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THE RIGHT TO WATER

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INTRODUCTION

In the United Nations Millennium Declaration of 2000, States made a commitment to halve, by the year 2015, the proportion of people with no access to safe drinking water and to sanitation.¹ Access to safe drinking water and to sanitation should therefore be an absolute priority for the international community. However, with only a few years to go, we must face the fact that despite the efforts that have been made – which include declaring: the 22nd March ‘World Water Day’ (since 1993)²; 2003 as the International Year of Freshwater; and 2008 as the International Year of Sanitation - there has been insufficient progress. If we continue in this way, the Millennium objectives will not be achieved by 2015.³

In an attempt to reverse this trend, Civil Society Organizations, supported by United Nations agencies and a number of States, have made the promotion and the protection of the right to water and the right to sanitation a priority. In the hope that this strategy will highlight the question of rights and make States accountable, these organizations are exerting pressure to obtain a greater recognition, a clearer definition and a more effective implementation of these fundamental rights.

¹ General Assembly, *Millennium Declaration*, A/RES/55/2, Part III, 18 September 2000.

² General Assembly, Resolution A/RES/47/193, adopted 22 December 1992.

³ General Assembly, *International Year of Sanitation. 2008. Report of the Secretary-General*, A/64/169, §3-4, 24 July 2009.

The aim of this critical report is to promote the protection of the right to water and the right to sanitation. In the first part, we describe the problems of access to water and to sanitation in the world today and identify the ways in which different uses of water compete with each other (I). In the second part, we look at how the right to water and to sanitation is recognized and defined at international, regional and national levels (II). In the third part, we outline the position taken by various organizations on the right to water and the right to sanitation and we describe the current state of discussions on these rights within the United Nations (III).

I. ACCESS TO WATER AND SANITATION

The question of access to water and to sanitation is a particularly complex one. While one might think that the “blue planet” possesses sufficiently large resources to satisfy all our needs for water, the reality is very different (1). Because the various uses of water compete with each other (2) and the provision of water to satisfy essential human needs is not given priority over other uses, we have a situation today in which a billion people have no access to safe drinking water or to sanitation (3).

a) Water and life on the “blue planet”

Water, including saltwater and freshwater, makes up 70% of the Earth’s surface; it is contained within the oceans, the ice-caps, icebergs, snow, underground water, lakes and rivers. Its total volume comprises about 1,400 million km³.⁴ This impressive volume of water is what gives the planet its blue appearance and might lead us to think that the amount available to supply the needs of humans, animals and plants is almost inexhaustible. Unfortunately this is not the case. Of the surface water on the globe, 97.5% is found in the oceans, and only 2.5% is freshwater. Of this, only an infinitely small part is useable. 70% of it is frozen inside the icecaps and the icebergs of the Antarctic and Greenland, and almost all of the rest is contained as moisture within the soil or in the great aquifers of fossil water too deep to be exploited.

In total only 42,700 km³ of freshwater are really accessible, which amounts to about 0.1% of the total freshwater and 0.003% of the total of all water on the planet. This final amount, which comes entirely from rainfall, is held in lakes, water courses and in the water table.⁵ Yet, even though some of this water cannot be made use of because it is needed to dispose of wastewater, and some cannot be harnessed during floods, there is still enough water to provide for the needs of six to eight billion people.⁶

Unfortunately, this positive sounding global statistic needs to be put in perspective according to region. The fact that the available water comes entirely from

⁴ According to UNESCO the total volume of water on the planet amounts to 1454 million km³, which is equivalent to ‘a layer of water uniformly distributed across the surface of the Earth to a depth of 2650 metres.’ Cf UNESCO, ‘Water : resources and consumption’ in *UNESCO Sources*, number 13, March 1990, p.6.

⁵ For a detailed account of the water cycle and water resources, Cf. E. Drouart, J-M. Vouillamoz, *Alimentation en eau des populations menacées*, Ed. Hermann, Paris,1999, pp. 31-64.

⁶ J. Illueca et W. Rast note that ‘theoretically’ there is sufficient fresh water on the planet to supply the needs of about twenty billion people. Cf. J. Illucca, W. Rast, “Precious, Finite and Irreplaceable” in *Our Planet* (the UNEP magazine for sustainable development), volume 8, number 3, 1996, p19.

precipitation means that 12 countries control three quarters of the world's water flow - Brazil receives 6260 km³ of rainwater every year - whereas about ten countries, in dry or desert areas, receive only 3 km³ per year.⁷ The regions most affected by water shortage are North Africa and the Arab peninsula, where almost all of the countries receive less than 1000 cubic metres per year, per inhabitant, which is considered the threshold of water scarcity.⁸

b) The different uses of water and how they compete with each other today

The history of man has always been linked to water. The *first brilliant civilisations* from the fourth century BCE onwards, developed alongside large rivers such as the Tigris and Euphrates, the Nile and the Indus.⁹ Mesopotamian and Egyptian civilizations were already using quite complex systems of dykes, canals and dams to irrigate their land and develop agriculture. They also used the rivers as drainage systems to carry away their wastewater.

