covenant on Economic, Social and Cultural Rights*, the *International Convention on the Elimination of All Forms of Racial Discrimination* and the *Convention on the Rights of the Child*.⁵⁸⁸

The Concluding Observations shed light on some of the key concerns that the CESCR, the CERD and the CRC have expressed regarding the realisation of the right to water and sanitation. These include, in particular:

- imbalances in water supply between urban and rural areas and between indigenous and non-indigenous peoples;
- State failure to especially ensure the provision of water and sanitation to vulnerable groups such as children; neglect of deprived urban areas;
- non-utilisation of budget items earmarked for social expenditure in the State's overall budget;
- restrictions on access to water by persons living under foreign occupation; and
- cases where large segments of the population remain without safe drinking water and basic sanitation.

Certain State actions have been recommended by the CESCR, such as the inclusion of squatter communities in a State's water supply systems, services in Roma communities or State measures to 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.

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

1. Concluding observations of the Committee on Economic, Social and Cultural Rights : Azerbaijan. 22/12/97. E/C.12/1/Add.20.⁵⁸⁹

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 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

⁵⁸⁸ The use that may be made of Concluding Observations is further addressed in Section 3.

⁵⁸⁹ [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/5e2712360d12fd9d8025656b00459de5?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/5e2712360d12fd9d8025656b00459de5?Opendocument)

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.

2. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Azerbaijan. 14/12/2004. E/C.12/1/Add.104.⁵⁹⁰

52. The Committee strongly recommends the State party to continue to take effective measures through, inter alia, allocation of increased resources, to ensure protection of fundamental economic, social and cultural rights of the refugees and internally displaced persons, in particular with regard to adequate housing, food and **water**, health services and **sanitation**.

3. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Benin. 05/06/2002. E/C.12/1/Add.78.⁵⁹¹

22. The Committee notes with concern the disparities in living standards between urban and rural areas, given that people living in rural areas have considerably less **access to drinking water, sanitation** and electricity and that the privatization of water and electricity are leading to a rise in costs.

4. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Bolivia. 21/05/2001. E/C.12/1/Add.60.⁵⁹²

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.

5. Concluding observations of the Committee on Economic, Social and Cultural Rights : Bosnia and Herzegovina. 24/01/2006. E/C.12/BIH/CO/1.⁵⁹³

27. The Committee is concerned about the **lack of access to adequate drinking water** in some parts of the Republika Srpska, the **poor quality of water** affecting many households, and the **insufficient monitoring of water quality**.

49. The Committee recalls the State party's **obligation to ensure access to safe drinking water** within, or in the immediate vicinity, of each household. It invites the State party to identify disaggregated indicators and appropriate national benchmarks in relation to the right to water, in line with the Committee's general comment No. 15 on the right to water, and to include information on the process of identifying such indicators and benchmarks in its next report.

6. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Brazil. 23/05/2003. E/C.12/1/Add.87.⁵⁹⁴

33. The Committee notes with concern that, according to the State party's report, at least 42 per cent of families currently live in inadequate housing facilities **without adequate water supply, waste disposal** and trash collection. It also notes that 50% of the population of major urban areas live in informal urban

⁵⁹⁰ [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.104.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.104.En?Opendocument).

⁵⁹¹ [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.78.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.78.En?Opendocument).

⁵⁹² [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.60.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.60.En?Opendocument).

⁵⁹³ [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.BIH.CO.1.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/E.C.12.BIH.CO.1.En?OpenDocument).

⁵⁹⁴ [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.87.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.87.En?Opendocument).

communities (illegal settlements and homes, as stated in paragraph 512 of the State party's report).

37. The Committee notes with concern about the living conditions of prisoners and detainees in the State party, especially with regard to provision to access to health care facilities, adequate food and **safe drinking water**.

7. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Cameroon. 08/12/99. E/C.12/1/Add.40.⁵⁹⁵

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.

8. Concluding observations of the Committee on Economic, Social and Cultural Rights : Canada. 10/12/98. E/C.12/1/Add.31.⁵⁹⁶

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, ... 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.

9. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Canada. 22/05/2006. E/C.12/CAN/CO/4-E/C.12/CAN/CO/5.⁵⁹⁷

15. ... The Committee is also concerned by the significant disparities still remaining between Aboriginal people and the rest of the population in the areas of employment, **access to water**, health, housing and education, and by the failure of the State party to fully acknowledge the barriers faced by African Canadians in the enjoyment of their rights under the Covenant.

30. The Committee regrets that the State party does not recognize the **right to water** as a legal entitlement, which is implicitly provided for under articles 11 and 12 of the Covenant, as outlined in the Committee's general comment No. 15 (2002) on the right to water.

64. The Committee strongly recommends that the State party review its position on the **right to water**, in line with the Committee's general comment No. 15 (2002) on the right to water, so as to ensure equal and adequate access to water for people living in the State party, irrespective of the province or territory in which they live or the community to which they belong.

10. Concluding observations of the Committee on Economic, Social and Cultural Rights : China. 13/05/2005. E/C.12/1/Add.107.⁵⁹⁸

34. The Committee notes with concern about the shortage of **access to safe drinking water** in highly industrialised areas.

⁵⁹⁵ [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.40.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.40.En?OpenDocument).

⁵⁹⁶ [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.31.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.31.En?OpenDocument).

⁵⁹⁷

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.CAN.CO.4.%20E.C.12.CAN.CO.5.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/E.C.12.CAN.CO.4.%20E.C.12.CAN.CO.5.En?OpenDocument).

⁵⁹⁸ [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.107.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.107.En?OpenDocument).

59. The Committee strongly recommends that the State party take immediate measures through, inter alia, allocation of increased resources for the protection of economic, social and cultural rights of persons living in disadvantaged areas, in particular with regard to adequate housing, food and **water**, health services and **sanitation**. The Committee calls upon the State party to develop a mechanism for measuring the poverty level and to monitor it closely, and refers the State party to the Committee's statement on poverty adopted in May 2001.

62. The Committee recommends that the State party undertake effective measures to guarantee **access to safe drinking water** to all persons under its jurisdiction.

11. Concluding observations of the Committee on Economic, Social and Cultural Rights : China (Hong Kong). 21/05/2001. E/C.12/1/Add.4.⁵⁹⁹

6. The Committee commends HKSAR for its efforts to provide adequate housing for Hong Kong residents. In particular, the Committee notes with appreciation that:

...

(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.

12. Concluding observations of the Committee on Economic Social and Cultural Rights : Colombia. 06/12/95. E/C.12/1995/18.⁶⁰⁰

200. The Committee also considers that the Colombian Government should:

...

(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**.

13. Concluding observations of the Committee on Economic Social and Cultural Rights : Costa Rica. 04/12/2007. E/C.12/CRI/CO/4.⁶⁰¹

15. The Committee regrets that indigenous communities and Afrodescendants suffer from higher levels of poverty and unemployment than the national average. Additionally, indigenous communities suffer from high illiteracy rates, limited **access to water**, housing, health and education.

26. The Committee is concerned that, despite the State party's efforts to address housing shortage, a high percentage of dwellings, especially those inhabited by indigenous peoples, Afrodescendants and migrants, is in poor condition, often **without access to drinking water and adequate sanitation**, and that many of these communities still live in slums and squats, sometimes on river banks and in other high-risk areas. The Committee is also concerned about the lack of disaggregated data on the number of forced evictions in the State party.

27. The Committee notes with concern the potential impact of the entry into force of the Central American Free Trade Agreement (CAFTA) on the State party's obligations under the Covenant and, in particular, on traditional agriculture, labour rights, access to health, social security and the intellectual property regimes protecting, inter alia, access to generic medicines, biodiversity, water and the right of indigenous communities associated to these resources.

35. The Committee urges the State party to take all appropriate measures to ensure that the levels of poverty, illiteracy and unemployment of indigenous communities and Afrodescendants be reduced and that the indigenous communities have proper **access to water**, housing, health and education.

⁵⁹⁹ <http://www.unhchr.ch/tbs/doc.nsf/0/1f67bd3f2a811fddc1256a4c002ed71a?Opendocument>.

⁶⁰⁰ [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1995.18.para.173-202.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1995.18.para.173-202.En?Opendocument).

⁶⁰¹ <http://www2.ohchr.org/english/bodies/cescr/docs/cescr39/E.C.12.CRI.CO.4.pdf>.

14. Concluding observations of the Committee on Economic, Social and Cultural Rights : Dominican Republic. 19/12/94. E/C.12/1994/15.⁶⁰²

11. ... 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. ...

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.) ...

15. Concluding observations of the Committee on Economic, Social and Cultural Rights : Dominican Republic. 06/12/96. E/C.12/1/Add.6.⁶⁰³

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, ...

16. Concluding observations of the Committee on Economic, Social and Cultural Rights : Dominican Republic. 12/12/97. E/C.12/1/Add.16.⁶⁰⁴

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.

17. Concluding observations of the Committee on Economic, Social and Cultural Rights : El Salvador. 28/05/96. E/C.12/1/Add.4.⁶⁰⁵

33. The Committee recommends that ... a greater effort be made to provide **sanitation and drinking water** supplies for the entire population.

18. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Georgia. 19/12/2002. E/C.12/1/Add.83.⁶⁰⁶

12. The Committee expresses deep concern about the deplorable situation of internally displaced persons in the State party. The State party's efforts to provide basic services to this disadvantaged group and special legislation adopted to that end have succeeded only partially in meeting the most basic needs of internally displaced persons, particularly with regard to employment, social security,

⁶⁰² [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/77eb9f84a2c59425c12563e9003459b7?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/77eb9f84a2c59425c12563e9003459b7?Opendocument).

⁶⁰³ [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/b1eb1544bee918f6c1256414004ee774?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/b1eb1544bee918f6c1256414004ee774?Opendocument).

⁶⁰⁴ [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.16.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.16.En?Opendocument).

⁶⁰⁵ <http://www.unhcr.ch/tbs/doc.nsf/0/aeb32d0abb5acfe0c125636100480676?Opendocument>.

⁶⁰⁶ [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.83.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.83.En?Opendocument).

adequate housing and **access to water**, electricity, basic health services and education.

23. The Committee expresses concern about the poor living conditions of the majority of the State party's population, including an **inadequate supply of water...**, which particularly affect the most disadvantaged and marginalized groups of society, such as older persons, persons with disabilities, internally displaced persons, prisoners and persons living in poverty.

31. The Committee strongly recommends that the State party take effective measures, in consultation with relevant civil society organizations, to improve the situation of internally displaced persons, including the adoption of a comprehensive programme of action aiming at ensuring more effectively their **rights to** adequate housing, food and **water**, health services and **sanitation**, employment and education, and the regularization of their status in the State party.

40. The Committee urges the State party to continue its efforts to improve the living conditions of its population, in particular by ensuring that the infrastructure for **water**, ... is improved, and by paying priority attention to the needs of the most disadvantaged and marginalized groups of society, such as older persons, persons with disabilities, internally displaced persons, prisoners and persons living in poverty.

19. Concluding observations of the Committee on Economic, Social and Cultural Rights : Hungary. 22/05/2007. E/C.12/HUN/CO/3.⁶⁰⁷

22. The Committee is deeply concerned that one-fifth of the Roma in the State party live in slum settlements, often **without access to running water, adequate sewerage** ...

48. The Committee recommends that the State party strengthen preventive health care services and improve public services, such as **clean water, sewerage**, waste disposal and **sanitation**, particularly in Roma communities, ...

20. Concluding observations of the Committee on Economic, Social and Cultural Rights : Iraq. 12/12/97. E/C.12/1/Add.17.⁶⁰⁸

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. ...

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.

21. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Ireland. 05/06/2002. E/C.12/1/Add.77.⁶⁰⁹

20. The Committee is concerned that: (a) many new households cannot secure adequate and affordable housing; and (b) some 1,200 families of the traveller

⁶⁰⁷ http://www.ohchr.org/english/bodies/cescr/docs/e_c12_hun_co3.doc.

⁶⁰⁸ [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.17.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.17.En?Opendocument).

⁶⁰⁹ [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.77.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.77.En?Opendocument).

community are living in roadside encampments without **access to water and adequate sanitary facilities**, and are liable to be forcibly evicted.

22. Concluding observations of the Committee on Economic, Social and Cultural Rights : Israel. 04/12/98. E/C.12/1/Add.27.⁶¹⁰

10. The Committee expresses concern that excessive emphasis upon the State as a "Jewish State" encourages discrimination and accords a second-class status to its non-Jewish citizens. The Committee notes with concern that the Government of Israel does not accord equal rights to its Arab citizens, although they comprise over 19 per cent of the total population. This discriminatory attitude is apparent in the lower standard of living of Israeli Arabs as a result, *inter alia*, of **lack of access to housing, water, ...**

24. ...The Committee also notes with concern that while the Government annually diverts millions of cubic metres of water from the West Bank's Eastern Aquifer Basin, the annual per capita consumption allocation for Palestinians is only 125 cubic metres while settlers are allocated 1,000 cubic metres per capita.

26. The Committee notes with deep concern that a significant proportion of Palestinian Arab citizens of Israel continue to live in unrecognized villages without **access to water**, electricity, **sanitation** and roads. ...

28. The Committee expresses its grave concern about the situation of the Bedouin Palestinians settled in Israel. The number of Bedouins living below the poverty line, their living and housing conditions, their levels of malnutrition, unemployment and infant mortality are all significantly higher than the national averages. They have no **access to water**, electricity and **sanitation** ...

42. The Committee urges the State party to recognize the existing Arab Bedouin villages, the land rights of the inhabitants and their **right to basic services, including water**.

23. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Israel. 23/05/2003. E/C.12/1/Add.90.⁶¹¹

16. The Committee is deeply concerned about the continuing difference in treatment between Jews and non-Jews, in particular Arab and Bedouin communities, with regard to their enjoyment of economic, social and cultural rights in the State party's territory. The Committee reiterates its concern that the "excessive emphasis upon the State as a 'Jewish State' encourages discrimination and accords a second-class status to its non-Jewish citizens" (1998 concluding observations, para. 10). This discriminatory attitude is apparent in the continuing lower standard of living of Israeli Arabs as a result, *inter alia*, ... **lack of access to housing, water, ...** In this regard, the Committee expresses its concern that the State party's domestic legal order does not enshrine the general principles of equality and non-discrimination.

19. ... The Committee continues to be gravely concerned about the deplorable living conditions of the Palestinians in the occupied territories, who – as a result of the continuing occupation and subsequent measures of closures, extended curfews, road blocks and security checkpoints – suffer from impingement of their enjoyment of economic, social and cultural rights enshrined in the Covenant, in particular access to work, land, **water**, health care, education and food.

25. The Committee is particularly concerned about **limited access to, distribution and availability of water** for Palestinians in the occupied territories, as a result of inequitable management, extraction and distribution of shared water resources, which are predominantly under Israeli control.

⁶¹⁰ [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/df35bf5b5ee94d01802566d5003dd6cd?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/df35bf5b5ee94d01802566d5003dd6cd?Opendocument).

⁶¹¹ [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.90.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.90.En?Opendocument).

27. The Committee continues to be concerned about the situation of Bedouins residing in Israel, and in particular those living in villages that are still unrecognized (1998 concluding observations, para. 28). Despite measures by the State party to close the gap between the living conditions of Jews and Bedouins in the Negev, the quality of living and housing conditions of the Bedouins continue to be significantly lower, with limited or no **access to water**, electricity and **sanitation**. ...

41. The Committee strongly urges the State party to take immediate steps to ensure equitable **access to and distribution of water** to all populations living in the occupied territories, and in particular to ensure that all parties concerned participate fully and equally in the process of water management, extraction and distribution. In that connection, the Committee refers the State party to its General Comment No. 15 on the right to water (E/C.12/2002/11).

43. The Committee further urges the State party to recognize all existing Bedouin villages, their property rights and their right to basic services, in particular **water**, ...

24. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Kyrgyzstan. 01/09/2000. E/C.12/1/Add.49.⁶¹²

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**.

25. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Libyan Arab Jamahiriya. 25/01/2006. E/C.12/LYB/CO/2.⁶¹³

18. The Committee notes with concern that 28 per cent of the population do not have sustainable access to an improved water source. It is also concerned that improvements achieved in the North of the country in terms of **access to safe water** have not yet been made available to the Amazigh population, in particular in the regions of Nefoussa and Zouara.

35. The Committee recommends, in line with general comment No. 15 (2002) on the right to water, that the State party increase its efforts to ensure the right of everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses, without any discrimination. The Committee recommends that the State party take steps to implement the right of the Amazigh population to access safe water in the regions of Nefoussa and Zouara, and to report back to the Committee on this issue in its next report.

26. Concluding Observations of the Committee on Economic, Social and Cultural Rights : The former Yugoslav Republic of Macedonia. 24/11/2006. E/C.12/MKD/CO/1.⁶¹⁴

23. The Committee is deeply concerned about reports that 70 percent of the Roma live in informal settlements, which often lack basic infrastructure and services such as electricity, **adequate water, sewage removal**, garbage collection or paved roads, and that most Roma are without legal title to the places where they reside and are exposed to a constant threat of eviction.

43. The Committee urges the State Party to ensure, by legalizing and improving the infrastructure and amenities of existing Roma settlements or through social housing programmes, that all Roma have access to adequate and affordable housing, security of tenure, electricity, **adequate drinking water, sanitation** and other

⁶¹² [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.49.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.49.En?Opendocument).

⁶¹³ [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.LYB.CO.2.En?Opendocumen.t](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.LYB.CO.2.En?Opendocumen.t)

⁶¹⁴ <http://www.ohchr.org/english/bodies/cescr/docs/E.C.12.MKD.CO.1.pdf>.

essential services, including safe access to roads. It also urges the State party to ensure that adequate alternative housing is provided whenever forced evictions take place, in line with the Committee's general comment No. 7 (1997), and to include updated statistical data on an annual basis on the number of forced evictions, arrangements for alternative housing and the extent of homelessness, as well as information on the measures taken to legalize and improve the infrastructure and amenities of Roma settlements, in its next periodic report.

27. Concluding observations of the Committee on Economic, Social and Cultural Rights : Mexico. 09/06/2006. E/C.12/MEX/CO/4.⁶¹⁵

10. The Committee is concerned about reports that members of indigenous and local communities opposing the construction of the La Parota hydroelectric dam or other projects under the Plan Puebla-Panama are not properly consulted and are sometimes forcefully prevented from participating in local assemblies concerning the implementation of these projects. It is also concerned that the construction of the La Parota dam would cause the flooding of 17,000 hectares of land inhabited or cultivated by indigenous and local farming communities, that it would lead to environmental depletion and reportedly displace 25,000 people. It would also, according to the Latin American Water Tribunal, violate the communal land rights of the affected communities, as well as their economic, social and cultural rights.

28. The Committee urges the State party to ensure that the indigenous and local communities affected by the La Parota hydroelectric dam project or other large-scale projects on the lands and territories which they own or traditionally occupy or use are duly consulted, and that their prior informed consent is sought, in any decision-making processes related to these projects affecting their rights and interests under the Covenant, in line with ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. The Committee also urges the State party to recognize the rights of ownership and possession of indigenous communities to the lands traditionally occupied by them, to ensure that adequate compensation and/or alternative accommodation and land for cultivation are provided to the indigenous communities and local farmers affected by the construction of the La Parota dam or other construction projects under the Plan Puebla-Panama, and that their economic, social and cultural rights are safeguarded. In this regard, the State party is referred to the Committee's general comments Nos. 14 and 15 on the right to the highest attainable standard of health and on the **right to water**.

28. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Morocco. 01/12/2000. E/C.12/1/Add.55.⁶¹⁶

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.

⁶¹⁵ [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.MEX.CO.4.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.MEX.CO.4.En?Opendocument).

⁶¹⁶ [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.55.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.55.En?Opendocument)

29. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Morocco. 04/09/2006. E/C.12/MAR/CO/3.⁶¹⁷

13. The Committee notes with regret that important points raised in its concluding observations in 1994 (E/C.12/1994/5) and in 2000 (E/C.12/1/Add.55) have not been taken into consideration, and that the State party has not effectively addressed the main concerns raised during the consideration of its initial report and its second periodic report, which still need to be addressed, namely:

(a) The lack of data and statistics on the homeless, evictions, **access to drinking water** and electricity, women's employment and the status of the Amazigh people;

26. The Committee takes note with concern of the privatization of public services such as water and electricity in urban centres in Morocco, the effect of which is to impose an additional economic burden on families living in shantytowns and thus aggravate their poverty.

53. The Committee urges the State party to take all necessary measures to ensure that families living in poverty in shantytowns have **access to public services**. It recommends that the State party take due account of its general comments No. 3 (1990), on the nature of States parties' obligations (art. 2, para. 1, of the Covenant), No. 7 (1997), on the right to adequate housing (art. 11, para. 1, of the Covenant) and forced evictions, and No. 15 (2002), on the right to water (arts. 11 and 12 of the Covenant).

30. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Nepal. 24/09/2001. E/C.12/1/Add.66.⁶¹⁸

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.

31. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Nepal. 16/05/2007. E/C.12/NPL/CO/2.⁶¹⁹

42. The Committee recommends that the State party take urgent steps to ensure food security and **access to water for all**, particularly those who belong to the most disadvantaged and marginalized groups. It recommends that agricultural policies aim effectively at improving not only productivity and commercialization but also access and distribution. In this regard, the Committee urges that specific measures be implemented with a view to enhancing the participation of the lower castes in the production, distribution and consumption of food. The Committee requests the State party in its third periodic report to provide detailed information about the extent of food insecurity, the groups most vulnerable to it, and the concrete measures envisaged to address it. In this regard, the Committee draws the attention of the State party to its General Comment No. 12 on the right to adequate food and General Comment No. 15 on the right to water.

43. The Committee recommends the immediate application of the Interim Constitution and laws prohibiting caste-based discrimination and segregation in cases of denial of access to public water sources. It recommends that access to public wells be closely monitored by the District Development Committees or by another appropriate local body.

⁶¹⁷ http://www.ohchr.org/english/bodies/cescr/docs/E_C_12_MAR_CO_3_EN.doc.

⁶¹⁸ [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.66.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.66.En?Opendocument).

⁶¹⁹ http://www.ohchr.org/english/bodies/cescr/docs/e_c12_npl_co2.doc.

32. Concluding Observations of the Committee on Economic, Social and Cultural Rights : New Zealand. 23/05/2003. E/C.12/1/Add.88.⁶²⁰

9. The Committee appreciates the information on the right to water provided in the report of the State party (paragraphs 417-418), which was submitted even prior to the adoption of the Committee's General Comment No. 15.

33. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Panama. 24/09/2001. E/C.12/1/Add.64.⁶²¹

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.

34. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Senegal. 24/09/2001. E/C.12/1/Add.62.⁶²²

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.

35. Concluding observations of the Committee on Economic, Social and Cultural Rights : Serbia. 23/06/2005. E/C.12/1/Add.108.⁶²³

30. The Committee is gravely concerned about the poor conditions in which thousands of Roma families live in sub-standard informal settlements without access to basic services such as electricity, **running water, sewage facilities**, medical care and schools.

32. The Committee is concerned about the lack of **direct access to safe drinking water** in 17.5 percent of rural households in Serbia and about the poor quality of water in central Serbia.

57. The Committee urges the State party to ensure, by legalizing and improving the infrastructure of existing settlements or through social housing programmes, that Roma have access to adequate and affordable housing with legal security of tenure, **access to safe drinking water, adequate sanitation**, electricity and other essential services.

60. The Committee recalls the State party's obligation to ensure **access to safe drinking water** within, or in the immediate vicinity, of each household. It invites

⁶²⁰ [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.88.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.88.En?Opendocument).

⁶²¹ [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.64.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.64.En?Opendocument).

⁶²² [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.62.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.62.En?Opendocument).

⁶²³ [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.108.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.108.En?Opendocument).

the State party to identify disaggregated indicators and appropriate national benchmarks in relation to the right to water, in line with the Committee's General Comment No.15, and to include information on the process of identifying such indicators and benchmarks in its next report.

36. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Solomon Islands. 19/12/2002. E/C.12/1/Add.84.⁶²⁴

13. The Committee is also concerned that many communities in the State party do not have access to safe *drinking water* and proper *sanitation facilities*, which poses severe health risks to them.

26. The Committee urges the State party to seek international cooperation and assistance with a view to ensuring access to safe drinking water and adequate sanitation systems for all rural and urban communities.

37. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Syrian Arab Republic. 24/09/2001. E/C.12/1/Add.63.⁶²⁵

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.

38. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Tajikistan. 24/11/2006. E/C.12/TJK/CO/1.⁶²⁶

34. The Committee is concerned about the lack of *sufficient access to safe drinking water* in many households in Dushanbe, and the insufficient monitoring of water quality.

41. The Committee is deeply concerned about the decline of the budget for education. The Committee notes that the quality of education has deteriorated in recent years, especially in rural areas, due to the lack of adequate school infrastructure, i.e. furniture and supplies, textbooks, heating and fresh drinking water. The Committee also notes with concern the shortage of teachers who are increasingly forced due to low salaries to look for jobs outside the school system.

66. The Committee recalls the State party's obligation to ensure access to safe drinking water within, or in the immediate vicinity, of each household. It invites the State party to identify disaggregated indicators and appropriate national benchmarks in relation to the right to water, in line with the Committee's general comment No. 15 on the right to water, and to include information on the process of identifying such indicators and benchmarks in its next report.

39. Concluding observations of the Committee on Economic, Social and Cultural Rights : Ukraine. 23/11/2007. E/C.12/UKR/CO/5.⁶²⁷

25. The Committee notes with concern that many Roma live in informal settlements and camps which lack basic infrastructures and services such as safe water, electricity, gas, heating, sewage, garbage disposal and roads, without legal security of tenure and under constant threat of eviction.

47. The Committee recommends that the State party allocate sufficient funds for the implementation of the Programme for the Resettlement and Integration of Formerly Deported Persons and ensure that formerly deported persons have equal access to suitable plots of land and adequate housing and to effective remedies for claiming such land and housing. It also recommends that the State

⁶²⁴ [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.84.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.84.En?Opendocument).

⁶²⁵ [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.63.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.63.En?Opendocument).

⁶²⁶ <http://www.ohchr.org/english/bodies/cescr/docs/E.C.12.TJK.CO.1.pdf>.

⁶²⁷ <http://www2.ohchr.org/english/bodies/cescr/docs/cescr39/E.C.12.UKR.CO.5.pdf>.

party proceed with the adoption of the draft law on compensation of formerly deported persons. The State party should consider repealing the recent law threatening illegal land occupants with several years' imprisonment. It should also ensure that Crimean Tatars living in settlements enjoy legal security of tenure and access to basic infrastructures, including safe water, electricity, gas, heating, sewage and garbage disposal, and roads.

48. The Committee urges the State party to ensure, by legalizing and intensifying its efforts to improve the infrastructures of Roma settlements or through social housing programmes, that all Roma have access to adequate and affordable housing, legal security of tenure, safe water, electricity, gas, heating, sewage and garbage disposal, and roads.

49. The Committee recommends that the State party take immediate measures to ensure adequate occupancy levels and access to safe water, sanitation, food, bedding, natural light, ventilation, and out-of-cell activities in prisons, detention centres and centres for refugees and asylumseekers, ...

40. Concluding observations of the Committee on Economic, Social and Cultural Rights : Uruguay. 30/05/94. E/C.12/1994/3.⁶²⁸

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.

41. Concluding observations of the Committee on Economic, Social and Cultural Rights : Yemen. 12/12/2003. E/C.12/1/Add.92.⁶²⁹

18. The Committee is concerned about the living conditions of prisoners and detainees in the State party, especially women, with regard to access to health-care facilities, adequate food and *safe drinking water*.

19. The Committee is concerned about the persisting water crisis which constitutes an alarming environmental emergency in the State party, and which prevents access to safe and affordable drinking water, particularly for the disadvantaged and marginalized groups of society, and for rural areas.

37. The Committee urges the State party to take effective legislative or other measures to provide adequate health-care facilities, adequate food and safe drinking water to prisoners and detainees, especially women. The Committee also urges the State party to ensure the professional and social reintegration of women ex-prisoners, through vocational training.

38. The Committee further urges the State party to introduce strategies, plans of action, and legislative or other measures to address the scarcity of water problems, in particular the sustainable management of the available water resources. The Committee recommends that effective water management strategies and measures be undertaken in urban setting, exploring possibilities for alternative water treatment and developing ecological dry sanitation methods in rural settings. The Committee requests the State party to report on these issues, in its next periodic report, bearing in mind the Committee's general comment No. 15 (2002) on the right to water, by providing comparative and disaggregated data.

⁶²⁸ [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/37ca8ed9111940b6c12563e80048b951?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/37ca8ed9111940b6c12563e80048b951?Opendocument).

⁶²⁹ [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.92.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.92.En?Opendocument).

42. Concluding Observations of the Committee on Economic, Social and Cultural Rights : Zambia. 23/06/2005. E/C.12/1/Add.106.⁶³⁰

28. The Committee is concerned about the living conditions of prisoners and detainees, especially with regard to access to health care facilities, adequate food and **safe drinking water**.

B. United Nations Committee on the Elimination of Racial Discrimination: Concluding Observations

1. Concluding observations of the Committee on the Elimination of Racial Discrimination : Albania. 10/12/2003. CERD/C/63/CO/1.⁶³¹

21. The Committee is concerned about information relating to discrimination against the Roma in respect of access to education, health, hygiene, housing, employment, and sufficient and adequate food and **water**.

The Committee recommends that the State party intensify its efforts on behalf of the Roma minority, in accordance with general recommendation XXVII. Special efforts should be made, in consultation with the communities concerned, to integrate Roma children into the Albanian educational system, while allowing for the possibility of bilingual or mother-tongue instruction and respecting the communities' cultural identity and way of life. Information on the results achieved by the national strategy on behalf of the Roma should be communicated in the next periodic report.

Concluding observations of the Committee on the Elimination of Racial Discrimination : Israel. 14/06/2007. CERD/C/ISR/CO/13.⁶³²

35. The Committee notes with concern the application in the Occupied Palestinian Territories of different laws, policies and practices applied to Palestinians on the one hand, and to Israelis on the other hand. It is concerned, in particular, by information about **unequal distribution of water resources** to the detriment of Palestinians, ...

The State party should ensure **equal access to water resources to all without any discrimination**. ...

Concluding observations of the Committee on the Elimination of Racial Discrimination : Lithuania. 21/03/2006. CERD/C/LTU/CO/3.⁶³³

22. The Committee is alarmed at the critical health situation of some Roma communities, which is largely a consequence of their poor living conditions (art.5).

The Committee recommends that the State party continue to implement programmes and projects in the field of health for Roma, bearing in mind their disadvantaged situation resulting from extreme poverty and low levels of education. To this end, the Committee encourages the State party to take further measures to address the issues of drinking water supplies and sewage disposal systems in Roma settlements.

Concluding observations of the Committee on the Elimination of Racial Discrimination : Nepal. 28/04/2004. CERD/C/64/CO/5.⁶³⁴

12. The Committee remains deeply concerned at the persistence of the de facto caste-based discrimination and the culture of impunity that apparently permeates the higher strata of a hierarchical social system. In particular, it is concerned at

⁶³⁰ [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.106.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.106.En?Opendocument).

⁶³¹ <http://www2.ohchr.org/english/bodies/cerd/cerds63.htm>.

⁶³² <http://www.ohchr.org/english/bodies/cerd/docs/CERD.C.ISR.CO.13.doc>.

⁶³³ <http://www2.ohchr.org/english/bodies/cerd/cerds68.htm>.

⁶³⁴ [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.64.CO.5.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CERD.C.64.CO.5.En?Opendocument).

information on the existence of segregated residential areas for Dalits, social exclusion of inter-caste couples, restriction to certain types of employment, and **denial of access to** public spaces, places of worship and **public sources of food and water**, as well as at allegations that public funds were used for the construction of **separate water taps** for Dalits.

The Committee recommends that the State party, as a matter of priority, take measures to prevent, prohibit and eliminate private and public practices that constitute segregation of any kind, and make determined efforts to ensure the practical and effective implementation of these measures. The Committee further requests that information be included in the next periodic report on any follow-up measures taken by the State party to general recommendation XXIX on descent-based discrimination. **Concluding observations of the Committee on the Elimination of Racial Discrimination : Slovakia. 01/05/2002. CERD/C/304/Add.110**⁶³⁵

14. The Committee is concerned that a disproportionately large number of Roma suffer higher mortality rates, have poorer nutrition levels, and low levels of awareness of maternal and child health. Moreover, the Committee is concerned about poor **access to clean drinking water, adequate sanitation**, and high exposure to environmental pollution in Roma settlements. The Committee recommends that the State party take all necessary measures to ensure that the Roma enjoy the full right to health and health care. The Committee recommends that the State party prioritize and target social services for persons belonging to the most vulnerable groups.

Concluding observations of the Committee on the Elimination of Racial Discrimination : Slovakia. 10/12/2004. CERD/C/65/CO/7.⁶³⁶

11. The Committee is alarmed at the critical health situation of some Roma communities, which is largely a consequence of their poor living conditions.

The Committee recommends that the State party continue to implement programmes and projects in the field of health for Roma, bearing in mind their disadvantaged situation resulting from extreme poverty and low levels of education; to this end, the Committee encourages the State party to take further measures to address the issues of **drinking water supplies and sewage disposal** systems in Roma settlements.

Concluding observations of the Committee on the Elimination of Racial Discrimination : South Africa. 19/10/2006. CERD/C/ZAF/CO/3.⁶³⁷

18. While noting the promulgation of the Restitution of Land Rights Amendment Act of 2004 and the post-settlement support programmes, the Committee is concerned about the extent of restitution, the sustainable development of resettled communities and the enjoyment of their rights under the Convention, in particular their rights to housing, health, access to water and education (art. 5 (e)).

C. United Nations Committee on the Rights of the Child: Concluding Observations.⁶³⁸

⁶³⁵ [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.304.Add.110.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CERD.C.304.Add.110.En?Opendocument).

⁶³⁶ [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.65.CO.7.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CERD.C.65.CO.7.En?Opendocument).

⁶³⁷ <http://www2.ohchr.org/english/bodies/cerd/cerds69.htm>.

⁶³⁸ Note that the following is only a small overview over Concluding Observations of the Committee on the Rights of the Child (CRC) referring to access to water and sanitation. The complete Concluding Observations of CRC are available at: <http://www.ohchr.org/english/bodies/crc/sessions.htm>.

Concluding Observations of the Committee on the Rights of the Child: Armenia. 24/02/2000. CRC/C/15/Add.119.⁶³⁹

40. The Committee expresses its concern at the high incidence of environmental threats, including contamination of water supplies, which have a negative impact on the health of children. The Committee is concerned that there is insufficient data on access to clean water and sanitation.

41. In the light of article 24 (c) of the Convention, the Committee recommends that the State party take all appropriate measures, including international cooperation, to prevent and combat the damaging effects of environmental degradation on children, including pollution and contamination of water supplies. The Committee encourages the State party to collect data on **access to clean water and sanitation**.

Concluding Observations of the Committee on the Rights of the Child: Azerbaijan. 17/03/2006. CRC/C/AZE/CO/2.⁶⁴⁰

55. The Committee is concerned that poor living conditions, which affect many families, seriously limit children's full enjoyment of their rights. The Committee is also concerned that over 40 per cent of the population lack **access to potable water**, including the vast majority of refugees and IDPs.

56. The Committee recommends that the State party take all necessary measures to provide support and material assistance to economically disadvantaged families, including the implementation of the Poverty Reduction Strategy Paper (PRSP) and targeted programmes with regard to the most needy group of families in order to guarantee the right of all children to an adequate standard of living. In particular, the Committee recommends that the State party ensure universal **access to sanitation and potable water**.

Concluding Observations of the Committee on the Rights of the Child: Benin. 20/10/2006. CRC/C/BEN/CO/2.⁶⁴¹

52. ... Furthermore, the Committee recommends that the State party strengthen its efforts to improve the health situation of children, including through:

(b) ... greater **access to clean drinking water**, ...

59. ... While noting the improvements in water supply, the Committee is concerned at the limited **access to clean and safe drinking water and adequate sanitation** in the country.

60. The Committee recommends that, in accordance with article 27 of the Convention, the State party reinforce its efforts to provide support and material assistance, with a particular focus on the most marginalized and disadvantaged families, and to guarantee the right of children to an adequate standard of living. In this connection, the Committee recommends that the State party: ...

(c) Increase its effort to provide **adequate water sanitation and access to clean drinking water** throughout the country, including by improving the capacity of technical services to use all funds made available and of community management of water points in order to make water supply sustainable at reduced user cost; and

(d) Undertake a large scale, long-term action, in cooperation with relevant stakeholders, to improve **sanitation and household hygiene**, especially in rural areas.

⁶³⁹ At: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.119.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.119.En?OpenDocument).

⁶⁴⁰ At: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.AZE.CO.2.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.AZE.CO.2.En?OpenDocument).

⁶⁴¹ At: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.BEN.CO.2.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.BEN.CO.2.En?OpenDocument).

Concluding Observations of the Committee on the Rights of the Child: Chile. 23/04/2007. CRC/C/CHL/CO/3.⁶⁴²

59. ... The Committee is concerned at the high percentage of the population that lacks access to basic services and is particularly concerned over the vast discrepancy in the coverage of **clean and running water**, as well as **sewage systems**, in urban compared to rural areas. The Committee notes that poverty levels are disproportionately high among female headed households and indigenous peoples.

60. The Committee recommends that the State party prioritize and allocate sufficient funds in order to counteract the increasing inequality and effectively reduce the discrepancies in the standard of living, inter alia, between urban and rural areas. The Committee highlights the need to strengthen the capacity of departmental and municipal authorities to provide basic services. In particular, increased **access to clean drinking water and sewage disposal** should be a priority in rural areas.

Concluding Observations of the Committee on the Rights of the Child: Ethiopia. 01/11/2006. CRC/C/ETH/CO/3.⁶⁴³

The Committee is deeply concerned about the widespread poverty in the State party and the increasingly large numbers of children who do not enjoy the right to an adequate standard of living, including access to food, **clean drinking water**, adequate housing and **latrines**.

62. The Committee recommends that, in accordance with article 27 of the Convention, the State party reinforce its efforts to provide support and material assistance, with a particular focus on the most marginalized and disadvantaged families, and to guarantee the right of children to an adequate standard of living.

Concluding Observations of the Committee on the Rights of the Child: Ghana. 17/03/2006. CRC/C/GHA/CO/2.⁶⁴⁴

49. The Committee is concerned about the high infant and under-five mortality rates, mostly from preventable causes such as inadequate drinking water and sanitation. While taking note of the "Roll back malaria" programme, the Committee is still concerned about the high incidence of malaria as well as the high number of malnourished, severely stunted and underweight children. It is also concerned about regional disparities in the provision of health services, and sanitation facilities.