The Greeks were the first to construct pipelines over long distances to bring water to the city, and the Romans did the same using a network of aqueducts with a total length of 500 kilometres.¹⁰

In the earliest cities (Jericho, Babylon, Athens, Carthage, Alexandria, Rome), water management was considered an essential task and the engineers in charge of this operation held an important place within society. The importance attached to this role disappeared in the Middle Ages and the situation deteriorated over the next few centuries. At the beginning of the 19th century, a number of towns suffered intolerable levels of pollution in their rivers caused by domestic waste.¹¹ This provoked some serious debate and it was in the middle of the 19th century that scientists proved that the quantity and flow of water were not, by themselves, sufficient to guarantee its cleanliness, and that it was only the *quality* of water that ensured the health of the population.¹²

The revolution in hygiene was already taking place in European towns and as the decades progressed, it brought safe drinking water and sanitation to their people. It was this revolution, based on the treatment of waste and wastewater, which was the crucial factor in reducing mortality rates in European cities at the beginning of the 20th century.

By the second half of the 19th century, water began to be used for purposes other than agriculture and domestic use: steam navigation; hydro-electric power; and industrial production.¹³

⁷ Worldwide the twelve 'giants' in terms of water resources are Brazil, Russia, Canada, China, Indonesia, the United States, Bangladesh, India, Venezuela, Burma, Colombia and Congo. Territories with less than 1 km³ of water a year include Jordan, Cyprus and Libya.

⁸ The Arab world, which makes up more than 4% of the world's population, has only 0.7% of the world's water resources.

⁹ H. Magnélier, *Histoire de l'eau, du mythe à la pollution*, Ed. F. Bourin, Paris, 1991 and R. Clarke, *Water: The International Crisis*, Earthscan Publications Ltd, London, 1993.

¹⁰ H. Magnélier, op.cit., p. 183.

¹¹ H. Magnélier, op.cit., the author notes that: "la ville [Paris] s'enfonçait lentement dans ses propres déjections" ("the town [Paris] was slowly sinking in its own waste"), p. 197.

¹² H. Magnélier, op.cit., p. 195 and also R. Clarke, op.cit., pp. 4-5.

¹³ Industrial production uses water from the rivers for cooling or cleaning.

All these uses increased in the 20th century, and the consumption of water multiplied tenfold. Consumption of water in agriculture in 2000 was six times more than it had been in 1900 rising from 500 km³/year to more than 3000 km³/year, mainly as a result of the increase in world population.¹⁴ The consumption of water for industrial and domestic use increased even more rapidly, in response to both the demographic boom and the increase in individual consumption linked to the process of urbanization and to new lifestyles - for example, it takes 280,000 litres of water to produce a ton of steel and 700 litres of water for each kilo of paper.¹⁵

In the 20th century, the move from traditional to mechanized agriculture, using an enormous quantity of toxic materials,¹⁶ combined with the lack of treatment of domestic and industrial waste,¹⁷ led to the pollution of almost all rivers and of the water table, so that the water then became unusable.¹⁸

In many countries, poor management of water resources diminished the supply of available waters still further by the over-exploitation of the water table.¹⁹ The construction of reservoirs and other large projects (dams) caused not only the pollution of about 60% of the 227 largest rivers on the planet, but also, since the 1950s, the displacement of between 40-80 million people.²⁰

As we begin the 21st century, intensive agriculture takes up about 60% of the world's consumption of water, industry more than 20% and domestic consumption 10%. In addition there is the use of water for navigation and for hydro-electric power. Conflict between these different uses of water becomes more and more critical, as the quantity of available water per inhabitant diminishes.

The most significant conflict in water usage is that between town and country. Urbanization leads to an exponential increase in water consumption in the towns - it has tripled in less than 20 years - posing an enormous problem in the apportioning of resources between town and country. The new citizens very often find themselves in shanty towns or in suburbs where the provision of water and sanitation is already inadequate. In order to respond to these new needs, water has

¹⁴ The increase in worldwide consumption of water follows an almost exponential curve, which is very worrying. The worldwide consumption of water rose from 500 km³/year to 1000 km³/year between 1900 and 1940, from 1000 km³/year to 3000 km³/year between 1940 and 1980, and finally from 3000 km³/year to 5000 km³/year between 1980 and 2000. G. Mutin, "De l'eau pour tous?" in *La documentation française*, bimonthly n°8014, April 2000, p. 1.

¹⁵ CETRI, "L'eau, patrimoine commun de l'humanité" in *Alternatives Sud*, vol. 8 2001/4.

¹⁶ R. Petrella, *The water manifesto: Arguments for a world water contract*. London, Zed Books, 2001, pp. 29-31.

¹⁷ In the majority of industrialized countries, sewage treatment works are not able to serve the whole of the population - for example, in 2000, the figure was 66% in Canada and 52% in France. G. Mutin, « De l'eau pour tous ? », op. cit., p. 6. The situation is even more problematic in developing countries, where there is very little investment in the collection and treatment of wastewater. According to UNDP, more than 90% of wastewater in developing countries goes straight into watercourses without any treatment. UNDP, *Human Development Report 1998*, p76.

¹⁸ The level of pesticides is increasing in rivers and in the water table in all regions of the world. In 2000, the consequent eutrophication (degradation of the ecological equilibrium by a decrease in the amount of dissolved oxygen) affected 54% of lakes and rivers in Asia, 53% in Europe, 48% in North America, 41% in Latin America and 28% in Africa. G. Mutin, "De l'eau pour tous?" in *La documentation française*, bimestriel n°8014, avril 2000, p. 6.

¹⁹ This is especially the case in China, India, Mexico, Thailand, the eastern United States, North Africa and the Middle East. It is important to note that while the rivers refill within 12 days, underground water levels only return to normal levels in 5000 years. UNESCO, 'Water: resources and consumption' in *UNESCO Sources*, number 13, March 1990, p.6.

²⁰ UNEP Report, presented at the World Summit on Sustainable Development (Johannesburg, 26th August - 4th September 2002): www.h2o.net/magazine/urgences_enjeux/politiques/2002_johannesburg/francais/johannesburg_2.htm.

to be brought from further and further away and it is often from rural areas that water is redirected to supply the agglomerations. Demand for electricity in towns poses similar problems because the response is often to build dams in rural areas producing hydroelectric power thus decreasing the amount of water available for agriculture.

The second most important conflict is between the private and public sectors. In rural areas, village communities' access to water is often threatened by the use of water by private enterprises, notably mining.²¹ In urban areas, the objectives of private transnational companies come into conflict with those of public management of water, as we saw in the 'water wars' in Bolivia a few years ago.²² At a global level, the majority of water and sanitation systems are still in public hands and contrary to certain received ideas, these still provide the "best practices found in water and sanitation provision".²³ However, they have been privatized in several countries, for example Argentina²⁴, Bangladesh, Colombia, the Ivory Coast, Hungary, Indonesia, Madagascar, Mexico, Morocco, Nepal, Nigeria, Pakistan, the Philippines, Senegal, Sri Lanka and Tunisia.²⁵ Two companies alone, Veolia Environnement and Suez Lyonnaise des Eaux, control the majority of private concessions worldwide, with the explicit aim of making a profit. In extending water supply networks, private companies increase the price of access without necessarily investing in infrastructure and maintenance, thus depriving some of the most disadvantaged people of their right to water.²⁶

While these conflicts in water management certainly pose problems in terms of political choices within a country, they become almost unmanageable when it comes to the division of water resources between several states. Worldwide, there are 250 international watercourses providing water to 40% of the world's population. These rivers are almost always over-exploited and are at the root of a number of conflicts between neighbouring States.

c) Access to water and sanitation in the world

When States have to make choices between different uses of water they rarely give priority to satisfying the fundamental needs of the most vulnerable, such as access to drinking water, to sanitation and to the water needed for subsistence agriculture. Where there is a conflict of interest, States give priority all too often to the economy and to industry, whose representatives are much more influential. In nearly all countries, the share of national budgets given to the financing of projects that aim to improve access to water and sanitation for the most vulnerable is very small. This is also true of development aid.²⁷

²¹ FIAN, *Identifying and Addressing Violations of the Human Right to Water. Applying the Human Rights Approach, Bread for the World*, Stuttgart, 2006.

²² See Bulletin No. 22, CETIM, March 2005, <http://www.cetim.ch/en/documents/bul22eng.pdf>

²³ Commission on Human Rights, *Report of the 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, § 62, 1 March 2002.

²⁴ In this country, the network is partly privatized.

²⁵ Commission on Human Rights, *Annual Report of the Special Rapporteur on the Right to Food*, J. Ziegler, E/CN.4/2004/10, §39, 9 February 2004.

²⁶ Cf. notably, R. Petrella, *The water manifesto: Arguments for a world water contract*, op. cit.

²⁷ UNDP, *Human Development Report 2006. Beyond scarcity: Power, poverty and the global water crisis*.

It is principally because of these political choices that there are 1.1 billion people in the world today, who have no access to safe drinking water and 2.6 billion who have no basic sanitation.²⁸ This situation has dramatic consequences because many diseases have a direct or indirect link with the supply and quality of water:

- 4 billion cases of diarrhoea leading to 2.2 million deaths a year, and 10% of people living in developing countries suffering from intestinal infections;
- 2 million deaths a year from malaria , a disease that affects nearly 100 million people;
- 6 million people go blind following trachoma, a contagious disease of the eye;
- 200 million people suffer from schistosomiasis, a serious parasitic disease.²⁹

The United Nations Development Programme (UNDP) describes the affront to human dignity that this situation represents in the following manner: “‘Not having access’ to water and to sanitation is a polite euphemism for a form of deprivation that threatens life, destroys opportunity and undermines human dignity. For the poorest people (not having access to water) means that people resort to ditches, rivers and lakes polluted with human or animal excrement or used by animals. It also means not having sufficient water to meet even the most basic human needs.”³⁰

The lack of dignity suffered through living in these conditions reinforces the political, economic and social exclusion of the most vulnerable groups. While providing for the basic human needs of all the inhabitants of the planet could be achieved using only a small proportion of the available water resources, priority is given to economic and industrial activities that do not respect the principles of sustainable development, are enormous consumers of water and are sources of pollution.

The apportioning of water for different purposes is therefore the result of choice and of political and economic power relationships. The UNDP report states that: “...the roots of the crisis can be traced to poverty, inequality and unequal power relationships, as well as flawed water management policies that exacerbate scarcity.”³¹

In an attempt to find a solution to the conflicts over the different uses of water, the States adopted the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses in 1997.³² This convention is very interesting because it gives priority to the use of International Watercourses to satisfy basic human needs, including the provision of safe drinking water and water required for basic subsistence food production.³³ Unfortunately, this convention never came into force, as it did not achieve the 35 necessary ratifications.

²⁸ Idem.

²⁹ UNEP Report, presented at the World Summit on Sustainable Development (Johannesburg, 26th August – 4th September 2002), op.cit.

³⁰ UNDP, *Human Development Report 2006*, op. cit., p. 5.