50. The Committee recommends that the State party:

- (a) Undertake all necessary measures to reduce mortality rates by improving prenatal care and preventing communicable diseases;
- (b) Allocate more financial resources to child health, nutrition and access to safe drinking water and sanitation facilities; ...

Concluding Observations of the Committee on the Rights of the Child: Honduras. 03/05/2007. CRC/C/HND/CO/3.⁶⁴⁵

58. The Committee welcomes the health-reform project aimed at improving access to health services for disadvantaged groups, as well as other important progress in this area. However, it is concerned that: ...

- (e) Homes, especially in rural areas, lack **clean drinking water**; ...

59. The Committee recommends that the State party: ...

⁶⁴² At: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.CHL.CO.3.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.CHL.CO.3.En?OpenDocument).

⁶⁴³ At: <http://daccessdds.un.org/doc/UNDOC/GEN/G06/450/09/PDF/G0645009.pdf?OpenElement>.

⁶⁴⁴ At: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.GHA.CO.2.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.GHA.CO.2.En?OpenDocument).

⁶⁴⁵ At: http://www.ohchr.org/english/bodies/crc/docs/co/CRC.C.HND.CO.3_en.pdf.

(b) Continue to address the problem of malnutrition and expand the supply of **clean drinking** water in homes, with special emphasis on rural and remote areas;

64. The Committee, while welcoming the adoption of a Poverty Reduction Strategy in 2001 and of the Law on the Fund for Poverty Reduction (Decree No. 70-2002), is concerned that the degree of poverty in the country remains high, especially in the rural areas and that the poor socio-economic situation of the country has a devastating impact on the standard of living of children, particularly the lack of access to basic goods, health services and education.

65. The Committee recommends that the State party take all possible action ... to reduce poverty and ensure that the entire country has access to basic goods, education, health and other services, including clean drinking water, especially the remote and rural areas. ...

81. ... The Committee further recommends that the State party: ...

(c) Improve the conditions of detention of children when detention is used as a last resort, notably by complying with the international standards as to surface area, ventilation, fresh air, natural and artificial light, proper food, drinking water and hygienic conditions; ...

Concluding Observations of the Committee on the Rights of the Child: Jordan. 02/06/2000. CRC/C/15/Add.125.⁶⁴⁶

49. In light of article 24 of the Convention, the Committee expresses its concern at problems involving waste treatment and poor access to safe drinking water and adequate sanitation, particularly in rural areas, which negatively impact upon the health of children.

50. In light of article 24 (c) of the Convention, the Committee recommends to the State party to take all appropriate measures, including through international cooperation, to prevent and combat the damaging effects of environmental pollution and contamination of water supplies on children, and to strengthen procedures for inspection. The Committee encourages the State party to collect data on access to clean water and sanitation.

Concluding Observations of the Committee on the Rights of the Child: Kazakhstan. 19/06/2007. CRC/C/KAZ/CO/3.⁶⁴⁷

55. The Committee notes that the per capita income has remarkably increased over the last decade, however it remains concerned about the discrepancy between the steadily growing GDP and the low standard of living of a large section of the population, including many children and their families, and that in spite of the State party's Programme to Reduce Poverty 2003 – 2005, a large percentage of the population still lives in poverty, particularly in some less developed districts. The Committee is further concerned that adequate housing remains a problem for many families and for children after they have left homes and that access to clean drinking water and sanitation is not ensured in all regions of the country.

56. In accordance with article 27 of the Convention, the Committee recommends that the State party: ...

(d) Ensure access to clean drinking water and sanitation in all regions of the country.

⁶⁴⁶ At: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.125.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.125.En?OpenDocument).

⁶⁴⁷ At: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/424/33/PDF/G0742433.pdf?OpenElement>.

Concluding Observations of the Committee on the Rights of the Child: Kenya. 19/06/2007. CRC/C/KEN/CO/2.⁶⁴⁸

47. The Committee notes the efforts of the State party at policy and practical levels to give effect to the right to health and health services, including the National Infant Feeding Policy and the distribution of impregnated nets for the prevention of malaria. However, it remains deeply concerned at the state of health of children in Kenya, in particular the following: ...

(c) Lack of access to sanitation and clean, sufficient, reliable and affordable drinking water, ...

48. The Committee recommends that the State party:

(d) Improve **access to safe drinking water and sanitation facilities and ensure sustainability, availability, sufficiency and affordability to all, particularly children;**

55. The Committee remains deeply concerned at the widespread poverty and the increasingly high number of children who do not enjoy the right to an adequate standard of living, including access to food, clean drinking water, adequate housing and latrines. The Committee is particularly concerned at the situation of children belonging to disadvantaged families, rural communities, orphans, children infected with HIV and/or affected by HIV/AIDS, and street children. ...

57. ... The Committee also notes that the rapid increase in school enrolment significantly challenges sufficient allocation of financial resources, commonly resulting in a poor physical school environment lacking adequate infrastructure, trained teachers, and appropriate water and sanitation facilities. ...

Concluding Observations of the Committee on the Rights of the Child: Kyrgyzstan. 09/08/2000. CRC/C/15/Add. 127.⁶⁴⁹

47. In light of article 24 of the Convention, the Committee expresses its concern at problems involving the recycling, collection and disposal of waste in urban areas and poor **access to safe water and adequate sanitation** in rural areas, which negatively impact upon the health of children.

48. In light of article 24 (c) of the Convention, the Committee recommends that the State party take all appropriate measures, including international cooperation, to prevent and combat the damaging effects of environmental degradation on children, including pollution and contamination of water supplies. The Committee encourages the State party to collect data on **access to clean water and sanitation.**

Concluding Observations of the Committee on the Rights of the Child: Maldives. 08/06/2007. CRC/C/MDV/CO/3.⁶⁵⁰

77. The Committee is concerned that gender biases and stereotypes in school textbooks, curricula and school management as well as the lack of appropriate sanitary facilities, including separate toilets, impede the full participation of girls in education, particularly in secondary schools.

78. In the light of article 28 of the Convention, Committee recommends that the State party continue to allocate adequate financial, human and technical resources in order to: ...

(c) ... ensure the provision of girls' sanitary facilities in all schools ...

⁶⁴⁸ At: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/425/08/PDF/G0742508.pdf?OpenElement>.

⁶⁴⁹ At: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.127.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.127.En?OpenDocument).

⁶⁵⁰ At: <http://www.ohchr.org/english/bodies/crc/docs/co/CRC.C.MDV.CO.2.pdf>.

Concluding Observations of the Committee on the Rights of the Child: Marshall Islands. 02/02/2007. CRC/C/MHL/CO/2.⁶⁵¹

52. The Committee recommends that the State party strengthen its efforts in improving the health situation of children, including through: ...

(h) Providing adequate water sanitation and access to clean drinking water throughout the country.

58. While noting the considerable level of foreign aid available in the State party, the Committee is concerned at the low standard of living of children and adolescents, in particular in outer islands. The Committee is concerned at the poor basic service provision, especially *safe drinking water* and electricity, as well as at overcrowding and low quality housing, particularly in Majuro and Ebeye.

59. The Committee recommends that the State party ensure that: ...

c) Families are provided with adequate and affordable housing; and have access to drinking water and sanitation; and ...

62. ... The Committee is also concerned at ... the lack of access to drinking water and sanitation in schools; ...

64. The Committee recommends that the State party, while taking into account General Comment No.1 on the aims of education, undertake measures to adopt the deficiencies in the area of education, inter alia, by: ...

(b) Strengthening efforts to bridge the gaps in the availability of education throughout the country, including the availability of school materials, drinking water, sanitation and transportation;...

Concluding Observations of the Committee on the Rights of the Child: Mauritius: 17/03/2006. CRC/C/MUS/CO/2.⁶⁵²

52. Notwithstanding the various measures undertaken by the State party to develop health-care services, antenatal and post-natal care and make them accessible for free to all, the Committee remains concerned about: ...

(e) Limited access to clean and safe drinking water in Rodrigues.

53. The Committee recommends that the State party: ...

(d) Ensure access to safe drinking water and sanitation in all areas of the country and particularly in Rodrigues; ...

Concluding Observations of the Committee on the Rights of the Child: Niger. 13/06/2002. CRC/C/15/Add.179.⁶⁵³

56. The Committee is concerned about widespread poverty and the increasingly high numbers of children who do not enjoy the right to an adequate standard of living, including access to *clean drinking water, adequate housing and latrines*.

Concluding Observations of the Committee on the Rights of the Child: Peru. 14/03/2006. CRC/C/PER/CO/3.⁶⁵⁴

50. The Committee is concerned about environmental health problems arising from a lack of access to safe drinking water, inadequate sanitation and contamination by extractive industries, which mainly affect the health and livelihoods of vulnerable groups, including children.

51. The Committee reiterates the recommendation of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, that the State party carry out independent, rights-based environmental and social impact assessments prior to the setting up of all mining or

⁶⁵¹ At: http://www.ohchr.org/english/bodies/crc/docs/co/CRC_C_MHL_CO_2.pdf.

⁶⁵² At: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.MUS.CO.2.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.MUS.CO.2.En?OpenDocument).

⁶⁵³ At: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.179.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.179.En?OpenDocument).

⁶⁵⁴ At: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.PER.CO.3.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.PER.CO.3.En?OpenDocument).

other industrial projects that may have harmful impacts on the right to health of children. The Committee further recommends that the State party strengthen its efforts to provide sanitation and safe drinking water to all the population, with special attention to rural and remote areas.

58. The Committee is concerned about the high degree of poverty in the country, where - according to the State party's written replies - about two-thirds of children live in poverty while about 30 per cent of them are in a situation of extreme poverty. The Committee is further concerned that housing and living conditions in rural areas are very poor and that only 34 per cent of families living in rural areas have access to water (while this percentage rises to 74 per cent for urban areas).

59. The Committee recommends that the State party take all possible actions, including providing additional and better managed resources, to reduce poverty and ensure universal access to basic goods and services, including housing and clean drinking water, paying special attention to remote and rural areas.

72. The Committee recommends that the State party continue and strengthen its efforts to bring the administration of juvenile justice fully in line with the Convention, in particular articles 37, 40 and 39, and with other United Nations standards in the field of juvenile justice, ... In this regard, the Committee recommends that the State party: ...

(c) Improve the conditions of detention of persons below 18, notably by complying with the international standards as to surface area, ventilation, fresh air, natural and artificial light, proper food, drinking water and hygienic conditions;

Concluding Observations of the Committee on the Rights of the Child: Slovakia. 08/06/2007. CRC/C/SVK/CO/2.⁶⁵⁵

55. ... The Committee remains concerned, however, that some Roma communities do not have equal access to adequate housing, have limited or no access to basic public services, live in substandard, racially segregated slum settlements exposed to environmental hazards and do not have access to clean drinking water. ...

56. The Committee recommends that the State party take all necessary measures to ensure that all communities, including Roma communities, are given equal access to adequate housing, sanitation and infrastructure, are protected from environmental hazards and are given access to clean air, land and water. ...

Concluding Observations of the Committee on the Rights of the Child: South Africa. 23/02/2000. CRC/C/15/Add.122.⁶⁵⁶

29. ...The Committee is also concerned about ... the poor situation of sanitation; and insufficient access to safe drinking water, especially in rural communities. The Committee recommends that the State party reinforce its efforts to allocate appropriate resources and develop comprehensive policies and programmes to improve the health situation of children, particularly in rural areas. In this context, the Committee recommends that the State party ... increase access to safe drinking water and sanitation.

Concluding Observations of the Committee on the Rights of the Child: Thailand. 17/03/2006. CRC/C/THA/CO/2.⁶⁵⁷

55. The Committee is concerned about a range of environmental problems such as air pollution and environmental degradation, including shortcomings in the municipal and industrial waste management, which have serious consequences for children's health and development. While noting improvements in water and

⁶⁵⁵ At: <http://www.ohchr.org/english/bodies/crc/docs/co/CRC.C.SVK.CO.2.pdf>.

⁶⁵⁶ At: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.122.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.122.En?OpenDocument).

⁶⁵⁷ At: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.THA.CO.2.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.THA.CO.2.En?OpenDocument).

sanitation, particularly for rural families, the Committee is concerned about regional disparities as regards access to safe drinking water and sanitation.

56. The Committee recommends that the State party:

(a) Continue to take effective measures to improve access to safe drinking water and sanitation facilities, particularly in remote areas of the country; ...

Concluding Observations of the Committee on the Rights of the Child: Uganda. 23/11/2005. CRC/C/UGA/CO/2.⁶⁵⁸

57. ... **However, the Committee remains deeply concerned about the widespread poverty in the State party, particularly in northern Uganda, and the increasingly large numbers of children who do not enjoy the right to an adequate standard of living, including access to food, clean drinking water, adequate housing and latrines.**

Concluding Observations of the Committee on the Rights of the Child: Zambia. 02/07/2003. CRC/C/15/Add.206.⁶⁵⁹

46. ... However, the Committee is concerned about ... and the poor sanitation and limited access to safe drinking water, especially in rural areas.

47. The Committee recommends that the State party: ...

(b) ... increase access to safe drinking water and sanitation;

54. The Committee is concerned about the widespread poverty, especially among female-headed households, in the State party and the increasingly high number of children who do not enjoy the right to an adequate standard of living, including access to clean drinking water, adequate housing and latrines.

⁶⁵⁸ At: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.UGA.CO.2.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.UGA.CO.2.En?OpenDocument).

⁶⁵⁹ At: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.206.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.206.En?OpenDocument).

6.4 Decisions of Regional Courts and Bodies

African Commission on Human and Peoples' Rights

Free Legal Assistance Group and others v. Zaire, Communications 25/89, 47/90, 56/91 and 100/93, decision made at the 18th Ordinary Session, Praia, Cape Verde, October 1995⁶⁶⁰

[right to health includes right to access to basic services, including safe drinking water]

The petitioners made numerous allegations of human rights violations, ranging from arbitrary arrests, detention, torture and religious persecution, to the shortage of medicines and the failure of the Government to provide basic services such as safe drinking water and electricity.

The Commission found that 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 accordingly 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 is held to constitute a violation of Article 16.⁶⁶¹

The Commission held that the facts constituted serious and massive violations of the African Charter, namely of Articles 4,5,6,7,8,16 and 17.

The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria, Communication 155/96, decision made at 30th Ordinary Session, Banjul, The Gambia, from 13th to 27th October 2001, ACHPR/COMM/A044/1⁶⁶²

[right to health – right to a clean environment – obligation to respect – obligation to protect – transnational corporations]

The communication alleged that the Nigerian military government, through a consortium that included a Nigerian subsidiary of Shell, was directly involved in oil exploitation in Ogoniland, which was done without any regard for the health or environment of the local communities, disposing toxic wastes into the environment and local waterways. The resulting contamination of **water**, soil and air was held to have serious short and long-term health impacts, including skin infections, gastrointestinal and respiratory ailments, and increased risk of cancers, and neurological and reproductive problems. The communication therefore alleged that the military government of Nigeria was guilty of violations of several of the rights guaranteed under the African Charter on Human and Peoples' Rights, including the right to health, the right to dispose of wealth and natural resources, and the right to a clean environment due to its condoning and facilitating the operations of oil corporations in Ogoniland.

⁶⁶⁰ http://www1.umn.edu/humanrts/africa/comcases/25-89_47-90_56-91_100-93.html.

⁶⁶¹ Ibid, at para 47.

⁶⁶² <http://cesr.org/filestore2/download/579>.

The Commission ruled that the Ogoni had suffered violations of their right to health (Article 16) and right to a clean environment (Article 24) due to the government's failure to prevent pollution and ecological degradation. It held further that the failure to monitor oil activities and involve local communities in decisions violated the State's duty to protect its citizens from exploitation and despoliation of their wealth and natural resources (Article 21). The Commission suggested that a failure to provide material benefits for the Ogoni people was also in violation of Article 21. The Commission also held that the implied right to housing (including protection from forced eviction), which is derived from the express rights to property, health and family, was violated by the destruction of housing and harassment of residents who returned to rebuild their homes. Finally, destruction and contamination of crops by government and non-state actors violated the duty to respect and protect the implied right to food.

The Commission issued orders to cease attacks on the Ogoni people, to investigate and prosecute those responsible for attacks, to provide compensation to victims, to prepare environmental and social impact assessment in the future and to provide information on health and environmental risks.

***Inter-American Commission on Human Rights
Mapuche Paynemil and Kaxipayiñ Communities v. Argentina, Case No
12.010⁶⁶³***

[complaint before IACHR regarding failure of Argentine State to comply with court decision ordering provision of drinking water to population exposed to water contaminated with heavy metals - violation of right to effective judicial protection]

In this case, the water supply of an indigenous community, the Paynemil Mapuche Community, in Neuquén, Argentina, had been polluted with lead and mercury by an oil company. The Public Defender of Minors of Neuquén (Children's Public Defender) filed an injunction ('amparo') against the Neuquén Government on the grounds that the Provincial State was obliged to provide the necessary fresh water for the community's survival since access to water is a basic human right. She argued that since the right to health can only be guaranteed through access to water, access to water is a fundamental human right and the Government was neglecting its obligation to safeguard the health of the population.

The competent domestic court ordered the provincial government to provide an immediate supply of emergency water within 2 days and a permanent supply of water through any possible means within 45 days; to conduct studies to ascertain damages in the population caused by heavy metal contamination and, if damages were found, to provide necessary treatment; and to take all necessary measures to prevent environmental damage. However, the Argentine State failed to fully comply with the court order, so the Defender of Minors filed a complaint with the IACHR alleging the violation of the children's right to the protection required by their status as minors, as well as of their rights to health, a healthy environment, land ownership and an effective remedy.

Within the framework of a hearing, the Argentine State committed itself to provide affected children with treatment. In addition, it was agreed that a water treatment plant under construction would be monitored by both Mapuche communities. Finally, the State committed itself to disclosing information about the Loma de la Lata field development, particularly about the location of abandoned wells, oxidation pools and piping.

⁶⁶³ Source: http://www.es.cr-net.org/index_country.htm?country_id=13475.

However, the Argentine State failed to comply with the agreement. Although the IACHR conducted a visit to the country in August 2001, met with the parties and held two additional work meetings (October 2001 and August 2003), there has been no major progress so far. The State continues to argue that the case should not have been accepted for consideration by the IACHR.

International Center for Settlement of Investment Disputes (ICSID)

Aguas Argentinas S.A., Suez Sociedad General de Aguas de Barcelona S.A., Vivendi Universal S.A. v. Republic of Argentina, Case No. ARB/03/19, judgment of 12 May 2005

Several organizations of users and consumers, and human rights organizations submitted to International Center for Settlement of Investment Disputes (ICSID) a "Petition for Transparency and Public Participation as Amicus Curiae," within the framework of proceedings started by Aguas Argentinas, Suez and Vivendi. These companies demanded from the State of Argentina an indemnification for damages caused upon their investments as a result of the public utility rates freeze following Argentina's abandonment in 2001 of the system that pegged its currency to the dollar. ICSID allowed the organizations to participate as *amicus curiae* so that they could provide their perspectives, arguments or specific information on the matter at stake.

Emphasizing that this particular case was "***of special public interest***" due to the fact that the ***investments issue related to sewage and water distribution systems of a large metropolitan area***, including the city of Buenos Aires and its neighboring municipalities. According to the tribunal, such systems provide basic public services to millions of people and, therefore, could pose a wide range of complex issues related to public and international law, including human rights issues, the tribunal allowed the petition. The ICSID tribunal also noted that the acceptance of the *amicus* briefs could also have the benefit of an increased transparency in arbitration proceedings between investors and States.