³¹ Ibid, Preface, p. v.

³² This Convention was adopted in Resolution 51/229 by the General Assembly of 21 May 1997

³³ See General Assembly, *Report of the Sixth Committee convening as the Working Group of the Whole, A/51/869*; p. 6 and *Commentary on The International Law Commission, A/CN.4/SER.A/1994/Add. 1, Part. 2.*

In order to force governments to give priority to basic human needs in their budgets and in their political choices, in the last few years, the emphasis has been placed on the promotion and protection of the right to water and the right to sanitation.³⁴

II. RECOGNITION AND DEFINITION OF THE RIGHT TO WATER AND THE RIGHT TO SANITATION

The right to water and the right to sanitation are fundamental human rights recognised implicitly and explicitly in a number of regional and international treaties³⁵ and in the national law of certain States (1). In 2003, the United Nations Committee on Economic, Social and Cultural Rights defined the right to water and the corresponding State obligations, now recognized in international law (2). In its most recent report, the independent Expert at the Human Rights Council (HRC), Caterina de Albuquerque, defined the right to sanitation and the corresponding State obligations (3).

a) Recognition of the right to water and the right to sanitation in regional and international treaties and in the national law of certain States

The right to water and the right to sanitation were recognized implicitly in the Universal Declaration of Human Rights of 1948 (article 25) and in the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 (article 11), as an integral part of the right of all persons to an adequate standard of living and the right to health.³⁶ They were also recognized implicitly in article 6 of the International Covenant on Civil and Political Rights (ICCPR), which enshrines the right to life.³⁷

The first explicit recognition of the right to water at an international level was made at the United Nations Water Conference, which was held at Mar del Plata in 1977. At this conference, States declared that “Whatever the development stage and the socio-economic situation, people have the right to have access to drinking water whose quantity and quality are equal to their basic needs.”³⁸

The right to water and the right to sanitation were then recognized in the Convention on the Elimination of All Forms of Discrimination Against Women, in

³⁴ See E. Riedel, P. Rothen (eds), *The Human Right to Water*, Berliner Wissenschafts-Verlag, Berlin, 2006.

³⁵ The list of these instruments is to be found in the annexes of the Report of the High Commissioner for Human Rights on the obligations related to access to water and sanitation. Cf Human Rights Council, *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*, A/HRC/6/3, 16 August 2007, Annexes I and II.

³⁶ CESCR, *General Comment n°15 on the right to water*, E/C.12/2002/11, §3, adopted 20 January 2003 and *General Comment n°14 on The right to the highest attainable standard of health*, E/C.12/2000/4, §11, adopted 11 August 2000 ; HRC, *Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation*, A/HRC/12/24, 1 July 2009.

³⁷ In General Comment n°6 on the right to life, the Human Rights Council noted that the right to life should not be interpreted in a restrictive manner. Rather, the protection of this right requires that States adopt positive measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics. Human Rights Council, *General Comment n°6 on the right to life*, § 5.

³⁸ *Report of the United Nations Water Conference*, Mar del Plata, 14-25 March 1977, Part I, Chapter I, Resolution II. This recognition of the right to water was later reaffirmed in Chapter 18 of Agenda 21, adopted at the United Nations Conference on Environment and Development in Rio de Janeiro, 1992

1979, and in the Convention on the Rights of the Child in 1989. The first called on State parties to ensure that women living in rural areas had the right “to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply”. (article 14, paragraph 2). The second called on State parties to combat illness and malnutrition by “the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution”. (article 24, paragraph 2).

At a regional level, the most explicit recognition of the right to water and the right to sanitation is in the African instruments of the Protection of the Rights of Women and Children. In the Protocol to the African Charter on Human and Peoples Rights regarding the Rights of Women, States made a commitment to ensure access to safe drinking water for women (article 15) and to regulate the management, the processing, the storage and disposal of domestic waste (article 18). In the African Charter of Rights and Wellbeing of the Child, they made a commitment to take all necessary measures to ensure the provision of safe drinking water to children (article 14, paragraph 2).

In the Protocol of San Salvador, which supports the American Convention on Human Rights, States recognized that “Everyone shall have the right to live in a healthy environment and to have access to basic public services.” (article 11, paragraph 1).

At a national level, the right to water and the right to sanitation are recognized in a number of national Constitutions - for example in Bolivia and Uruguay. They are also recognized in a great number of national laws³⁹ and some significant legal rulings confirm that they can be protected through the right to life, the right to health or the right to an adequate standard of living.⁴⁰ One of the best examples of the protection of the right to water at a national level is the enshrinement of the right to water in the Constitution of South Africa⁴¹, and its recognition in a national law⁴² which, in a decision given in 2008, allowed the High Court to force the City of Johannesburg Metropolitan Municipality to provide 50 litres of water to each inhabitant every day.⁴³

³⁹ Catarina de Albuquerque notes that they are enshrined in law in Algeria, Paraguay and South Africa. Cf Human Rights Council, *Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation*, A/HRC/12/24, §37, 1 July 2009. See also H. Smets, *Le droit à l'eau dans les législations nationales*, Académie de l'eau, Nanterre, 2005 and COHRE, *Legal Resources for The Right to Water: International and National Standards*, 2004.