According to the tribunal's decision, the petitioning organizations should ask for permission to be accepted as *amicus curiae* and provide information, including but not limited to information about their identity and background, the nature of their interest in the case, the reasons why the Tribunal should accept the *amicus curiae* brief.

This decision is a fundamental precedent, because it is the first time that an arbitration tribunal working under the ICSID rules decided to accept the participation of civil society organizations as amicus curiae even though the parties (in this case, the companies) had opposed to it. On March 17 2006, in the case Aguas Provinciales de Santa Fe S.A. et al. v. República Argentina (ICSID Case ARB/03/17), the same tribunal confirmed this criterion and accepted the participation of third parties acting as amicus curiae.

7. DECISIONS OF NATIONAL COURTS

National jurisprudence on the right to water and sanitation is important in interpreting national constitutions and legislative standards and international standards, as well as in applying these to concrete cases of deprivation or denial of access to water and sanitation. 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 legal redress for those denied or deprived access to water.

The decisions below indicate that a wide range of courts, >including those in 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 Costa Rican Supreme Court ordered service providers to extend existing water networks in order for people to be served. 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 per day as interim relief. In the Indian case of *F.K. Hussain v. Union of India*, the Court considered opposing views regarding the impact on water quality of a government agency's plans to dig wells on a set of islands. 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 of 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* specifically addressed the obligations of States to ensure adequate sanitation facilities.

The number of cases addressing sanitation issues is still more limited, but increasing. Indian courts in particular have produced a number of important precedents on access to sanitation and the State duty to provide sanitary living conditions.

In most cases, such judicial decisions will be implemented by the State, or at least have a strong influence on its policy-making.⁶⁶⁴ The decisions included in this section may be persuasive for judges in other jurisdictions

⁶⁶⁴ See for further information on the role of economic, social and cultural rights litigation, note 13 above.

who may be concerned about their ability or mandate to address right-to-water-and-sanitation issues.

The judgments are included here in our paraphrased form produced by COHRE. For easier orientation, we have classified them according to the components of the right to water and sanitation primarily addressed in them.

Recognition & Entitlements

INDIA

Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and Others, Supreme Court of India, 13 January 1981⁶⁶⁵

[Right to life interpreted in broad terms to include basic necessities of life such as adequate nutrition, clothing and shelter]

The case is concerned with the rights of detainees. In particular, the petitioner Francis Coralie Mullin challenged the restrictions on having interviews with his lawyer and the members of his family. The Court held that a detainee in principle has all fundamental rights, with the exception of those that are incompatible with imprisonment.

In this context, the Court also interpreted article 21 of the Constitution providing for the right to life. The Court held that this right cannot be restricted to mere physical survival, but rather must be interpreted in broad terms aiming to “enhance the dignity of the individual and the worth of the human person”. It declared that “the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. The magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life”.

Following the Supreme Court’s above view, the right to life guaranteed under the Indian Constitution would clearly encompass access to essential supplies of safe water and sanitation.

Subhash Kumar v. State of Bihar and Others, Supreme Court of India, 9 January 1991⁶⁶⁶

[Right to life guaranteed under article 21 of the Indian Constitution held to include the right to enjoyment of pollution free water]

This case, filed as a public interest litigation by Subhash Kumar, aimed to stop the pollution of the Bokaro River. According to the applicant, sludge

⁶⁶⁵ (1981) SCR (2) 516; also available at: <http://judis.nic.in/supremecourt/qrydisp.aspx?filename=10150>.

⁶⁶⁶ (1991) AIR 420; also available at: <http://www.judis.nic.in/supremecourt/qrydisp.aspx?filename=12854>.

discharged from the washeries of the respondent, West Bokaro Collieries and Tata Iron and Steel Company (TISCO), caused such high levels of pollution that the river water was neither fit for drinking nor for irrigation purposes and thus constituted a risk to the health of people. Furthermore, he claimed that the authorities and the State of Bihar had failed to take action against the company.

The court dismissed the petition on the ground that the case was motivated by self-interest and would therefore not qualify as a public interest litigation. However, in this case the Supreme Court for the first time explicitly stated that the right to life under article 21 "includes the right of enjoyment of pollution free water and air for full enjoyment of life".

F.K. Hussain v. Union of India, High Court of Kerala, 26 February 1990⁶⁶⁷
[Right to life guaranteed under article 21 of the Constitution includes right to sweet water]

Cf. case summary under AVAILABILITY & ALLOCATION

S. K. Garg v. State of Uttar Pradesh and Others, High Court of Allahabad, Writ Petition No. 19754 of 1998, 28 May 1998⁶⁶⁸
[Right to get water held to be part of the right to life; Municipality directed to set up committee to find a solution to the lack of water provision in many parts of the city]

Cf. case summary under MONITORING AND COMPLAINT PROCEDURES

INDONESIA

Judicial Review of the Law No. 7 of 2004 on Water Resources, Constitutional Court of the Republic of Indonesia, 058-059-060-063/PUU-II/2004, 19 July 2005⁶⁶⁹

[Indonesian Law on Water Resources held to be conditionally constitutional – recognition of the right to water as part of international and constitutional law - obligations relating to availability, accessibility, affordability, quantity and participation]

In its judgment, the Constitutional Court reviewed the constitutionality of the Indonesian Law on Water Resources. The constitutionality was challenged by a number of NGOs who considered the law to be in contradiction to the Constitution, in particular due to provisions that in their view encouraged the privatisation of water services. They therefore lodged a complaint to the Constitutional Court.

The Court rejected the petition and declared the law to be conditionally constitutional meaning that it is constitutional when it is interpreted,

⁶⁶⁷ (1990) AIR Ker 321; also available at: <http://www.elaw.org/resources/text.asp?ID=1126>. Cf. also *Attakoya Thangal vs. Union of India*, High Court of Kerala, 1990, available at: <http://www.elaw.org/resources/text.asp?ID=1267>.

⁶⁶⁸ (1999) AIR All 41.

⁶⁶⁹ English version of the judgment on file with COHRE, version in Bahasa Indonesia available at: <http://www.mahkamahkonstitusi.go.id/download/PutusanSDA.pdf>.

implemented and applied in a certain way in accordance with the conditions established by the Court. If this is not the case, the law could be subjected to a further review.

In its judgment, the Court acknowledged that access to water is a human right. It referred to a number of international instruments including article 25 of the Universal Declaration of Human Rights, article 12 of the International Covenant on Economic, Social and Cultural Rights and article 24 of the Convention on the Rights of the Child as well as the General Comments No. 14 and 15 on the right to the highest attainable standard of health and water respectively. Furthermore, it argued that article 28H of the Indonesian Constitution guaranteeing the right to a life of well-being in body and mind lays the foundation for the recognition of the right to water. The Court stressed that the State has the obligation to respect, protect and fulfil the human right to water and held that the responsibilities of the Government as laid down in the Law on Water Resources must be interpreted in light of the right to water.

It continued by referring to different aspects of the right to water. Regarding water resources allocation, the Court stressed that “[t]he Government is obligated to prioritize untreated water to fulfil the daily needs for every individual”. The judgment includes extensive considerations of the nature of water holding that it is a *res commune* like air, yet with certain specific characteristics as water is not as naturally distributed but requires distribution channels to be accessible to everyone. In so far the State is obliged to develop a drinking water provision system in order to make water accessible also to those communities to whom water is not naturally accessible.

The Court further stated that a price can be charged for water processing and distribution. As such, this does not entail a commercialization of the water resource itself. However, this must not lead to expensive costs. Rather, pricing should be transparent and involve community members. In terms of water quantity, the Court argued that “[t]he volume of daily basic needs should be established based on the universally applied standard regarding the minimum water needs to fulfil the daily basic needs.” Lastly, the Court also referred to community participation as an element to be prioritised in water management.

IRELAND

Gladys Ryan vs. The Attorney General⁶⁷⁰

[No specific right to receive unfluoridated piped water, but recognition of more general right to have access to a supply of water]

In this case, the plaintiff, Ms. Gladys Ryan, a resident of Dublin, challenged the constitutionality of the so-called Health (Fluoridation of Water Supplies) Act, 1960. Section 2 of the Act in result created a statutory obligation

⁶⁷⁰ Both the High Court and Supreme Court judgments are reported in [1965] IR 294.

binding every health authority in the country – including the Dublin Health Authority - to fluoridate its water supplies coming to the public through pipes before a certain date to be fixed by the Minister. Ms. Ryan alleged that the fluoridation of public water supplies in accordance with the Act would constitute a violation of her personal rights and the personal rights of her children under Article 40.3 of the Irish Constitution.

In the proceedings before the Irish High Court, Justice Kenny found, in essence, that the plaintiff did not have a right to receive a supply of water through the piped water supply which had not been fluoridated and accordingly dismissed Ms. Gladys' claim. However, while thus denying that the claimant had a specific right to be provided with unfluoridated piped water, he also stated that "water today is a necessity of life and that the plaintiff probably has a right of access to a supply of water".⁶⁷¹

Ms. Ryan subsequently appealed to the Supreme Court. While the appeal failed, the Supreme Court explicitly noted that "It was accepted by the Attorney General that water is one of the essentials of life, and that man therefore has an inherent right to it."⁶⁷²

BANGLADESH

Dr. Mohiuddin Farooque, Secretary General, being dead Ms. Syeda Rizwana Hasan, Director (Program), representing Bangladesh Environmental Lawyers Association (BELA) v. Bangladesh & Others, Supreme Court, High Court Division, Special Original Jurisdiction, Writ Petition No. 891 of 1994, 15 July 2001⁶⁷³

[Government authorities directed to implement and ensure compliance with environmental pollution control laws – broad interpretation of constitutional right to life]

This case filed by the Bangladesh Environmental Lawyers Association aimed at obligating the authorities to implement laws to control pollution and to ensure that industries and factories in the country comply with applicable standards.

Already in 1986, the Government had conducted a survey and identified 903 industries and factories as polluters that discharged various industrial wastes into the air and water bodies. A later list included 1176 industries. In 1997, the Government promulgated the Environment Conservation Rules setting up specific standards and categorising industries according to the environmental impact. However, no measures were taken against these industries. Rather, the pollution continued unabated and even increased. There was hardly any improvement in curbing and reducing the hazardous industrial pollution. The goal of the present petition was to oblige the authorities to implement these rules.

⁶⁷¹ Ibid. at p. 315.

⁶⁷² Ibid. at p. 342.

⁶⁷³ Available at: <http://www.elaw.org/resources/text.asp?id=1113>.

The Court argued that the environmental laws were enacted specifically to protect citizens by eradicating pollution and preserving the hygienic condition of the country. In so far, it made extensive reference to several judgments of Indian Courts that also dealt with the implementation of laws providing for pollution control.

The Court held that the protection of citizens from environmental pollution is guaranteed under the right to life guaranteed under article 32 of the Constitution, stating that this right "includes everything which is necessary to make it meaningful and a life worth living, such as, among others maintenance of health is of utmost importance and preservation of environment and hygienic condition are of paramount importance for such maintenance of health, lack of which may put the life of the citizen at naught."

The Court held that it is the constitutional obligation of the Government to implement the corresponding environmental laws in order to ensure that the people enjoy the rights guaranteed under articles 18 and 32 of the Constitution. Therefore, the Court ordered the Directorate of Environment to ensure that the industrial units and the factories adopt adequate and sufficient measures to control pollution. Furthermore, the Minister of Industries was directed to ensure that no new industrial units and factories are set up without first arranging adequate and sufficient measures to control pollution.

Dr. Mohiuddin Farooque v. Bangladesh, Writ Petition 998 of 1994, CA 24 of 1995, Supreme Court of Bangladesh, Appellate Division (Civil), 25 July 1996⁶⁷⁴

[Standing granted to environmental organisation - right to life held to encompass protection and preservation of the environment, including pollution-free water]

Cf. case summary under PARTICIPATION AND ACCESS TO INFORMATION.

BELGIUM

Judgment N° 36/98, Belgian Court of Arbitration, 1 April 1998⁶⁷⁵

[Right to water derived from Belgian Constitution – municipal water providers obliged to provide every person living in household connected to public water system with 15 m³ of free tap water per annum]

Cf. case summary under AFFORDABILITY.

Availability and allocation

INDIA

Municipal Council, Ratlam v. Shri Vardhichand & Others, Supreme Court of India, 29 July 1980⁶⁷⁶

⁶⁷⁴ Available at: <http://www.elaw.org/resources/text.asp?id=139>.

⁶⁷⁵ Original French version at: <http://www.arbitrage.be/public/f/1998/1998-036f.pdf>.

[Municipality ordered to improve sanitary conditions and to build public conveniences]

The case deals with the appalling sanitary conditions in the municipality of Ratlam. As the municipality was not providing any sanitary facilities on the roads nor public conveniences for slum dwellers, people living in informal settlements were using the road for that purpose. The open drains attracted mosquitoes, thus posing a further threat to human health. The open sewage situation was even worsened by a distillery discharging bad smelling fluids into the street.

The applicants were seeking an order directing the Municipal Council of Ratlam to take the necessary action to stop this unbearable situation whereas the municipality pleaded, inter alia, financial difficulties.

The Court relied on the Municipalities Act which includes the provision of sanitary facilities as duties of the municipal council and held that the municipality is required to abate such nuisance regardless of its financial situation.

In this early decision the Supreme Court did not make specific reference to the right to water, but to the overall social justice orientation of the Constitution. It held that it runs contrary to this orientation when pollutants of big factories are being discharged to the detriment of poorer sections of the population. Furthermore, it stressed that “[d]ecency and dignity are non-negotiable facets of human rights”. According to the Court, the municipality’s failure to provide basic public conveniences “drives the miserable slum-dwellers to ease in the streets, on the sly for a time, and openly thereafter, because under Nature’s pressure, bashfulness becomes a luxury and dignity a difficult art.”

The Court therefore ordered the municipality to shift priorities by decreasing its budget on other items and using the savings for sanitary facilities and public health measures. The Court did not hesitate to issue detailed directions to stop effluents from the distillery flowing into the street and construct sufficient numbers of public latrines. Its judgment also included a fixed time limit and the exercise of supervisory jurisdiction on the execution of the Court’s orders.

Vellore Citizens Welfare Forum v. Union of India, Supreme Court of India, 28 August 1996⁶⁷⁷

[Tanneries ordered to set up pollution control devices or to be closed down as well as to pay compensation to those who have suffered from the pollution]

⁶⁷⁶ (1981) SCR (1) 97; also available at: <http://www.judis.nic.in/supremecourt/qrydisp.aspx?filename=4495>.

⁶⁷⁷ (1996) AIR 2715; also available at: <http://www.iclrc.org/content/e9607.pdf>.

Several cases before the Supreme Court of India dealt with the pollution of river water, in particular by tanneries that play an important role in the Indian economy.⁶⁷⁸ The present case is a public interest petition brought to the Court by the Vellore Citizens Welfare Forum. The petitioner was concerned about the water pollution caused by more than 900 tanneries discharging untreated effluents into agricultural fields, waterways and open land which ended up in the River Palar, the main source of drinking water supply in the area.

In its judgment, the Court recognised the vital importance of the leather industry for the economy of the country as it generates foreign exchange and provides employment opportunities. However, it stressed that all development must be sustainable and that the economy must neither destroy the ecology nor create health hazards.

In its judgment, the Court focused in large part on the concept of sustainable development and environmental law, including the precautionary principle and polluter-pays principle, with reference to the Stockholm Declaration, the Brundtland Report and Agenda 21. It also linked these principles to article 21 of the Constitution and stressed that the Constitution and the statutory provisions protect the right to clean water, citing the common law right of clean environment as the source of this right.

As efforts to persuade the tanneries to construct effluent treatment plants had been lasting more than ten years and the Court itself had been monitoring the matter for about four years, the Court saw no reason to grant more time. Rather, the tanneries were directed to set up pollution control devices within a specified time frame of a few months. If they did not follow this direction, they were ordered to be closed. Moreover, the Court ordered that those who had suffered from the pollution should receive compensation.

Rampal and Others v. State of Rajasthan and Others, High Court of Rajasthan, Writ Petition No. 1604 of 1979, 4 September 1980⁶⁷⁹

[Municipality ordered to build drainage and sewage facilities]

The petitioners in the present case complained about the lack of drainage facilities in their road. They put forward that water used for domestic purposes, including waste water, as well as rain water was collected in open chowks and that the stagnant water served as a breeding place for mosquitoes and other insects and might cause the spread of infectious diseases. The petitioners therefore called for the municipality to be directed

⁶⁷⁸ Apart from this case cf. as well M.C. Mehta vs. Union of India and Others, (1988) AIR SC 1115, also available at: <http://www.elaw.org/resources/text.asp?id=279>; M.C. Mehta vs. Union of India and Others, (1988) AIR SC 1037.

⁶⁷⁹ (1981) AIR Raj 121.

to remove the dirty water and to construct proper drainage facilities and sewers.

The Court relied on Section 98 of the Rajasthan Municipalities Act that lists the cleaning of public places and sewers, the removal of filth, rubbish, night-soil, odour and other noxious or offensive matter from privies, latrines or urinals and the construction of sewers and drainage works as primary duties of the municipality. The Court held that the municipality is responsible for maintaining sanitation and healthy living conditions. It has, the Court found, a statutory obligation to perform these duties and no discretion in the matter.

The Court therefore ordered the municipality to fulfil its duties and to construct and maintain sewers and drains for the discharge of domestic and rain water in order to remove the public nuisance caused by the open sewage within a period of three months.

L. K. Koolwal v. State of Rajasthan and Others, Rajasthan High Court, Writ Petition No. 121 of 1986, 19 September 1986⁶⁸⁰

[Municipality ordered to solve sanitation problem in Jaipur City]

In this case, the petitioner L. K. Koolwal approached the Court in order to have the municipality directed to clean the city of Jaipur and remove the filth and dirt which he alleged was posing a threat to the health and life of citizens. The city actually had a serious sanitation problem with unsanitary conditions prevailing in many areas. However, the municipality pleaded that it did not have sufficient resources to solve the problem.

The Court relied on Section 98 of the Rajasthan Municipalities Act that includes provisions about the cleaning of public places and sewers and the removal of filth, rubbish, night-soil, odour and other noxious or offensive matter from privies, latrines or urinals. These tasks are primary duties of the municipality that have to be performed regardless of the availability of funds and staff. The municipality has to raise the necessary resources to fulfil this duty.

Furthermore, the Court linked the unsanitary conditions to the right to life holding that the “[m]aintenance of health, preservation of the sanitation and environment falls within the purview of article 21 of the Constitution as it adversely affects the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen”.

The Court therefore ordered the municipality to remove the dirt within a period of six months, to clean the entire city of Jaipur and to maintain sanitary conditions. In order to monitor progress, the Court set up a commission to inspect the city and to submit a report about the implementation in different areas of the city.

⁶⁸⁰ (1988) AIR Raj 2.

Kranti v. Union of India and Others, Supreme Court of India, 16 May 2007⁶⁸¹

[Administration of islands hit by 2004 tsunami directed to take immediate measures to enhance water supply]

This case dealt with the adverse living conditions faced by the inhabitants of the Andaman and Nicobar Islands after the tsunami in 2004. The tsunami caused extensive damage to the shelters and livelihoods of the island inhabitants. Major problems included lack of medical facilities, lack of food and shelter as well as the lack of access to drinking water.

The petitioner applied for interim relief and certain measures to be taken to mitigate the effects of the disaster. He argued that the available funds were not being utilised in a proper manner. He suggested measures that would be more sustainable and suitable for the special situation on the islands. In regard to water, the situation was particularly urgent because the monsoon season was approaching.

The Court issued interim directions. With respect to water, the Court ordered the local administration to take immediate steps for rain water harvesting, to clean out and recharge the existing wells and to dig new wells if necessary in order to provide for the drinking water needs of the inhabitants.

Delhi Water Supply & Sewage Disposal Undertaking and Another v. State of Haryana and Others, Supreme Court of India, 29 February 1996⁶⁸²

[State of Haryana directed to supply sufficient quantity of water for domestic purposes to Delhi]

The case was concerned with the lack of water availability in Delhi, particularly during the summer months. According to the Court, water availability was not even sufficient for drinking purposes. This penury was considered to be partly due to the fact that the State of Haryana, the upper riparian on the River Yamuna, did not release sufficient water from the Tejwala Head. The case thus in essence dealt with the problem of inter-state water rights and water supply.

The Court accorded priority to water use for drinking purposes and held that "it would be mocking the nature to force the people who live on the bank of a river to remain thirsty, whereas others incidentally placed in an advantageous position are allowed to use the water for non-drinking purpose". The upper riparian thus may not deny the lower riparian "the benefit of using the water even for quenching the thirst of its residents".

⁶⁸¹ Available at: <http://www.ielrc.org/content/e0702.pdf>.

⁶⁸² (1996) SCC (2) 572; also available at: <http://www.ielrc.org/content/e9603.pdf>.

The Court therefore directed the State of Haryana to supply a sufficient quantity of water for domestic purposes to Delhi and ordered that the two reservoirs in Delhi shall remain full to their capacity with water being supplied through the River Yamuna.

F.K. Hussain v. Union of India, High Court of Kerala, 26 February 1990⁶⁸³

[Supply of freshwater must be secured in a sustainable manner – right to life guaranteed under article 21 of the Constitution includes right to sweet water]

The application dealt with the special water situation on the coral islands of Lakshadweep where fresh water resources are scarce and salt-water intrusion into the groundwater poses a major threat to freshwater availability. The applicants were concerned about a water supply augmentation scheme developed by the administration that aimed to increase the amount of groundwater extracted. The petitioners argued that such an augmented extraction would upset the fresh water equilibrium and lead to salinity of groundwater.

Following this argumentation, the Court held that that the administrative action would result in an infringement of article 21, as the right to life “is much more than the right to animal existence. [...] The right to sweet water, and the right to free air, are attributes of the right to life, for, these are basic elements which sustain life itself”.

Accordingly, the Court held that any scheme must take these natural constraints into account in order to maintain the ecological balance and that the supply of fresh water must be secured in a sustainable manner. It ordered the administration to protect the existing water supply and in particular to ensure that its action does not result in salt-water intrusion. Any groundwater pumping scheme must therefore be submitted to the Ministry of Science and Technology and the Ministry of Environment for prior approval.

Perumatty Grama Panchayat v. State of Kerala and Hindustan Coca-Cola Beverages (Pvt.) Ltd., High Court of Kerala, 16 December 2003⁶⁸⁴

[Company producing beverages ordered to stop excessive groundwater exploitation]

In this case, the excessive exploitation of groundwater resources by a soft drink and bottled water production plant of Hindustan Coca-Cola Beverages (P) Ltd. caused water sources in the region to dry up, resulting in acute

⁶⁸³ (1990) AIR Ker 321; also available at: <http://www.elaw.org/resources/text.asp?ID=1126>. Cf. also *Attakoya Thangal vs. Union of India*, High Court of Kerala, 1990, available at: <http://www.elaw.org/resources/text.asp?ID=1267>.

⁶⁸⁴ Available at: <http://www.elaw.org/resources/text.asp?id=2551>.

drinking water scarcity. The local Grama Panchayat [village council] therefore cancelled the company's licence for operation of the plant. At issue was thus the question whether a Grama Panchayat can cancel the licence of a company manufacturing soft drinks and bottled water on the ground of excessive exploitation of ground water.

The company argued, inter alia, that every landowner is free to extract the groundwater available under the land that he owns. The Court recognised that every landowner in principle has the customary right to extract groundwater. However, it held that an unlimited extraction is incompatible with the jurisprudence developed around article 21 of the Constitution of India, guaranteeing the right to life. Furthermore, the Court referred to Principle 2 of the Stockholm Declaration stating that the natural resources of the earth must be safeguarded for the benefit of present and future generations. The Court also relied upon the public trust doctrine, according to which "[t]he State is the trustee of all natural resources which are by nature meant for public use and enjoyment". The State is therefore obliged to protect the natural resources, including groundwater. The Court held that if the State failed to protect this resource against excessive exploitation, this would be tantamount to an infringement of the right to life under article 21 of the Constitution as the right to clean water forms part of this right.

Therefore, the Court found that the amount of groundwater extracted must be limited to a reasonable amount, i.e. the amount necessary for domestic uses and to meet agricultural requirements. The amount drawn by the company exceeded this quantity. Moreover, the Court noticed that the water was converted into products and transported away, thus breaking the natural water cycle. If every landowner would be permitted to extract as much groundwater as he wishes, the Court argued, the entire region would turn into a desert. The Court concluded that the excessive exploitation of groundwater was illegal.

In result, the Court upheld the action taken by the Panchayat in order to stop the second respondent from over-extracting ground water and ordered the company to stop drawing groundwater for its use after a transition period of one month from the date of the judgment.

The Court further ordered the Panchayat, together with the Ground Water Department, to determine the amount of water that a landowner owning the size of land the company owned would extract for agricultural and domestic purposes. That amount of water the company would then be allowed to draw, but only through open dug wells, so that the extraction could be adequately monitored by the Panchayat and the Ground Water Department.

The above decision was not the last one rendered in this matter. In 2005, the division bench of the Kerala High Court decided that the company could extract up to 500,000 litres per day and directed the Panchayat to renew the license.⁶⁸⁵ The matter is currently pending with the Supreme Court.

⁶⁸⁵ *Hindustan Coca-Cola Beverages (P) Ltd. v. Perumatty Grama Panchayat*, judgment of 7 April 2005, available at: <http://community.livejournal.com/stolngeneration/13242.html>.

PAKISTAN

Sindh Institution of Urology and Transplantation and Others v. Nestlé Milkpak Limited & Others, High Court of Sindh at Karachi, Original Civil Jurisdiction, Suit No. 567 of 2004, 30 November 2004⁶⁸⁶

[Company restrained from setting up a bottling plant that would result in the excessive use of ground water]

Karachi's Deh Chuhar area, also known as "Education City", was designated to be used solely for educational and health purposes. Nestlé Milkpak Limited, however, planned to set up and operate a bottled water factory in the area for which the company was planning to exploit an aquifer lying underneath the "Education City" area.

These plans were objected by several institutions located in the area on a number of grounds. The project was regarded as being in violation of Section 12 of Pakistan Environmental Protection Act of 1997 requiring an environmental impact assessment as well as being contrary to the exclusive use for educational and health purposes. Moreover, it was argued that the excessive use of the aquifer (Nestlé Milkpak Limited was planning to tap into it through tube wells) was environmentally degrading and non-sustainable and would cause serious prejudice to the availability of water for use of the institutions based in the area.

In its judgment, the Court referred to the decision of the High Court of Kerala (India) delivered by K. Balakrishnan Nair, J. in Writ Petition No. 3492 of 2003 (G) (*Perumatty Grama Panchayat vs. State of Kerala and Hindustan Coca-Cola Beverages Private Limited*)⁶⁸⁷ which also dealt with groundwater extraction and in which the Court cancelled the license of the beverage producer in view of the resulting acute drinking water scarcity in Perumatty Panchayat and nearby places. The Court also referred to Principle 2 of the Stockholm Declaration requiring natural resources to be safeguarded for the benefit of present and future generation.

The Court issued an interim order balancing the interests of the plaintiffs and defendants. It held that the extraction of water in such huge quantities would rapidly diminish the water deposits in the aquifer and "adversely affect the rights of plaintiffs to use the underground water according to their genuine needs". Therefore, it restrained Nestlé Milkpak Limited from initiating any commercial or industrial activities including the construction of a bottling plant in the area.

⁶⁸⁶ Available at: <http://www.shehri.org/subpages/nestle.pdf>.

⁶⁸⁷ Available at: <http://www.elaw.org/resources/text.asp?id=2551>.

Mrs. Anjum Irfan v. Lahore Development Authority through Director General and Others, Lahore High Court, Writ Petition No. 25084 of 1997, 14 June 2002⁶⁸⁸

[Water pollution held to be a hazard to the health and safe living of citizens protected under the right to life as guaranteed under article 9 of the Constitution]

The petition filed by Mrs. Anjum Irfan was directed against the Lahore Development Authority and other authorities responsible for pollution control. It alleged that the respondents neglect their duties to ensure compliance with environmental laws, in particular the Environment Protection Act of 1997, which aimed at ensuring a pollution free environment.

The case focused on air pollution, but also dealt with water pollution caused, for example, by draining untreated sewage and discharging effluents of factories into the River Ravi. According to the petitioners, water pollution had reached hazardous levels and caused diseases. The inaction of the authorities was therefore held to constitute a violation of articles 9 (right to life) and 14 (human dignity) of the Constitution.

In its judgment, the Court referred to the Supreme Court judgment in *Shehla Zia vs. WAPDA*⁶⁸⁹, in which the Supreme Court established that the right to life has to be given a wide meaning and that it includes a guarantee of all "amenities and facilities which a person born in a free country is entitled to enjoy with dignity" referring to food, clothing, shelter, education, health care, a clean atmosphere and an unpolluted environment. In cases where the quality of life of citizens is degraded and hazards for human health are created, the Court thus may grant relief. In that case, air and water pollution negatively affected individuals and posed a threat to the health and safe living of citizens.

Furthermore, the Court continued made extensive reference to the Qur'an, which according to the Court prohibits environmental pollution and requires that water quantity and quality should be conserved.

The Court concluded that the authorities must implement the environmental laws and must ensure compliance. To this end, the Court made suggestions to the respondents on how to ensure environmental protection, which, however, focused on measures to prevent air pollution. The authorities were directed to implement the provisions of the Environment Protection Act of 1997 and to submit a report within six months.

⁶⁸⁸ P.L.D. 2002 Lahore 555; also available at: <http://www.iucn.org/places/pakistan/elaws/PDF/N-Areas/NA%20Legislation%20Vol-2/Chapter-6/6.2.1%20Anjum%20Irfan/6.2.1%20anjum%20irfan.pdf>.

⁶⁸⁹ Human Rights Case No. 15-K/1992, P.L.D. 1994 SC 693; available at: <http://www.iucn.org/places/pakistan/elaws/PDF/Federal/Chapter-4/4.2%20Court%20Decisions/4.2.4%20Shehla%20Zia%20--693.pdf>.

General Secretary, West Pakistan Salt Miners Labour Union (CBA) Khewra, Jhelum v. The Director, Industries and Mineral Development, Punjab, Lahore, Supreme Court of Pakistan, Human Rights Case No. 120 of 1993, 12 July 1994⁶⁹⁰

[Restriction of mining operations bearing the danger of water pollution based on the right to have clear and unpolluted water which is derived from the right to life]

This case involved the rights of residents to have access to clear and unpolluted water. The petition was filed to the Supreme Court under Article 184 (3) of the Constitution, arguing that the mining operations in the Khewra region pose a danger to the water resources, in particular the Mitha Pattan spring which is the only major source of drinking water in the area.

The mining activities in the water catchment area, which had been increasing since the beginning of the 20th century, posed a dual threat to the water resources, namely resource exhaustion (by water leaking through the mines) and pollution of the catchment area, including the watercourse, reservoir and the pipelines.

The Court stressed that water is the source of life and based its judgment on the right to life as in article 9 (and article 14 providing for human dignity) of the Constitution. It referred to its earlier judgment in *Shehla Zia vs. WAPDA*⁶⁹¹ where it had for the first time interpreted the right to life in broad terms holding that man should not only be enabled to sustain life but also to enjoy it.

The Court then stated that “[t]he word ‘life’ has to be given an extended meaning and cannot be restricted to a vegetative life or mere animal existence. ... [T]he right to have water free from pollution and contamination is a right to life itself.” It continued that “[t]he right to have unpolluted water is the right to every person wherever he lives.”

If the water in the region became contaminated, it would cause serious threats to human existence and health. Therefore, the Court ordered the mining activities to shift within four months to a safe distance from the stream and reservoir. It then appointed a commission with powers of inspection to monitor the implementation of the orders. Additionally, all mining operations were directed to take measures to prevent pollution to the satisfaction of the commission. Finally, the authorities concerned were ordered not to grant new licenses in the catchment area or to renew old ones without the prior permission of Court.

⁶⁹⁰ 1994 S.C.M.R. 2061; also available at: <http://www.iucn.org/places/pakistan/elaws/PDF/N-Areas/NA%20Legislation%20Vol-2/Chapter-6/6.2.5%20General%20Secretary/6.2.5%20General%20Secretary.pdf>

⁶⁹¹ Human Rights Case No. 15-K/1992, P.L.D. 1994 SC 693; available at: <http://www.iucn.org/places/pakistan/elaws/PDF/Federal/Chapter-4/4.2%20Court%20Decisions/4.2.4%20Shehla%20Zia%20--693.pdf>

PHILIPPINES

Minors Oposa v. Secretary of the Department of Environment and Natural Resources (DENR), G.R. No. 101083, Supreme Court of the Philippines, 30 July 1993⁶⁹²

Several minors represented by their parents filed an action against the Department of Environment and Natural Resources to cancel existing timber license agreements in the country and to stop the issuance of new ones. The applicants claimed that the deforestation resulting from the timber license agreements had led to a "host of environmental tragedies, such as (a) water shortages resulting from drying up of the water table, otherwise known as the 'aquifer', as well as of rivers, brooks and streams, (b) salinization of the water table as a result of the intrusion therein of salt water". Such damage to the environment, the applicants argued, violated their constitutional rights to a balanced and healthful ecology and to health (Section 15 of the Philippine Constitution). The applicants further asserted that they represented others of their generation as well as generations yet unborn.

Regarding locus standi, the Court held that the petitioners were able to file a class suit both for others of their generation and for succeeding generations as "the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come." The Court allowed the petition on the merits and set aside a former lower court judgment to the contrary.

NEPAL

Suray Prasad Sharma Dhungel v. Godavari Marble Industries and Others, Supreme Court of Nepal, Writ Petition 35/1992, 31 October 1995⁶⁹³

[Nepalese Supreme Court ordered enactment of legislation for protection of air, water, sound and environment based on the right to a clean and healthy environment which is held to be part of the constitutional right to life]

This case was a public interest litigation filed by the Legal and Environmental Analysis for Development and Research Services (Pvt.) Ltd. (LEADERS) against Godavari Marble Industries and several Ministries and Government Departments. The applicant claimed that the mining activities have led to serious environmental degradation in the Godawari area. Apart from sound, air and soil pollution, emissions from the industry have also polluted springs and water bodies in the area. Other water bodies used as sources for drinking water and irrigation have dried up. This has caused the deterioration of the health and life of labourers in the industry and of local inhabitants. In respect of the Government authorities the petitioner claimed that they had taken no measures to halt the negative impacts, while some

⁶⁹² Reprinted in 33 I.L.M. (1994), p.173 et seq. Also available at: http://www.lawphil.net/judjuris/juri1993/jul1993/gr_101083_1993.html

⁶⁹³ Available at: <http://www.elaw.org/resources/text.asp?id=2287>.

of the respondents pointed to the positive impacts of job opportunities and local development.

The Court held that since a “clean and healthy environment is an indispensable part of a human life, [the] right to clean, healthy environment is undoubtedly embedded within the right to life”. The Court acknowledged that industry is the basis of development of the country, but stressed that the ecological balance must be maintained and that development therefore has to be sustainable.

In line with the petition submitted by the applicant, the Court argued that necessary measures to protect the environment and to mitigate the negative impacts of the mining industry must be taken. Only if these measures do not reach their aim the license of the Marble Industries must be cancelled as a last resort.

The Court held that it could not issue a mandamus order as this would have required that the respondents had violated a definite and clearly stated legal duty. It was impossible to define such a violation as there were no specific environmental laws in place yet, and an order cannot be issued on the basis of a general claim that the public interest had been violated. However, the Court regarded the protection of the environment as such an important issue that it issued an order calling for the enactment of the “necessary legislation for protection of air, water, sound and environment and to take action for protection of the environment of Godawari area”.

INDONESIA

Judicial Review of the Law No. 7 of 2004 on Water Resources, Constitutional Court of the Republic of Indonesia, 058-059-060-063/PUU-II/2004, 19 July 2005⁶⁹⁴

[Obligations relating to availability]

Cf. case summary above in section RECOGNITION & ENTITLEMENTS

Physical accessibility

ISRAEL

The Regional Council for Unrecognized Villages in the Naqab and Others v. The Minister of National Infrastructure and Others, H.C. 3586/01, 16 February 2003⁶⁹⁵

A petition was filed in May 2001 in the name of Adalah and on behalf of the Regional Council for the Unrecognized Villages, the Association of Forty, the Galilee Society, Physicians for Human Rights-Israel, and Arab Bedouin citizens of Israel living in Abu Tulul, Shahbi, Wadi el-Neem, Em Tnan, Em Batin and Drejat (population of 750-4,000). The petitioners alleged that the Minister of National Infrastructure, the Water Commissioner, the Israeli

⁶⁹⁴ English version of the judgment on file with COHRE, version in Bahasa Indonesia available at: <http://www.mahkamahkonstitusi.go.id/download/PutusanSDA.pdf>.

⁶⁹⁵ Summary available at: <http://www.adalah.org/eng/legaladvocacycultural.php#9535>.

Water Company, the Minister of Agriculture and Environmental Protection, and the MOI maintained a policy of denying clean and accessible water to thousands of residents of these villages. Most residents of these unrecognized villages used to obtain water via improvised, plastic hose hook-ups or unhygienic metal containers, which transport the water from a single water point located on main roads quite far from their homes. This situation poses health risks to the residents (e.g. dehydration, dysentery, etc.) as well as numerous daily hardships caused by lack of access to water. The petitioners maintained that water, like any other public good, should be allocated and provided in an equal, fair and non-arbitrary manner.

The State initially claimed that the villages were "illegal settlements" and that residents were trespassers on State land, who were not entitled to water network connections. However, as a result of the filing of the petition, an inter-ministerial Water Committee was formed in October 2001 to examine the water situation in the villages. In result, the petition was dismissed in February 2003, after the State reported that water access points had been added for five of the seven villages named in the petition.

FRANCE

Mme Lefevre v. Ville d'Amiens, Cour de Cassation, Troisième chambre civile, [Supreme Court, 3rd Civil Chamber], Arrêt No. 1362, 15 December 2004⁶⁹⁶

[Reasonable accommodation includes the provision of running water - contractual obligation of landlord]

Pursuant to a rental agreement signed on 6 May 1983 and subject to the provisions of the Law of 1 September 1948 concerning accommodation managed by the Public Accommodation and Construction Office of Amiens (OPAC), Mrs X (Mrs Lefevre) applied to the Court on 20 December 1999 seeking a Court order obliging the OPAC to fulfil its contractual obligation of providing her with reasonable accommodation, namely to undertake the necessary work to connect her to running water. The case was subsequently appealed to the High Court which ruled on 28 September 2001 that the accommodation in question was classified under category IV, which also determines the rent to be paid and that Mrs X was informed that it would not be possible to connect the accommodation to running water. Mrs X was offered the possibility to be relocated to another accommodation.