⁴⁰ For example the Belgian Court of Arbitration recognized “the right of each individual to a minimum provision of safe drinking water”. Arrêt No 36/98 of 1 April 1998. The Supreme Court of India, on the basis of Article 21 of the Constitution which guarantees the right to life, stated that “the right to access to drinking water is fundamental to life and there is a duty on the State under Article 21 to provide clean drinking water to its citizens.” Supreme Court of India, 2000 SOL Case No 673. Regarding the right to sanitation Argentinian jurisprudence is particularly interesting. Cf. Human Rights Council, *Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation*, Catarina de Albuquerque, A/HRC/12/24, §37, 1 July 2009.

⁴¹ Article 27 of the South African Constitution states that “Everyone has the right to have access to (...) sufficient food and water”.

⁴² South Africa’s National Water Act was adopted in August 1998 to implement Article 27 of the Constitution.

⁴³ High Court of South Africa (Witwatersrand Local Division), *Lindiwe Mazibuko and Others v. The City of Johannesburg and Others*, Case No. 06/13885, judgement of 30 April 2008.

b) Definition of the right to water and the corresponding State obligations as set out by the Committee on Economic, Social and Cultural Rights

In 2002, on the eve of the International Year of Freshwater, the Committee on Economic Social and Cultural Rights (CESCR), which oversees the implementation of the ICESCR, adopted General Comment number 15, which defined the right to water and the corresponding State obligations.

In General Comment number 15, the Committee for Economic, Social and Cultural Rights started by recognizing that the right to water was a fundamental human right protected by the covenant. According to the Committee, “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”.⁴⁴ The Committee also insisted that “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”.⁴⁵

The Committee then defined the right to water as it is currently enshrined in international law. According to this definition, the right to water “entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses”.⁴⁶ According to the definition given by the CESCR, all people have the right to water that is safe and of an acceptable quality, available on a continuous basis, in sufficient quantities, accessible physically, at an affordable price and without discrimination.⁴⁷

The Committee stated that “the water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation and personal and household hygiene”.⁴⁸

The Committee also underlined the importance of access to sanitation, indicating that “Ensuring that everyone has access to adequate sanitation is not only fundamental for human dignity and privacy, but is one of the principal mechanisms for protecting the quality of drinking water supplies and resources”.⁴⁹ However the Committee did not, in this General Comment, state that the right to sanitation was an autonomous right.

Following its General Comment n°15, CESCR defined the corresponding State obligations. According to the Committee, States have an obligation to respect the right to water, to protect this right and to give it effect, as it should with all other human rights.⁵⁰

The obligation to respect the right to water means that States must not interfere in the exercise of the right to water. States, for example, are prohibited from

⁴⁴ CESCR, *General Comment n°15 on the right to water*, E/C.12/2002/11, §1, adopted 20 January 2003.

⁴⁵ *Ibid.*, § 11.

⁴⁶ *Ibid.*, § 3.

⁴⁷ *Ibid.*, § 12.

⁴⁸ *Ibid.*, § 12.

⁴⁹ *Ibid.*, § 29.

⁵⁰ *Ibid.*, §§ 20-29.

interrupting the water supply, from supplying dirty water, or from raising the price of publicly managed water disproportionately, or in a discriminatory fashion.⁵¹ The obligation to protect the right to water means that States must prevent more powerful third parties, such as transnational companies, from interfering in the exercise of the right to water. States must, for example, monitor water quality, and protect the most vulnerable from industrial water pollution, or from price rises demanded by private water companies.⁵²

The obligation to apply the right of water in practice means that States must take measures to facilitate the right to water for the population and to distribute water in the case of disasters. The programme “1 million water tanks” which consists of gathering rainwater in tanks in the semi arid area of North Eastern Brazil, is an example of putting this obligation into practice.⁵³

The obligation to guarantee that the right to water is exercised without discrimination and in an equal manner between men and women means that States have to combat discrimination *de jure* and *de facto* in access to water. States must, for example, put policies into place that guarantee equal access to water for discriminated-against groups such as: women and children; people living in remote rural areas or in shantytowns, even if they are illegal; indigenous people; nomads; refugees and asylum seekers, who are too often discriminated against in their access to safe drinking water.⁵⁴

Finally, the right to water, like all other human rights, also involves States in obligations towards other countries beyond its boundaries. According to the Committee on Economic, Social and Cultural Rights, States must respect the exercise of the right to water in other countries; they must take measures to prevent their own citizens, or companies that come under their jurisdiction, from violating the right to water of individuals and communities in other countries; and depending on their own resources, they must facilitate the exercise of the right to water in other countries and offer help wherever necessary.⁵⁵ As the first United Nations Special Rapporteur on the right to food underlined in his reports on missions to Ethiopia, India and Bangladesh, these extraterritorial obligations mean that when States exploit transboundary watercourses, they must give priority to the satisfaction of basic human needs of the populations that depend on these water courses, in particular safe drinking water, and the water needed for basic subsistence agriculture.⁵⁶

⁵¹ See the violations of obligations in relation to the right to water described in the report of his mission to Niger by J Ziegler, E/CN.4/2002/58/Add.1, § 50-51, 23 January 2002.

⁵² See the violations of the obligation to protect the right to water described in the report of his mission to India by J Ziegler, E/CN.4/2006/44/Add.2, § 45, 20 March 2006.

⁵³ Commission on Human Rights, *Report of the Special Rapporteur on the Right to Food. Mission to Brazil*, J. Ziegler, E/CN.4/2006/44/Add.2, § 39, 20 March 2006.

⁵⁴ CESCR, *General Comment n°15 on the Right to Water*, op.cit., § 16.