The Supreme Court ruled that the High Court had violated article 1719(1) of the Civil Code subsequent to the Law of the 13 December 2000, which stipulates that "a reasonable accommodation lease imposes the connection of running water."

The Supreme Court thus confirmed that adequate accommodation, one of the constitutional objectives to protect human dignity, includes the provision of potable water. It ruled that a landlord is responsible for

⁶⁹⁶ Excerpts available at :

http://www.courdecassation.fr/jurisprudence_publications_documentation_2/actualite_jurisprudence_21/trioisieme_chambre_civile_572/arrets_573/br_arret_746.html; see also Gariazzo, A. (2005) 'L'exigence de la délivrance au preneur d'un logement décent impose son alimentation en eau courante'. *La Semaine Juridique - Edition générale*, Commentary N° 1-10000.

providing access to potable water to the tenant as part of the conditions to provide him/her with reasonable accommodation. In result, the Supreme Court struck down the High Court judgment and condemned the City of Amiens and the OPAC to pay full legal costs.

xxx v. xxx, Tribunal de Grande Instance [District Court] of Meaux, 28 February 2001⁶⁹⁷

[Provision of water must be maintained while final resolution of dispute is pending]

This case concerned the provision of water services to the owner of a caravan to the location where the caravan was parked while proceedings to resolve whether the owner had a right to deploy the caravan on that specific location were still pending.

The District Court of Meaux ordered a water supplier, on pain of a fine of € 150 per day, to supply potable water until such time that a final decision prohibiting the provisional deployment was issued or alternatively until an alternative solution ending the dispute between the Mayor and the owner of the caravan is reached. The Court held that “the provisional connection of water must be satisfied in so far as it arises out of the ownership of the land on which the owner may temporarily park the caravan or carry out any activities which are not against the law. The application to connect water must be satisfied in so far as it is the expression of the inalienable right to human dignity which must, whatever the circumstances, albeit illicit with respect to municipal laws, benefit on a provisional basis from the facilities and advantages provided by public services that are essential to life.”

SOUTH AFRICA

Government of the Republic of South Africa and Others v. Grootboom and Others, South African Constitutional Court, Case No. CCT 11/00, 4 October 2000⁶⁹⁸

[Government under an obligation to take reasonable measures towards implementation of socio-economic rights taking account of the needs of the most indigent parts of the population]

Cf. summary under ‘Non-discrimination and attention to vulnerable groups’

INDONESIA

Judicial Review of the Law No. 7 of 2004 on Water Resources, Constitutional Court of the Republic of Indonesia, 058-059-060-063/PUU-II/2004, 19 July 2005⁶⁹⁹

Cf. case summary above in section RECOGNITION & ENTITLEMENTS

⁶⁹⁷ Source: *Droit en Quart Monde* (2004) 37-38 p. 77.

Discussed in Henri Smets, *Le droit d'accès à l'eau potable dans le contexte méditerranéen*, 2007. Available at: http://www.academie-eau.org/IMG/pdf/mar3.cwk_TEXTE_.pdf.

⁶⁹⁸ 2000 (11) BCLR 1169 (CC).

⁶⁹⁹ English version of the judgment on file with COHRE, version in Bahasa Indonesia available at: <http://www.mahkamahkonstitusi.go.id/download/PutusanSDA.pdf>.

AFFORDABILITY

BELGIUM

Judgment N° 36/98, Belgian Court of Arbitration, 1 April 1998 (Unofficial translation)⁷⁰⁰

[Right to water derived from Belgian Constitution – municipal water providers in Flamish region obliged to provide every person living in household connected to public water system with 15 m³ of free tap water per annum]

In this case, the applicant, the municipality of Wemmel, petitioned the Court to issue a declaration of invalidity regarding articles 1bis §§ 3 and 4 of the Law governing the protection of drinking water of 1933, which had been amended by the Decree of the Flamish Council of 20 December 1996 to include, inter alia, a provision obliging municipal water providers to provide, from 1 January 1997 on, every person residing in a household connected to the public water grid with 15 m³ of tap water per year free of charge. This provision, according to the claimant, was in breach of, inter alia, articles 10, 11 and 16 of the Constitution.

In its consideration of the various causes of action relied upon by the applicant, the Court noted that “parliamentary preparatory work reveals that the contested provision has two goals. On the one hand, the right of every person to a minimum supply of drinking water is satisfied, a right which is derived from Article 23 of the Constitution and which is also stated in Chapter 18 of Agenda 21, approved in June 1992 in Rio de Janeiro by the United Nations Conference on Environment and Development. On the other hand, the contested provision also aims to promote the rational use of water and to limit the amounts of waste water, which corresponds to the right to the protection of a healthy environment as guaranteed under Article 23 of the Constitution. Logically, the provision of 15 m³ of tap water free of charge will lead to an increase of the price for additional amounts and thus form an incentive for a decrease of additional water use.”⁷⁰¹

The Court further held that drinking water supply is a more fundamental need of life than other services such as gas, electricity or telephone, and it is therefore warranted that it is treated differently.⁷⁰² In result, the municipality’s claim was dismissed.

The relevant provision is still in force: every person residing in a household connected to the public water grid in the Flamish region has a right to be provided with 15 m³ of tap water per year free of charge.

MALAYSIA

Rajah Ramachandran v. Perbadanan Bekalan Air Pulau Pinang Sdn Bhd, High Court of Malaya, Civil Suit No. 22-716-2003, 2 March 2004⁷⁰³

⁷⁰⁰ Original French version at: <http://www.arbitrage.be/public/f/1998/1998-036f.pdf>.

⁷⁰¹ At para B.4.3.

⁷⁰² At para B.6.2.

⁷⁰³ Available at: <http://hba.org.my/laws/CourtCases/2004/raja.htm>.

[Disconnection of water services due to non-payment of an inexplicably high water bill held to be unreasonable]

The applicant, Mr. Rajah Ramachandran, had been a customer of the defendant for several years. In the whole time, the bi-monthly water bill issued by the defendant to the applicant had never exceeded RM25. In September 2002, the applicant received a bi-monthly bill for RM3,047.02. The applicant tried to settle the issue of the exorbitantly high bill with the defendant. However, the defendant, would not provide a satisfactory explanation for the amount of the bill nor was he willing to renounce on payment. The applicant then lodged a complaint to the Consumers Association of Penang whose efforts to settle the dispute however failed. When the applicant subsequently refused to settle the questionable bill but was willing to settle the subsequent bills, the defendant cut off the supply of water to the plaintiffs premises in October 2003. The applicant then asked the Court to issue a mandatory interim injunction to prevent the defendant from disconnecting his water services and to order him to bear the costs of reconnection.

In the Court's view, the defendant had not given any satisfactory explanation for the high bill. To the contrary: "To my mind the defendant's lack of any satisfactory explanation is a clear indicator that it does not know what really happened and that the attempt by the defendant to cut-off water supply was an oppressive act done with the intention of pressurising the consumer into submission and to make the payment."

The Court further referred to Section 49 (1) of the Water Supply Enactment 1998, which allows the water services provider to take certain measure in case the consumer fails to pay his water bill. The Enactment provides for the possibility to disconnect water services or to take such other means as the provider thinks fit and proper. The Court argued that the defendant would have had to take a less drastic action to cause less inconvenience to the consumer such as suing the consumer in Court, acting "as a reasonable man would". The Court held that the consumer is entitled to an explanation for the bill and continued that the "draconian act of cutting off supply was too harsh in the circumstances of this case".

Therefore, the Court in result granted the plaintiff an order in terms of his application.

SOUTH AFRICA

Residents of Bon Vista Mansions v. Southern Metropolitan Local Council, High Court of South Africa (Witswatersrand Local Division), Case No: 01/12312, 5 September 2001⁷⁰⁴

⁷⁰⁴ 2002 (6) BCLR 625 (W); Case summary taken from the website of the Community Law Centre at: <http://www.communitylawcentre.org.za/Socio-Economic-Rights/case-reviews-1/south-african-cases/high-court-cases>.

[Access to water - discontinuance of existing water access - Water Services Act 108 of 1997 - urgent application]

This matter was brought as an urgent application by the residents of a block of flats in Hillbrow, Johannesburg. The applicants' case was that the respondents had unlawfully discontinued its municipal water supply late on the afternoon of 21 May 2001. They had for three days attempted to seek redress through the manager of the premises without success. In this application they sought interim relief in the form of an order on the respondent to restore the water supply pending the final determination of an application for similar relief. Such order was granted by Budlender AJ.

Certain points in limine were raised by the respondents. They argued that the identity of the applicant was not clear and that the application should have been brought by a number of the residents in their own names or accompanied by a resolution authorizing the resident before the court to bring the proceedings on behalf of the other residents. Budlender AJ held that in a highly urgent matter of this kind and where only interim relief is sought the usual formalities do not apply and it was sufficient that the deponent was a resident of the premises. In addition, he had clearly had locus standi in his own interest and in terms of section 38(c) of the Constitution.

The respondent also claimed that they had been wrongly cited. This argument was also dismissed as the true service provider (and disconnecter) of the water supply had been served with notice and was actually before the Court and had not claimed to have suffered any prejudice. Respondent also complained that it had only received 3 hours notice before the matter was heard. The Court held that water was a basic and essential service and that the absence of the provision of water could have serious health consequences for the applicants and other residents of the city. The weekend was approaching and the matter was inherently urgent.

Section 27(1)(a) of the Constitution provides that everyone has the right of access to water and the respondent as an organ of State plainly bore the duties set out in section 7 to take reasonable legislative and other measures within its available resources to achieve the progressive realisation of the right. Budlender AJ held that this case did not involve the positive duty to provide access to water services but instead implicated the duty to respect the right of access to water. In understanding the nature of the duties placed on the State by section 7 of the Constitution, Budlender AJ, relying on section 39(1)(b) of the Constitution made reference to the International Covenant on Economic, Social and Cultural Rights and commentaries on that document. Using the interpretations given to similar provisions to section 27 in the ICESCR, Budlender AJ found that the disconnection of an existing water 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.

The Water Services Act 108 of 1997 creates a statutory framework within which such breaches may be justified. Section 4(1) of that Act states that a water service provider must set the conditions in terms of which water access may be discontinued and section 4(3) provides that procedures for the limitation or discontinuance of water services must be fair and equitable; must in general provide for reasonable notice of intention to discontinue services and provide for an opportunity to make representations; and must not result in a person being denied access to basic water services for non-payment where that person can prove an inability to pay for such basic services.

At the time of these interim proceedings, the Court held that the Council had not as a matter of evidence shown that its actions satisfied the requirements of the Constitution and the Act, although it conceded that it may well be able to do so in due course. This being the case the onus was on the Council to show that it had legally valid grounds for disconnecting the water supply and had acted in compliance with the Constitution and the Act in doing so. The Council had not discharged this onus. Under the circumstances the applicants had therefore shown a prima facie right to a continuing supply of water and the balance of convenience was in their favour and no other remedy was available. The Court therefore granted an interim interdict in favour of the applicants.

Highveldrige Residents Concerned Party v. Highveldridge Transitional Local Council and Others, High Court (Transvaal Provincial Division), Case No. 28521/2001, 17 May 2002⁷⁰⁵

[Local authority directed to reinstate water supply in form of interim relief]

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. The applicant applied for interim relief aiming at the restoration of water supply after it had been disconnected by the respondent, the local authority. The applicant argued, inter alia, that the disconnection resulted in a violation of the constitutional right to water.

The judgment primarily deals with the *locus standi* of the applicant. 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. It concluded that these provisions must be interpreted in broad terms and granted standing to the association requiring that it provided a list of its members.

⁷⁰⁵ 2003 (1) BCLR 72 (T).

In regard to the interim relief, the Court made an assessment of the balance of convenience and argued that any potential pecuniary losses of the respondents could not outweigh the human need and suffering that would occur due to the lack of fresh water. In this context, the Court referred to Sections 27 and 28 of the Constitution. The Court therefore held that the applicants are entitled to water supply and ordered the respondent to reinstate it pending the finalisation of the matter.

FRANCE

François X and the Union Fédérale des Consommateurs d'Avignon v. Société Avignonnaise des Eaux, Tribunal de Grande Instance (District Court) of Avignon, Order No. 1492/95, 12 May 1995⁷⁰⁶

[Disconnection of water supply constitutes deprivation of essential element of life; Court orders reconnection and damages]

Mr and Mrs X acting on their behalf and that of their minor children and the Avignon Federal Union of Consumers applied to the court for the reconnection of their water supply disconnected by the Société Avignonnaise des Eaux (SAE), the defendant, on 10 May 1995, following a dispute concerning the application of tarification. The applicants sought damages for the disruption of their right to enjoy water and any arising prejudices thereof while the defendant argued that the disconnection of domestic water was pursuant to the provisions provided for in the subscriber's contract and following the non-payment of water bills, subsequent to a new provision setting up a new tarification system. They claimed FF 5000 for prejudices caused as well as FF 5000 pursuant to article 700 of the New Code of Civil Procedure.

The Court found that pursuant to article 809(1) of the New Code of Civil Procedure, a Circuit Court judge may make an order to prevent an imminent prejudice. The Court noted that "disconnecting water amounted to deprive an essential element of the life of a family made up of six people, of which four are children ... and constitutes an important impediment and health risk which could only be remedied by the immediate reconnection of water supply".

In result, the Court ordered condemned the SAE to pay a daily fine of FF 5000 until such time the water was reconnected, FF 2000 for prejudices caused and to pay the legal costs involved.

CISE v. Association Consommateurs Fontauliere, Tribunal de Grande Instance (District Court) of Privas, Order No. 9800223, 5 March 1998⁷⁰⁷

[Application by service provider for permission to disconnect water supply for partial non-payment denied]

The Compagnie de Services et d'Environnement (CISE - Services and Environment Company) applied to the Court for permission to disconnect

⁷⁰⁶ Original French version at: <http://www.cace.fr/jurisprudence/rets/caupression/tgi12051995.html>.

⁷⁰⁷ Original French version at: <http://www.cace.fr/jurisprudence/rets/acf/tgi05031998.html>.

the water supply of various subscribers for failure to pay their water bill pursuant to the subscribers' contract and article 700 of the New Code of Civil Procedure.

Whereas the Court held that the partial cessation of water payments did cause an illicit inconvenience, it also found that such non-payment did not jeopardise the financial stability of the water company and thus did not constitute a reasonable justification to disconnect the supply of potable water, which, according to the Court, constitutes an essential element to life itself. Furthermore, the Court found that the inconvenience from the disconnection would be of far greater importance, specifically for families with children, than the partial non-payment of a bill.

In result, the Court rejected the application of the CISE to disconnect the water supply for partial non-payment, rejected any application from the parties pursuant to article 700 of the New Code of Civil Procedure and condemned the CISE to pay all legal costs.

United Kingdom

R. v. Director General of Water Services ex parte Oldham MBC, Queen's Bench Division (Crown Office List), 20 February 1998⁷⁰⁸

[Prohibition of pre-payment devices]

In this case, six different local authorities applied for judicial review of decisions of the Director General of Water Services (DGWS) which related to the refusal to take enforcement action under section 18 of the Water Industry Act 1991⁷⁰⁹ to require the relevant water undertaker to remove, and not to install any further, pre-payment water devices known as "budget payment units" or BPUs in domestic premises in each of the applicants' areas.

In sum, the Court found that the use of the budget payment units was inconsistent with the statutory protections against disconnections of water domestic water supply required by the legislation and thus was unlawful. The Court further found that the the Director was therefore under a duty under section 18(1) of the Act to make an enforcement order to secure compliance.

The Court accordingly allowed the applications and granted an order of certiorari to quash the Director's decision in each case and made a declaration in the terms sought in each case.

The prohibition of the use of pre-payment devices for domestic water supply was soon after endorsed by legislation. The 1999 Water Industry Act outlaws the disconnection of water and sewerage services to residential and several other categories of users for non-payment and also prohibits pre-payment devices (see Section 7.? – Affordability above).

⁷⁰⁸ Reprinted in [1999] Env. L.R. 114.

⁷⁰⁹ Available at: <http://www.hmso.gov.uk/acts/acts1999/19990009.htm#2> and <http://www.hmso.gov.uk/acts/en/99en09-b.htm>.

INDONESIA

Judicial Review of the Law No. 7 of 2004 on Water Resources, Constitutional Court of the Republic of Indonesia, 058-059-060-063/PUU-II/2004, 19 July 2005⁷¹⁰

Cf. case summary above in section RECOGNITION & ENTITLEMENTS

Quality and hygiene

FRANCE

Compagnie Générale des Eaux v. Le Bras and Others, Cour d'Appel (Court of Appeal) of Rennes, Order No. 770, 14 November 1996,⁷¹¹ appealing **Le Bras et al. v. Cie Générale des Eaux**, TI [Municipal Court] of Saint-Brieuc, Order No. 311/94, 18 July 1994

[Nitrate pollution – water supplier responsible for adequate water quality and liable for damages resulting from non-compliance with quality standards]

Breton water consumers first obtained a sentence against Compagnie Générale des Eaux (water supplier) in July 1994. The Court then found that the water supply had been polluted by a high level of nitrates and that the water company had a contractual obligation to provide safe water for human consumption without endangering the health of those who drink it in so far as the users complied with the legal norms in place.

The Compagnie Générale des Eaux appealed against the decision in first instance at the Court of Appeal of Rennes. The Court found that the water company could not be exonerated of its contractual obligation in so far as the pollution was not unforeseeable as the analyses carried out over the years showed a constant increase of nitrate rates which was itself foreseeable due to the intensive farming in the area. It also ruled that the water company could have prevented the increased pollution of the water by taking adequate preventive measures. Furthermore, it found that the defendants had suffered a loss in so far as they had to buy bottled water, which is far more expensive than tap water, for a long period of time.

In result, the Court rejected the applicants' motion. It confirmed that a supply of potable water containing a rate of nitrates above 50 mg per litre is not fit for consumption, making the water supplier liable for resulting damages. The Court found that the defendants had suffered a loss and ordered that they be compensated on the basis of FF 1.50 per litre of water at the rate of two bottles of water per day per person.⁷¹²

⁷¹⁰ English version of the judgment on file with COHRE, version in Bahasa Indonesia available at: <http://www.mahkamahkonstitusi.go.id/download/PutusanSDA.pdf>.

⁷¹¹ Excerpts from the original French version available at: <http://www.cace.fr/jurisprudence/jugement/ouvrage/ca14111996.html>.

⁷¹² Note that there are a number of other French cases dealing with water quality issues (see <http://eau-et-rivieres.asso.fr/icodia.info/index.php?71/291&p=1>). In Brittany, e.g., consumers have brought several cases concerning potable water, which does not meet the quality norms required by French law (Decree No. 93-1038 of 27 August 1993 [JO 3 Sept. 1993] concerning the protection of water against pollution caused by nitrates from agricultural sources) and EC regulations/directives (EC Council Directive No. 91/676/CEE [12 December 1991] concerning the protection of waters against pollution caused by nitrates from agricultural

Mr X v. Syndicat d'Adduction d'Eau du Tregor, Cour de Cassation (Supreme Court), Civil Chamber, Order No. 03-16335, 30 May 2006⁷¹³

[Nitrate pollution – water supplier responsible for quality of water supplied and liable for damages in case of non-compliance]

In its decision of 9 May 2003,⁷¹⁴ the Court of Appeal of Rennes had awarded damages to the applicant who complained about the poor quality of the tap water due to its high levels of pesticides and nitrates. The public collectivity supplying the water, the Syndicat d'Adduction d'Eau du Tregor (SAET), had argued that it could not be held reasonably responsible as the pollution was caused by intensive farming taking place in the area, the impact of which was - due to the costs and the work involved in the cleaning of the water - of an insurmountable nature.