⁵⁵ Cf. *Ibid.*, § 30-36.

⁵⁶ Cf. Reports of J. Ziegler on his missions to Ethiopia, India and Bangladesh: www.righttofood.org.

c) Definition of the right to sanitation and the corresponding State obligations as set out by the independent expert of the Human Rights Council

In her report presented in September 2009 to the Human Rights Council, Catarina de Albuquerque, the independent expert charged with examining the question of obligations concerning human rights as regards access to safe drinking water and to sanitation, pointed out that a quarter of the deaths of children under the age of 5 in the world are attributable to inadequate sanitation, and that the United Nations Millennium Development Goal concerning sanitation was unlikely to be reached by 2015 in the case of more than 700 million people.⁵⁷ This explains why she decided, in her report, to put the emphasis on the recognition of the right to sanitation as an autonomous human right.

According to the independent expert, the right to sanitation is protected in international law through the recognition of several other rights, in particular the right to an adequate standard of living, the right to adequate housing, the right to health and the right to water.⁵⁸ But for her, this does not go far enough; it must go further and recognize the right to sanitation as an autonomous human right, because this is what is needed for the protection of human dignity.⁵⁹

In her report, Catarina de Albuquerque gives the following definition of the right to sanitation and the corresponding State obligations: “The Independent Expert is of the view that sanitation can be defined as a system of collection, transport, treatment and disposal or reuse of human excreta, and associated hygiene. States must ensure without discrimination that everyone has physical and economic access to sanitation, in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity”.⁶⁰

As the independent expert explains herself, there are a number of definitions of sanitation and some are broader than others.⁶¹ Her definition of sanitation is more restricted, because she limits herself to “personal sanitation” (disposal of human excreta).⁶² In the future, it would be better if the Committee on Economic, Social and Cultural Rights investigated this question in order to develop a broader definition which would include the cleaning up of all types of water pollution. The independent expert also describes in her report the States’ obligations to respect, to protect and to apply in practice the right to sanitation⁶³ and their obligation to “pay special attention to groups, particularly vulnerable to exclusion and discrimination in relation to sanitation, including people living in poverty, (...) women, children,

⁵⁷ See Human Rights Council, *Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation*, A/HRC/12/24, 1 July 2009, §§ 4-5.

⁵⁸ *Ibid.*, § 14-54.

⁵⁹ *Ibid.*, §§ 55-59. The independent expert cites Article 22 of the Universal Declaration of Human Rights, which states that “everyone ... is entitled to the realization of the economic, social and cultural rights indispensable for his dignity...”, to justify the need to recognize the right to sanitation as an autonomous right.

⁶⁰ *Ibid.*, §63.

⁶¹ *Ibid.*, §§8-12.

⁶² CESCR, *General Comment n°15 on the right to water*, op.cit., § 12.a)..

⁶³ Cf. *Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation*, A/HRC/12/24, 1 July 2009, § 64.

elderly persons, people with disabilities, people affected by health conditions, refugees and IDPs, minority groups among others”.⁶⁴

It should also be noted that in General Comment number 15, the Committee for Economic, Social and Cultural Rights had already indicated that “State Parties have an obligation to progressively extend sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children”.⁶⁵

III. CURRENT STATE OF DISCUSSIONS ON THE RIGHT TO WATER AND THE RIGHT TO SANITATION AT THE UNITED NATIONS

Discussions at the United Nations about the right to water and the right to sanitation really started with the adoption of the General Comment on the right to water by the Committee on Economic, Social and Cultural Rights. A year before, J.Ziegler, the Special Rapporteur on the right to food, was asked to extend his mandate to include the right to water in relation to the right to food,⁶⁶ and in the following two years, El Hadji Guissé, Rapporteur to the Sub-Commission on the Promotion and Protection of Human Rights, presented his final report on the promotion and realization of the right to safe drinking water and to sanitation⁶⁷ and his guidelines for the realization of the right to clean drinking water and to sanitation which were adopted by the Sub-Commission.⁶⁸

Between 2001 and 2006, States, international and civil society organizations considered their position in relation to these experts’ findings, and in particular in relation to General Comment number 15 (1). With the creation of the Human Rights Council in June 2006, the views of the various players on the right to water and the right to sanitation came together in the mandate given to the High Commissioner on Human Rights in 2006 (2) then on the creation of the post of independent expert on the question in 2008 (3).

a) The position of States and international and civil society organizations regarding the right to water and the right to sanitation

Outside the United Nations, States, the private sector, international organizations and certain civil society organizations, came together under the aegis of the World Water Council to discuss the promotion of access to water and to sanitation. The World Water Council had been created in 1996; its principal mandate was to organize the publications of the World Water Forum, which took place in

⁶⁴ Ibid, § 65.

⁶⁵ CESCR, *General Comment No 15 on the Right to Water*, op.cit., § 29.

⁶⁶ In Resolution 2001/25, the Commission on Human Rights requested ‘the Special Rapporteur, in discharging his mandate, to pay attention to the issue of drinking water, taking into account the interdependence of this issue and the right to food.’ (paragraph 9). In accordance with this mandate, J. Ziegler has produced two reports on the interdependence between the right to safe drinking water and the right to food. These were presented to the General Assembly in 2001 and to the Human Rights Council in 2003. J. Ziegler has also included the question of safe drinking water in the numerous reports of his missions between 2001 and 2007.