The Supreme Court confirmed the judgment of the Court of Appeal of Rennes, sanctioning SAET for the distribution of non-potable water. The Supreme Court ruled that the water supplier had a contractual obligation to ensure that "any person who supplies water for human consumption to the public is responsible for ensuring that the water is clean for consumption", in accordance with article 2 of Decree No. 89-3 of 3 January 1989 subsequently incorporated as R. 1321-3 of the Public Health Code, which stipulates that "waters destined for human consumption must satisfy a quality threshold" that is no more than 50 mg nitrate per litre and 0,1 micgr pesticides per litre. The Supreme Court, once again, rejected the argument that the degradation of the water quality was the result of a *force majeure*, confirming that "water pollution due to nitrates or pesticides relating to intensive agricultural practices is not of an unforeseeable nature".

This case clearly indicates that the supply of non-potable water is open to full compensation and indemnity for consumers based on the polluter-pays principle.⁷¹⁵

The Court thus rejected the water company's application and condemned it to pay all legal costs under article 700 of the New Code of Civil Procedure.

Que Choisir (Union Fédérale des Consommateurs) and FRAPNA (Fédération Rhône-Alpes de Protection de la Nature) v. Syndicat des

sources). See also *Le Provost et al. v. Société Lyonnaise des Eaux*, Tribunal d'Instance [Municipal Court] of Guingamp, Order No. 306/95, 14 December 1995 (unreported). In this case, 176 consumers sued the *Société Lyonnaise des Eaux*. The Tribunal d'Instance of Guingamp sentenced the water supplier for distributing water of poor quality not fit for human consumption. The supplier did not appeal the judgment but subsequently sued the State in the Administrative Court of Rennes, arguing that it was the State's responsibility to ensure the protection of the quality of water sources. The Court condemned the State to reimburse the compensation previously paid (FF 251 440) by the water supplier with an additional FF 500 000 (Tribunal Administratif de Rennes, application n° 97182, 2 May 2001).

⁷¹³ XXX.

⁷¹⁴ Court of Appeal of Rennes, Order No. 365/2003 of 9 May 2003.

⁷¹⁵ See OECD: *The Implementation of the Polluter-Pays Principle*.

Available at: <http://sedac.ciesin.org/entri/texts/oecd/OECD-4.09.html>. The same applies for water polluted by pesticides (see *SA Compagnie Générale des Eaux*, Court of Appeal of Rennes, 14 November 1996; *Mr X v. SAUR*, District Court of Mulhouse, 11 May 2005).

Eaux de la Haute Bourbre, Tribunal d'Instance of Bourgoin-Jallieu, 4 July 2006⁷¹⁶

[Liability of water supplier for non-compliance with water quality standards and obligation to inform users about health risks]

On 4 July 2006, the Local Court of Bourgoin-Jallieu ruled against the inter-communal water syndicate of Haute Bourbe (Isère) for providing its users (1100 subscribers spread over 10 communes) since 1999 with water polluted with pesticides (three times over the normal limit) and not informing them that the water should not be drunk by infants and pregnant women. The Court awarded € 800 per person for individual damages and € 5000 for collective damages.⁷¹⁷

Previously, on 23 June 2005, the Administrative Court had condemned the Préfet of Isère for rejecting the FRAPNA application and for failure to take adequate administrative measures (see Public Health Code, R 21-36), such as ordering the distribution of bottled water, and prohibiting the distribution of phytosanitary products within the protection perimeter of the drinking water sources, thus causing a public health risk.⁷¹⁸

NEPAL

Advocate Prakash Mani Sharma and Others v. Nepal Drinking Water Corporation and Others, Supreme Court of Nepal, Writ Petition 2237/1990, 10 July 2001⁷¹⁹

[Drinking Water Corporation to be held accountable and obliged to provide pure and uncontaminated water]

The petition submitted by Prakash Mani Sharma and others was aimed against the Nepal Drinking Water Corporation and others accusing the Corporation inter alia of distributing contaminated water and collecting fees from places to which it in fact did not distribute any water. In this context, the petitioner brought up the questions whether pure drinking water is a matter of right and to what extent the State is responsible for providing water.

The Court outlined the significance of pure water for public health and held that the Corporation has a duty to distribute pure and uncontaminated water. Yet, the Court denied the issuance of an order to guarantee the right to pure drinking water as demanded by the petitioner due to the fact that it is not possible to settle questions of fact between litigants by collecting and evaluating evidence under its writ jurisdiction. Therefore, it quashed the petition.

⁷¹⁶ Available at: <http://www.frapna.org/site/region/doc-actu/Carences%20politiques%20STEP%20eau%20FRAPNA%2022%2011%2006.pdf>.

⁷¹⁷ Source: <http://www.lyon-communiqués.com/communiqué.php?id=7417>.

⁷¹⁸ Available at: <http://www.frapna.org/site/region/doc-actu/Carences%20politiques%20STEP%20eau%20FRAPNA%2022%2011%2006.pdf>.

⁷¹⁹ Available at: <http://www.elaw.org/resources/text.asp?id=2342>.

However, in its concluding remarks, the Court referred to article 25 of the Constitution, stating that the chief objective of the state is to protect the lives, property and liberty of the people by promoting their welfare. The Court added that to guarantee necessities to the people and that these are distributed in a fair manner is a central obligation of the welfare State. In the assessment of the Court, the Corporation seemed reluctant to perform its duties to protect public health. The Court therefore decided to alert the Ministry of Housing and Physical Development to provide necessary directions to the Corporation in order to hold it accountable and to make proper arrangements for providing pure drinking water.

PAKISTAN

Human Rights Case No. 9 – K/1992, Supreme Court of Pakistan, unreported⁷²⁰

[Court ordered immediate repair of leaking sewage pipes that resulted in contamination of drinking water]

This case was initiated by the Karachi Administration Women's Welfare Society (KAWWS) who wrote a letter of complaint to the Supreme Court, which the Court converted into a petition. The Court regarded the matter as being of public importance in the sense of article 184 (3) of the Constitution and dispensed with the ordinary strict rules of procedure.

Safina Siddiqui (also known as Safina Apa) and about 40 other women residents of a neighbourhood of the Karachi Administration Employees Cooperative Housing Society (KAECHS) complained in their letter about deplorable living conditions and the fact that basic infrastructure was not maintained. They made two main points: Firstly, the use of open storm water drains for the disposal of sewage was a hazard to human health, and secondly, the breakdown of the sewer system resulted in serious contamination of drinking water. Due to the fact that adjoining drinking water and sewage pipes were rusted and leaking the sewage water mixed with the fresh drinking water and thus contaminated it.

The Court ordered a Commission to be constituted to investigate the complaints. The Commission reported that the nuisance complained about by KAWWS was correct. A complaint was lodged against the KAECHS and the Karachi Water and Sewerage Board (KWSB) as both entities claimed not to be responsible. At a later stage, the KWSB had taken over the responsibility for the maintenance of the water and sewerage system and the Court ordered it to start the necessary work to repair the water and sewerage pipes. The pipes were repaired in 1992/93. Moreover, an underground reservoir for the area was built. Also, when the drinking water was contaminated again, the necessary repairs were undertaken.

⁷²⁰ Case study available at: <http://www.iucn.org/places/pakistan/elaws/PDF/Federal/Chapter-4/4.2%20Court%20Decisions/4.2.5%20Human%20Rights%20Case%20No.9-K-1992.pdf>.

NON-DISCRIMINATION AND ATTENTION TO VULNERABLE GROUPS

SOUTH AFRICA

Government of the Republic of South Africa and Others v. Grootboom and Others, South African Constitutional Court, Case No. CCT 11/00, 4 October 2000⁷²¹

[Government under the obligation to take reasonable measures towards implementation of socio-economic rights taking account of the needs of the most indigent parts of the population]

This case was concerned with the situation of Mrs. Irene Grootboom and the other respondents, who were rendered homeless after being evicted from their informal homes. Originally, they had applied to the High Court for an order to require the government to provide them with adequate basic shelter.

While the case was thus focused on the right to housing, the Court stated several times that all socio-economic rights have to be read and interpreted together and made specific reference to section 27 of the South African Constitution, which includes the right to water. The Court's general considerations are therefore also valid for the right to water and sanitation.

The Constitutional Court held that the State is obliged to take positive action to meet the needs of people living in extreme poverty, in particular homeless people or those living in intolerable living conditions. In the Grootboom judgement it developed the notion of *reasonableness*, laying down that section 26 (2) and 27 (2) of the Constitution respectively oblige the State to establish a coherent programme directed toward the progressive realisation of the rights enshrined in these sections. State measures must be reasonable in their conception as well as in their implementation, which includes that a programme is balanced and flexible and takes account of short-, medium- and long-term needs.

In particular, the Court explained, a programme must not exclude a significant group of society - otherwise it cannot be considered reasonable. This referred in particular to the most indigent part of society whose needs are most urgent, with the Court explicitly stating that measures that fail to respond to the needs of the most desperate do not pass the test of reasonableness. Rather, State measures must ensure that a significant number of people in desperate need are afforded relief.

The Court reached the conclusion that the housing programme fell short of the State's obligations, as it did not sufficiently recognise the needs of the most needy people. However, the Court also held that this does not mean that everyone in desperate need must be afforded immediate relief and

⁷²¹ 2000 (11) BCLR 1169 (CC).

found that the respondents in the present case were not entitled to claim shelter or housing immediately.

PARTICIPATION AND ACCESS TO INFORMATION

BANGLADESH

Dr. Mohiuddin Farooque v. Bangladesh, Writ Petition 998 of 1994, CA 24 of 1995, Supreme Court of Bangladesh, Appellate Division (Civil), 25 July 1996⁷²²

[Standing granted to environmental organisation - right to life held to encompass the protection and preservation of the environment including pollution-free water]

This is a public interest litigation filed by Mohiuddin Farooque on behalf of BELA, the Bangladesh Environmental Lawyers Association. It is alleged that the implementation of the Flood Action Plan FAP-20 would adversely affect over a million people and result in environmental degradation and ecological imbalance. BELA therefore called for a judicial review.

The question to be considered by the Supreme Court was the *locus standi* of the organisation and the interpretation of the expression "any person aggrieved" in article 102 of the Constitution. The Court held that article 102 must not be interpreted narrowly but that the question of standing must be construed liberally. The Court can be approached for redress of a public wrong or public injury, e.g. when the fundamental rights of an indeterminate number of people or environmental issues are concerned. Although the Bangladeshi Constitution includes no separate provision on environmental protection, environmental concerns are regarded as being covered by the right to life.

In this regard, the Court held that "articles 31 and 32 of our Constitution protects right to life as a fundamental right. It encompasses within its ambit, the protection and preservation of the environment, ecological balance free from pollution of air and water, and sanitation without which life can hardly be enjoyed. Any act or omission contrary thereto will be violative of the said right to life."

The Court was of the opinion that BELA's petition refers to the public interest and thus granted standing. The matter was referred to the High Court for hearing on merits.

MONITORING AND COMPLAINT PROCEDURES

⁷²² Available at: <http://www.elaw.org/resources/text.asp?id=139>.

INDIA

S. K. Garg v. State of Uttar Pradesh and Others, High Court of Allahabad, Writ Petition No. 19754 of 1998, 28 May 1998⁷²³

[Right to get water held to be part of the right to life; Municipality directed to set up committee to find a solution to the lack of water provision in many parts of the city]

This petition, filed by Sri S. K. Garg as a public interest litigation, regarded suitable directions to ensure regular water supply in the city of Allahabad. The petitioner stated that despite being situated at the confluence of the Ganga and the Yamuna River the city had been witnessing a water shortage for the past years due to the poor functioning of the water supply system. He alleged that several localities had received no water at all for days, while other localities had received very little water with low pressure for only about 15 minutes per day. Moreover, tube wells and hand pumps for supply of water were out of order in many localities.

In other areas huge amounts of water were wasted because hydrants were unattended and uncapped. The petitioner further alleged that the existing water works were insufficient and that even three of four existing underground water tanks were not functioning, while the single functioning water tank was full of mud and filth. This contamination, he noted, led to the spread of epidemics.

The Court held that "the right to get water is part of the right to life guaranteed by article 21 of the Constitution, but a large section of citizens of Allahabad are deprived of this right". The Court further noted that this deprivation caused agony, in particular in the hot summer season, and had even resulted in the death of people due to dehydration and heat strokes.

Therefore, the Court ordered a committee to be set up consisting of bureaucrats and other members of society including the petitioner in this matter. The committee was directed to look into the problem of lacking water provision and to decide on the ways and means to solve it with urgency. It should not only consider immediate remedial steps, but also long term solutions. The Court brought up several suggestions such as the establishment of a second waterworks, but stated that it lacked the technical expertise to take a decision. The committee should consult technical experts on these matters. Finally, it was ordered to submit a report to the Court.

Furthermore, the Court directed the authorities to repair the existing tube wells and hand pumps within a week as well as to regularly test drinking water to find out whether it is potable and does not contain any germs or harmful substances. Finally, the Court recommended that similar water committees should be set up in other cities having to deal with water problems.

⁷²³ (1999) AIR All 41.

INTERNATIONAL COOPERATION

Note: summaries of the following cases to be added:

- *Barrio Rodrigo Bueno c/ GCBA s/ amparo*, Juez N° 4 en lo Contencioso Administrativo del Gobierno de la Ciudad de Buenos Aires, sentencia del 5 de septiembre de 2005.

- *Juan Carlos Cascante López c. Municipalidad de San Isidro de Heredia, Municipalidad de San Rafael de Heredia, el Instituto Costarricense de Acueductos y Alcantarillados y la Asociación de Desarrollo Integral de Concepción de San Rafael de Heredia s/amparo*, Sala Constitucional de la Corte Suprema, sentencia del 20 de noviembre de 1996.

- *Ciro Edilberto Linares Bejarano c/ la Corporación Autónoma Regional de los Valles de Ubaté y la Sabana de Bogotá (C.A.R) y otros s/ acción de tutela*, Sala Séptima de Revisión de la Corte Constitucional, Expte. N° T-9713, sentencia N° T-232/93 del 18 de junio de 1993.

- *Fernando Agustín Delgado c/ Junta administradora del Acueducto regional "La Cuchilla" s/acción de tutela*, Sala Séptima de Revisión de la Corte Constitucional, Expte. N° T-71043, sentencia N° T-413/95 del 13 de septiembre de 1995.

- *Beatriz Mendoza y otros c. Estado Nacional, Provincial, Gobierno de la Ciudad de Buenos Aires y otros, s/daños y perjuicios*, Corte Suprema de Justicia de la Nación, 20 de junio de 2006.

- *Cámara La Plata, Municipalidad de Berazategui c. Aguas Argentinas S.A. s/ ordinario*, 3 de octubre de 2006.

- *Asociación para la protección del Medio Ambiente y Educación Ecológica '18 de octubre' c. Aguas Argentinas S.A. y otro s/amparo*, Cámara Civil y Comercial de la Plata, 8 de julio de 2003.

- *Marchisio José Bautista y otros s/amparo*, Juez de 1era. Instancia y 8ª Nominación en lo Civil y Comercial de la ciudad de Córdoba, sentencia del 19 de octubre de 2004.

- *Emilio Espinoza Morales y otros c. Roberto Aguilar Arguedas, Alcalde municipal de Montes de oro y Waddy Villalobos Quiros, Ronald Sanchez Trejos, Jorge Francisco Vargas Rojas, Martha Ligia Blanco Rodriguez y Rosey Jimenez Moya, Regidores de la Municipalidad de Montes de oro s/amparo*, Sala Constitucional de la Corte Suprema, sentencia del 8 de noviembre de 2000.
[Costa Rica]

- *Caldwell Ashby, Charles y otro c. Municipalidad de San Rafael Heredia s/amparo*, Sala Constitucional de la Corte Suprema, voto 2728-91, del 24 de diciembre de 1991 [Costa Rica]

- *Comité Pro-No Construcción de la Urbanización Linda Vista, San Juan Sur de Poás, c. el Ministerio de Ambiente y Energía, el Instituto Costarricense de Acueductos, el Instituto Nacional de Vivienda y Urbanismo, el Servicio Nacional de Aguas Subterráneas, Riego y Avenamiento y la Municipalidad de Poás s/amparo*, Sala Constitucional de la Corte Suprema, Voto N° 2004-01923, del 25 de febrero de 2004. [Costa Rica]

- *Xinia Castillo Bolívar c. MKM S.A. Ministro de Salud y ALCALDE de la Municipalidad de Alajuela s/amparo*, Sala Constitucional de la Corte Suprema, Res: 2001-03840, Exp: 00-010233-0007-CO, del 11 de mayo de 2001. [Costa Rica]

- *Jorge Hernán Gómez Ángel c/ Alcalde Municipal del Versalles y el Gerente de la Empresa de Servicios Públicos de Versalles. s/ acción de tutela*, Sala Cuarta de Revisión de la Corte Constitucional, Expte. N° T-697667, sentencia N° T-410/03 del 22 de mayo de 2003. [Colombia]

- *Asociación Civil por la Igualdad y la Justicia c. GCBA s/ amparo*, Cámara Contencioso Administrativo de la Ciudad 18 de julio de 2007. [Argentina]

- *Usuarios y Consumidores en Defensa de sus Derechos Asociación Civil c/ Aguas del Gran Buenos Aires S.A. s/acción de amparo*, Sentencia de primera instancia, Partido de Moreno, Provincia de Buenos Aires Expte. 44.453, sentencia del 21 de Agosto de 2002. [Argentina]

- *Recurso Especial n. 201.112/SC*, Expte. 1999/0004398-7, Superior Tribunal de Justicia, Primera Turma, sentencia del 20 de Abril de 1999, Relator Ministro Garcia Vieira. [Brazil]

- *Recurso Especial n. 943.850/SP*, Expte. 2007/0088451-6, Superior Tribunal de Justicia, Primera Turma, sentencia del 28 de Agosto de 2007, relator Ministro José Delgado. [Brazil]

- *Defensor del Pueblo de la Nación c. Estado Nacional y otro s/amparo*, Corte Suprema de Justicia de la Nación 18 de septiembre de 2007. [Argentina]

- *Defensoría de Menores N 3 c/Poder Ejecutivo Municipal s/acción de amparo*, Acuerdo 5 del Tribunal Superior de Justicia. Neuquén Expte. 46-99, sentencia del 2 de Marzo de 1999. [Argentina]

- *Comunidad Atacameña Toconce c/ Essan S.A.*, Corte Suprema de Chile, sala IV, sentencia del 22 de Marzo de 2004.

- *Arnulfo Camacho Medina c/ INDIRENA – Regional Cundinamarca, Carlos Adolfo Van Arcsen y María Angélica Medina s/ acción de tutela*, Sala Sexta de Revisión de la Corte Constitucional, Expte. N° T-28216, sentencia N° T-244/94 del 20 de mayo de 1994. [Colombia]

- *Red de Vigilancia y Exigibilidad de los Derechos Económicos, Sociales y Culturales c/ Municipalidad Provincial de Huancayo s/ Proceso de Cumplimiento*, Sentencia de la Corte Superior de Justicia de Junín Segunda, sala mixta, Provincia de Huancayo Expte: 2004-02877, sentencia N° 1230 del 2 de Septiembre de 2005. [Peru]

- *Recurso Inombrado n.71001348267*, Tribunal de Justicia del Estado de Rio Grande do Sul, Primera Turma Recursal Civil, sentencia del 6 de Septiembre de 2007, Relator Juez Joao Pedro Cavalli Júnior. [Brazil]

- *Aguas Argentinas S.A., Suez Sociedad General de Aguas de Barcelona S.A., Vivendi Universal S.A. c/ República Argentina*, Centro Internacional de Arreglo de Diferencias relativas a Inversiones (CIADI), Caso N ARB/03/19, sentencia del 19 de mayo de 2005. [ICSID case]

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, 2002.⁷²⁴

[keywords]

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 had failed to comply with its regulatory obligation to provide 50 litres of water per day (which was to be supplied whether or not payment was made) and that even that minimum supply obligation was too low. The families requested the court to obligate the company to provide at least 200 litres of water daily per family.

The Judge rejected the argument that the decision by the company to cut or restrict the supply of water on the grounds of non-payment was illegal. However, the Judge 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 determine whether it could be heard under a special expedited procedure called an *accion de amparo*. The Judge declared that the provision of water is of vital importance and that its absence has numerous implications for the health of the populace, especially for the poor. The Judge

⁷²⁴ This is a paraphrased version of the judgement in this case.

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 regarding the possibility of restricting the provision of water on the grounds 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 drinking water to 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." The Judge 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 "... incontestable 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 through ensuring 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 cannot 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 obligated to comply with this order. However, this did not preclude the possibility of it reaching an agreement with the responsible State authorities to be compensated for the costs of meeting this obligation.

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 1999.⁷²⁵

[keywords]

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 in good conditions the water thus provided. The Court further specified that this measure should be implemented within 48 hours and 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 compel the government to comply with the decision, the Court modified its previous decision, reducing the amount of water to be provided and limiting the provision so that it would only benefit 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 of promoting or recognising illegal occupations or settlements.

However, the new decision was then appealed by the Public Defender and modified by the Supreme Court of the Province of Neuquen, which 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.

Menores Comunidad Paynemil s/accion de amparo, Expte. 311-CA-1997. Sala II. Cámara de Apelaciones en lo Civil, Neuquen, 19 May, 1997⁷²⁶

[keywords]

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 its 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 about the potential heavy-metal pollution of the aquifers from which the Paynemil Community was extracting drinking water. In their complaint, they presented studies showing that the water extracted by various inhabitants was unsuitable for drinking. In November 1996, local authorities ordered health studies in order to establish the levels of lead in the bloodstream, and of mercury in the urine of the people, focusing especially on the children. This study showed that many children had high levels of one or both of these heavy and highly toxic metals.

⁷²⁵ This is a paraphrased version of the three judgements on this case.

⁷²⁶ This is a paraphrased version of the two judgements in this case.

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 that the water quality made it unfit for human consumption, and that traditional disinfection methods, including boiling, could not neutralise the pollutants or were inappropriate for such a purpose. They recommended that the Minister intervene in order to provide water for the Community.

In March 1997, the Children's Public Defender, filed an *accion de amparo* (a special expedited procedure) 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 per 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 had been damaged by the existence of heavy metals, and in such a case, to provide the necessary treatment; and
- iv) take steps to protect 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 in accordance 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 Paynemil community's 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: for human consumption, in drums; and for irrigation, in tanks. A drinking water plant has been built, but there is a dispute between the community and the Government over the quality of the treated water, and a study on water quality is being carried out. The Government has not implemented any of the other measures ordered in the decision. No special treatment has been provided for the children affected, and no measure has been taken to restore the ecosystem and clean the soil and water previously contaminated.

The Public Defender has brought the case before the Inter-American Commission on Human Rights, arguing a violation of Article 19 (children's rights), Article 4 (right to life), and Articles 8 and 25 (effective judicial protection) of the Inter-American Convention on Human Rights. To date they have held a number of hearings with the provincial authorities at the Inter-American Commission but, so far no final solution has been reached. See Section 6.4 Decisions of Regional Courts and Bodies

8. RECOMMENDATIONS OF INTERNATIONAL EXPERTS

Recommendations of international experts generally do not have official legal value. However, they can be influential in debates preceding the adoption of a law or standard. A number of the recommendations in this subsection, notably the *Dublin Statement on Water and Sustainable Development* have influenced subsequent official documents. These recommendations also have persuasive value in the implementation of international and national standards by governments and courts. The European Council on Environmental Law Resolution of 2004 on the recognition of the right to drinking water in the member States of the European Union, excerpted below, provides specific guidelines on means to implement the right to water in a developed country context.

The Dublin Statement on Water and Sustainable Development, 1992⁷²⁷

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

⁷²⁷ <http://www.gdrc.org/uem/water/dublin-statement.html>.

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.

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.

Brazzaville Declaration of the Africa 2000 Initiative for Water and Sanitation, 1996⁷²⁹

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...

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

⁷²⁸ <http://heiwwww.unige.ch/humanrts/demo/1994min.html>.

⁷²⁹ <http://www.afro.who.int/wsh/af2000/declaration.html>.

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, 28 April 2000⁷³⁰

PROPOSES that Governments and competent international organizations explicitly recognize - in the national, community, and international frameworks - the right of each person to water according to the following principles;

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.

Resolution on the Recognition of the Right to Drinking Water in the Member States of the European Union, European Council on Environmental Law, 17 January 2004⁷³¹

...Considering that the European Parliament discussing the Commission Communication on water management in developing countries and priorities for EU development cooperation, has declared in September 2003 that "access to drinking water is a basic human right"; ...

Noting the recent progress in a number of Member States of the European Union towards the enforcement of the right to drinking water;

Considering that the right to water will become fully effective only when it is proclaimed and defined in precise terms by binding legal instruments in each Member State;

⁷³⁰ Published in *Environmental Policy and Law*, 30 May 2000. The European Council on Environmental Law is an academic institution and not to be confused with the European Council.

⁷³¹ Available at: <http://www.cedha.org.ar/docs/doc219-eng.doc>.

Recommends that each Member State of the European Union takes appropriate measures to ensure the effective implementation of the right to water as set out here:

1. Access to drinking water and sanitation is a fundamental right of the individual. The implementation of this right shall be ensured by law which shall specify the conditions for its exercise. Everyone is obliged to act so as to protect the sustainability of this resource with respect to quantity and quality.

2. Everyone in urban areas and in areas with water supply and sanitation networks has the right to be provided with sufficient drinking water for his or her fundamental needs and is also entitled to benefit from the provision of sanitation services. Everyone is obliged to contribute to the recovery of the cost of water supply and sanitation. Where networks for supplying water are not available, residents shall be able to obtain drinking water from a source within their local authority area at an affordable price.

3. Prices of water supply and sanitation services shall be set at a level that will contribute to promoting the sustainability of these services and of the water resource, to protecting public health and the environment as well as to enhancing social and territorial cohesion. They shall be calculated transparently and seek to recover the net costs of providing water services.

4. Prices of these services shall not be a barrier to their use for human consumption. Accordingly, appropriate social measures shall be taken for residents in reduced financial circumstances.

5. In order to protect the right of everyone to water, public authorities shall, irrespective of whether they themselves actually provide water supplies, take the necessary measures to guarantee the quality of drinking water and to ensure that water supply and sanitation networks are enlarged in accordance with land use planning and urban development requirements. Provision of the necessary capital costs shall be made in multi-annual programs with a view to ensuring sustainable development.

6. Public authorities shall ensure the provision of information to residents concerning water services, water quality and pricing. They shall organize effective participation of users and user associations in decision-making on the provision and prices of these services.

7. Decisions relating to water restriction in case of water shortage shall be transparent without unjustified discrimination. Users shall be timely informed of interruptions in water supply and be provided with an alternative supply where necessary. The disconnection of a water supply for non-payment by residents in reduced financial circumstances shall not be permitted if it could adversely affect human dignity or endanger human health.

9. MISCELLANEOUS SOURCES NEW CHAPTER

Religious and historic sources

Christianity

In the Holy Bible, God, among other names, is referred to as “the fountain of living waters” (Jeremiah 2:13). Likewise, “water of life” is used as a metaphor for the love of God.

The Bible further prescribes that “If your enemy is hungry, give him food to eat; and if he is thirsty, give him water to drink.” (Proverbs 25:21)

On the reception of his followers by the local population, Jesus said: “And whoever gives to one of these little ones a cup of cold water only, in the name of a disciple, truly I say to you, he will not go without his reward.” (Matthew 10:42)

Moses gives the Israelites with the following advice on how to keep their encampment clean and acceptable to God: “Set up a place outside the camp to be used as a toilet area. And make sure that you have a small shovel in your equipment. When you go out to the toilet area, use the shovel to dig a hole. Then, after you relieve yourself, bury the waste in the hole.” (Deuteronomy 23:12)

Hinduism

In Hinduism, water is considered the source of all life and imbued with powers of spiritual purification. For Hindus, morning cleansing with water is an everyday obligation. All temples are located near a water source, and followers must bathe before entering the temple. Bathing in or drinking the holy waters of the river Ganges is considered to purify the soul. According to Hindu belief, in order for the soul to reach the divine after-life, the ashes of the deceased should be poured into the waters of the Ganges.

Islam⁷³²

As a universal religion born initially in the harsh deserts of Arabia, Islam ascribes the most sacred qualities to water as a life-giving, sustaining, and purifying resource. It is considered the origin of all life on earth, the substance from which God created man (Al-Furqan 25:54), the primary element that existed even before the heavens and the earth. (Hud 11:7). According to Qur’an, “[w]e made from water every living thing” (Al-Anbiyaa’ 21:30).

In Islam, water is considered a gift from God. Next to grass (pasture for cattle) and fire, water is one of the three things that every human is entitled to. Water should be freely available to all, and any Muslim who withholds unneeded water sins against Allah: “No one can refuse surplus water without sinning against Allah and against man.” The hadiths say that

⁷³² See Francesca de Chatel, *Drops of Faith: Water in Islam*, 2002, available at: <http://www.islamonline.net/english/Contemporary/2002/11/Article02.shtml>.

among the three people Allah will ignore on the Day of Resurrection there will be "the man who, having water in excess of his needs refuses it to a traveller."

When the Prophet Mohamed was asked what was the most praiseworthy deed, he answered, "To give water to drink." (Hadith)⁷³³

Accordingly, Islamic Law, the Shari`ah, goes into great detail on the subject of ensuring a fair and equitable distribution of water resources within the community. The word *Shari`ah* itself is closely related to water. It is included in early Arab dictionaries and originally meant "the place from which one descends to water." Before the advent of Islam in Arabia, the shari`ah was, in fact, a series of rules about water use: the *shir`at al-maa'* were the permits that gave right to drinking water.

Islamic law recognizes the right of thirst (*chafa*), which comprises the right to take water to quench one's thirst or to water one's animals. Persons have control over water are under a corresponding obligation to share water for domestic (although not irrigation) uses with others. Islamic law further grants ownership to the person who digs a well and provides a surrounding "prohibited area" to prevent drawdown.

Islamic water law is still followed by Bedouin in the Negev, where "water to quench thirst, is an unalienable right, and may not be refused from any water source," and by the Berbers in Morocco, where drinking water for humans is "sacrosanct and neither may be denied anyone for any reason at any time."⁷³⁴

Judaism

The basic rule of Talmudic Law is one of common property: "Rivers and Streams forming springs, these belong to every man." In cases where human labor was necessary to gain access to the water, drinking water was managed as a common resource, though not an open access resource. Within each community, Jewish law prioritised access according to use – highest priority to drinking water, then irrigation and grazing. Importantly, however, the very highest priority access was granted to those in need, regardless of whether they belonged to the well's community of owners or not. This so-called "Right of Thirst" is reflected in the text in Isaiah, "Let all you who thirst, come to the water!" In satisfying the Right of Thirst, rules of access still applied, for villagers' necessary drinking requirements took priority over outsiders'. However, the thirst of outsiders took precedence over local grazing and other uses.⁷³⁵

⁷³³ See <http://www.pureinsideout.com/water-myths-mysteries-and-symbolism.html>.

⁷³⁴ James Salzman, *Thirst: A short history of drinking water*, Duke Law School Legal Studies Research Paper No. 92, December 2005, p. 8, quoting Aaron T. Wolf, "Indigenous Approaches to Water Conflict Negotiations and Implications for International Waters," 5 *International Negotiation* (2000). Available at: [http://eprints.law.duke.edu/archive/00001261/01/17_Yale_J.L._&_Human._94_\(2006\).pdf](http://eprints.law.duke.edu/archive/00001261/01/17_Yale_J.L._&_Human._94_(2006).pdf).

⁷³⁵ *Ibid.*, pp. 6-7.

Miscellaneous

In the traditional Balinese Subak system, the use of water for drinking and watering of animals is given priority over other uses.

Under ancient Roman water law, citizens and aliens alike were entitled to make use of public watercourses for drinking and domestic needs, watering of cattle, fishing and transportation.

A significant proportion of the water transported to settlements via aqueducts was supplied to public basins (*lacus*). The water collected in such basins was made available to the population free of charge and most residents of ancient Rome satisfied their drinking water needs in this manner.⁷³⁶

Local Customary Law

In many instances, access to water and sanitation services is not - or at least not exclusively - governed by written national or regional laws, rules and regulations, formally adopted or approved by the competent State organs, but also by local customary rules. The terms local customary law or local customary water law in the following section refer to the body of rules governing access to water resources which has emerged from the customs of specific ethnic or tribal groups or localities and whose application is limited to these specific groups or geographic settings. Local customary law can govern access to water for a wide range of purposes, including basic human needs, watering of livestock, subsistence agriculture, specifically in rural areas, water conservation, pollution control, protection of catchment areas and of fisheries.⁷³⁷

In **Kenya**, in the Nyando basin, local customary norms dictate that no one should be denied his/her basic water needs. Therefore, everyone has a right to withdraw water from the pipe below the Kiptegan spring for drinking. People may also use water for their cattle, on condition that the water is drawn from the cattle trough, and that they contribute to its cleaning.⁷³⁸

In **Zimbabwe**, water is considered *hupenyu* (life), which creates a customary obligation to share drinking water – and a corresponding right to access to drinking water for all - which is a morally based duty rather than a negotiable and reciprocity based notion of property. This customary right extends to all available water sources, including wells on private land, boreholes, riverbed wells, rivers, wells, collector wells and dams, no matter

⁷³⁶ Ibid., p. 12. See p. 3 et seq for more examples of historic and indigenous regimes governing access to water resources.

⁷³⁷ See also Stefano Burchi, “The Interface between customary and statutory water rights – a statutory perspective”, paper presented at international workshop on “*African Water Laws: Plural Legislative Frameworks for Rural Water Management in Africa*”, 26-28 January 2005, Johannesburg, South Africa. Available at: <http://www.indigenouswater.org/user/Customary%20Water%20Rights%20-%20Burch.pdf>.

⁷³⁸ Source: Ruth Meinzen-Dick, R. and Leticia Nkonya, “Understanding legal pluralism in water rights: lessons from Africa and Asia”, paper presented at international workshop on “*African Water Laws: Plural Legislative Frameworks for Rural Water Management in Africa*”, 26-28 January 2005, Johannesburg, South Africa. Available at: <http://www.nri.org/waterlaw/AWLworkshop/MEINZEN-DICK-R.pdf>.

the tenurial status, whether publicly or privately owned, and records from communal areas in Shamva, Mutoko, Chiduku, Dande, Masvingo, Guruve, and Matabeleland suggest that water for drinking can and should be made available for all. Other reports from the Romwe catchment in the Chivi District, South Zimbabwe confirm that drinking water is made available to all no matter what the source of water.⁷³⁹ To breach this custom often means risking community sanctions or becoming a potential target of witchcraft.

Under **Ghanaian** customary laws, water in all its forms including the sea, rivers and lakes is considered public property and cannot be subject to individual appropriation. Akan customary water law, for example, recognises the right of water use by all, meaning that each user may use available water, provided sufficient water is left for other users. According to the Ghanaian Ministry of Works and Housing, customary rules and practices applying to water resources in the Volta Basin include the following issues:

- Demarcation of areas in river courses for non-human activity;
- Marking out portions in water courses for human activity;
- Prohibition of certain activities on named days in the week and months in the year; and
- Practices requiring strict compliance with orders for communal labor of clearing, weeding and desilting river courses, drains and other tasks.

These rules are enforced through various sanctions, usually determined by traditional authorities. In Northern Ghana, the regulation of reservoirs for water supply, watering of livestock and irrigation is the responsibility of traditional chiefs, who appoint "Masters of Fisheries" to manage the daily use of the water by monitoring fishing practices. They are also expected to deal with the misuse of water, and report to the chief any situation, which they consider beyond their control for appropriate sanctions.⁷⁴⁰

In **Tanzania**, the Sukama peoples consider water as a gift from God, which means that water is a common good and should be free for all. Everyone has access to any water source for domestic use, regardless of whether it is on private or public land. As long as it is for human consumption, water is to be shared with all members of a community. Sharing water is part of hospitality customs and those who fail to render water assistance, it is believed, will be punished by ancestral spirits. Sukama customary laws are

⁷³⁹ Source: Bill Derman, Anne Hellum and Pinimidzai Sithole, "Intersections of human rights and customs: a livelihood perspective on water laws," paper presented at international workshop on "*African Water Laws: Plural Legislative Frameworks for Rural Water Management in Africa*", 26-28 January 2005, Johannesburg, South Africa.

Available at: <http://www.nri.org/waterlaw/AWLworkshop/DERMAN-B.pdf>.

⁷⁴⁰ Source: Yaw Opoku-Ankomah, Youssouf Dembélé, Ben Y. Ampomah and Léopold Somé, "Hydro-political Assessment of Water Governance from the Top-down and Review of Literature on Local Level Institutions and Practices in the Volta Basin," *International Water Management Institute, Working Paper 111*, 2006.

Available at: http://www.iwmi.cgiar.org/Publications/Working_Papers/working/WOR111.pdf.

used by private well-owners to govern access and the management of water. They include:

- No one is allowed to have access to private water without the permission of the owner(s)
- Members of a community can access free water for the purpose of drinking, cooking and washing. If water is needed for other uses, it must be paid for. During droughts, free water is limited to no more than five buckets (approximately 20 litres per bucket)
- No dirty containers are allowed at the water source
- No washing of clothes, face, hands or watering of animals is allowed at the drinking water source
- No one may draw water from a well done by a member of the Seventh Day Adventist Church during the Sabbath as they do not work on Sabbath

These customary laws are enforced by the *Dagashida*, a village assembly which plays a crucial role in organising communal work for water development and management. Rules made for managing privately owned water are made by the *Dagashida* in collaboration with the private owner and usually respect existing water laws.⁷⁴¹

⁷⁴¹ Source: Leticia K. Nkonya, "Customary laws for access to and management of drinking water in Tanzania," 2/1 *Law, Environment and Development Journal* (2006), pp. 50-66, available at <http://www.lead-journal.org/content/06050.pdf>.

⁷⁴² French original version available at: http://www.cf.undp.org/Doc_pdf/Energie%20Environ/code%20de%20l%27eau.pdf.

⁷⁴³ French original version available at: <http://faolex.fao.org/docs/texts/ivc15630.doc>,

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