⁶⁷ Commission on Human Rights, *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. Final report of the Special Rapporteur*, El Hadji Guissé, E/CN.4/Sub.2/2004/20, 14 July 2004.

⁶⁸ Commission on Human Rights, *Realization of the right to drinking water and sanitation Report of the Special Rapporteur*, El Hadji Guissé, E/CN.4/Sub.2/2005/25, 11 July 2005.

Marrakesh in 1997, The Hague in 2000, Tokyo in 2003, Mexico in 2006 and Istanbul in 2009, where more than 30,000 people assembled.⁶⁹

Despite the fact that the World Water Council published a document on the right to water in 2006,⁷⁰ the most important document to come out of the World Water Forum - the Declaration of Heads of State - did not recognize access to water and to sanitation as a human right.⁷¹ As a way of expressing their disagreement with this, Cuba, Venezuela, Uruguay and Bolivia put out their own declaration in which they reaffirmed the human right to water and to sanitation.⁷²

Other States only went so far as to state that the promotion of the right to water was a priority in their development policies. The United Kingdom, for example, declared that it intended to reorient its development aid towards the realization of the right to water, and proposed the creation of a plan of action worldwide to achieve this.⁷³ Curiously, the United Kingdom opposed the adoption of any resolution at the Human Rights Council that made explicit mention of the right to water as an autonomous human right. The same was true of Canada.

The international organizations, for their part, reacted extremely positively to the adoption of General Comment number 15 of the Committee of Economic, Social and Cultural rights. The World Health Organization and the United Nations High Commissioner for Human Rights published a brochure on the right to water in 2003,⁷⁴ as did the World Bank in 2004.⁷⁵ But undoubtedly the strongest support for the promotion of the right to water was the United Nations Development Programme, Human Development Report 2006 *Beyond scarcity: Power, poverty and the world water crisis*. In this report, UNDP identified four central principles which should form the basis of the reforms needed to realize the Millennium Development Goal regarding access to water. The first principle was the need for States to recognize the right to water in their Constitution and in their national legislation.⁷⁶

Civil society organizations, many of which were already working on the promotion of the right to water and the right to sanitation before 2003, were equally positive in their welcome to general Comment number 15. The Centre on Housing Rights and Evictions (COHRE), for example, had continued to promote the right to water and

⁶⁹ See the World Water Council website, www.worldwatercouncil.org.

⁷⁰ C. Dubreuil, *The Right to Water – from Concept to Implementation*, World Water Council, 2006.

⁷¹ Access to water has been recognized as a basic human need in successive final declarations. In the Ministerial Declaration of the World Water Forum in Istanbul, Ministers recognized that ‘access to safe drinking water and sanitation is a basic human need’ (paragraph 15), but this was not included in the Declaration of Heads of State. For a critique of the World Water Forum (Istanbul, 2009) cf <http://www.oikoumene.org/en/activities/ewn-home/ewn-news-and-events-containers/english-news-container/single-news/article/1634/declaration-of-the-world.html>

⁷² This was the case, for example, at the World Water Forum in Mexico 2006.

⁷³ Cf. UK Department for International Development, *UK recognizes the right to water as Hilary Benn launches call for Global Action Plan to solve water crisis*, Press release, 9 November 2006, www.dfid.gov.uk/News/files/pressreleases/human-dev-report06.asp.

⁷⁴ WHO and OHCHR, *The Right to Water*, 2003: www.who.int/water_sanitation_health/rightwater/en/.

⁷⁵ Salman M. A. Salman, S. McInerney-Lankford, *The Human Right to Water: Legal and Policy Dimensions*, World Bank, 2004, http://publications.worldbank.org/e-commerce/catalog/product?item_id=3845440.

⁷⁶ UNDP, *Human Development Report 2006. Beyond scarcity: Power, poverty and the global water crisis*, pp. 8, 60-61. The other three principles identified by the UNDP are: the need to adopt national strategies with regard to water and sanitation; to support national plans through international aid; and to develop a World Action Plan.

the right to sanitation through numerous publications and training programmes.⁷⁷ The organization 'Bread for the World' which initiated a campaign for the right to water in 2003, created an inclusive advocacy network for water.⁷⁸ A number of social organizations have campaigned for years at both national and international levels (in particular through the World Social Forum). Amongst these, we should mention in particular the network ACME, (Association for a World Water Contract), which was set up in Italy by Riccardo Petrella, Professor of Economics, and then spread to Canada, Belgium, Switzerland and Morocco. ACME has organized several alternative forums all over the world (FAME) (Alternative World Water Forum) with the principle objective of promoting the right to water and sanitation.⁷⁹

b) Study by the High Commissioner for Human Rights – 2006-2007

In 2006, following an initiative from Germany and Spain, the Human Rights Council asked the United Nations High Commissioner on Human Rights to provide it with "a detailed study on the scope and content of the human rights obligations related to the equitable access to safe drinking water and sanitation under human rights' instruments".⁸⁰

This initiative aimed to provide a counterbalance to the position of the UN experts on human rights regarding the right to water. However, the study prepared by the High Commissioner, certain aspects of which could be criticized, contains some interesting elements.⁸¹ In his study, the High Commissioner identified the international instruments that directly and indirectly protect the right to safe drinking water and the right to sanitation⁸² and put forward a definition of these rights and the corresponding State obligations.⁸³ It also identified seven questions that needed to be investigated in more detail, including whether the right to water and the right to sanitation should be considered as autonomous human rights, and the question of a hierarchy of water usage.⁸⁴

Whilst underlining the need to develop certain aspects of the obligations that concern the right to water and to sanitation, in particular the normative content of the obligations corresponding to the right to sanitation,⁸⁵ the High Commissioner concluded 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

⁷⁷ Cf. www.cohre.org/water.

⁷⁸ Cf. <http://www.oikoumene.org/en/activities/ewn-home.html>

⁷⁹ ACME organized Alternative World Water Forums in Florence in 2003 and Geneva in 2005. They have also pursued their activities on a global level by taking part in World Social Forums: www.acme-eau.org.

⁸⁰ Human Rights Council, *Human Rights and Access to Water*, Resolution 2/104, unanimously adopted 27 November 2006.

⁸¹ Human Rights Council, *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*, A/HRC/6/3, 16 August 2007.

⁸² Ibid, §§ 4-12.

⁸³ Ibid, §§ 13-29.

⁸⁴ Ibid, §§ 44-64.

⁸⁵ Ibid, § 67.

that this sufficient amount is of good quality, affordable for all and can be collected within a reasonable distance from a person's home".⁸⁶

The High Commissioner also underlined the lack of existing mechanisms to monitor the respecting of obligations regarding the right to water and to sanitation⁸⁷, and this paved the way for the creation of a special procedure on this question at the Human Rights Council.

c) The mandate and work of the independent expert – 2008-2009

The Human Rights Council decided unanimously, in its resolution 7/22 of 28th March 2008, to "appoint, for a period of three years, an independent expert on the issue of human rights obligations relating to access to safe drinking water and sanitation".

One of the tasks entrusted to the independent expert by the Human Rights Council, was the clarification of "the content of human rights obligations, including non-discrimination obligations, in relation to access to safe drinking water and sanitation". It should be noted that resolution 7/22 does not make explicit reference to the right to water and to sanitation but to "access to water". It should also be pointed out that the question of the sharing of water resources between States is explicitly excluded from the mandate of the independent expert, while it affirms "the need to focus on local and national perspectives in considering the issue leaving aside questions of international watercourse law and all transboundary water issues".

If the independent expert does not take up a position regarding both this right and the issue of transboundary waters, she could overlook entirely the real issues involved in the realization of the right to water and to sanitation. In Egypt, where she went on a fact-finding mission, and in Bangladesh which she will be visiting soon, these questions are crucial.⁸⁸ The same thing applies all along the 250 international watercourses that supply the water needs of 40% of the world's population.

CONCLUSION

The right to water and the right to sanitation were enshrined in several regional and international treaties and in the national law of certain States. They have also been recognized as fundamental rights by CESCR and by several United Nations experts. However, there is still a significant amount of resistance on the part of some States, to giving explicit recognition, at the Human Rights Council, to the right to water and the right to sanitation. On the other hand there is a real willingness on the part of some other States to recognize the right to water and the right to sanitation, and a firm commitment to the defence of human rights by the United Nations, by international and civil society organizations.

⁸⁶ Ibid, § 66.

⁸⁷ Ibid, par. 69.

⁸⁸ Reports by J. Ziegler on his missions to Ethiopia, India and Bangladesh: www.righttofood.org.

In the future, it would be desirable if CESCR were to produce a general comment on the right to sanitation, to reinforce its General Comment on the right to water and the work of the independent expert at the Human Rights Council. It would also be desirable if the Human Rights Council allowed the independent expert to make recommendations on the uses of transboundary watercourses in order to satisfy the basic needs of the 40% of the world's populations who depend on them. If these two elements were taken into account, it would represent a significant step forward in the realization of the right to water and the right to sanitation.

ANNEXES

1. CESCR, *General Comment n°15, The right to water (articles 11 et 12)*, E/C.12/2002/11, 20 January 2003;
2. Human rights Council, *Report of the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque*, A/HRC/12/24, 1st July 2009;
3. Human Rights Council, *Report of the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque*, A/HRC/10/6, 25 February 2009;
4. *Resolution 7/22 of the Human Rights Council, Human rights and access to safe drinking water and sanitation*, 28 March 2008;
5. *Report of the Secretary-General to the General Assembly, International Year of Sanitation*, A/64/169, §3-4, 24 July 2009;
6. Human Rights Council, *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*, A/HRC/6/3, 16 August 2007;
7. *Decision 2/104 of the Human Rights Council, Human rights and access to water*, 27 November 2006;
8. UNDP, *Human Development Report 2006, Beyond scarcity: Power, poverty and the global water crisis*, 2006;
9. Commission on Human Rights, *Report of the Special Rapporteur El Hadji Guissé, Realization of the right to drinking water and sanitation*, E/CN.4/Sub.2/2005/25, 11 July 2005;
10. Commission on Human Rights, *Report of the Special Rapporteur El Hadji Guissé, 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.2/2004/20, 14 July 2004;
11. Commission on Human Rights, *Report of the Special Rapporteur on the right to food, Jean Ziegler, The right to food*, E/CN.4/2004/10, 9 February 2004;
12. Commission on Human Rights, *Report of the Special Rapporteur on the right to food, Jean Ziegler, The right to food*, E/CN.4/2003/54, 10 January 2003;
13. General Assembly, *Report of the Special Rapporteur on the right to food, Jean Ziegler, The right to food*, A/56/210, 23 July 2001;
14. Commission on Human Rights, *Resolution 2001/25 on The Right to Food*, 20 April 2001.

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