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ECONOMIC, SOCIAL AND CULTURAL 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

* The document was submitted late to the conference services without the explanation required under paragraph 8 of General Assembly resolution 53/208 B, by which the Assembly decided that, if a report is submitted late, the reason should be included in a footnote to the document.

Summary

This report constitutes 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. The Special Rapporteur supports the premise that all peoples, notwithstanding 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 sufficient for their basic needs.

The right to drinking water and sanitation constitutes a part of internationally recognized human rights and may be considered as a prerequisite to the realization of other human rights. The Universal Declaration of Human Rights has arguably recognized implicitly the right to drinking water and sanitation in article 25 (1), which states that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care ...”. More specifically, the Committee on Economic, Social and Cultural Rights, in general comment No. 15, noted that the right to drinking water forms part of the International Covenant on Economic, Social and Cultural Rights. The Committee further asserted that the right to drinking water is closely linked to the right to health and the right to food.

Full enjoyment of the right to development is impeded in part by unequal distribution of water and lack of sustainable sanitation systems. The relationship between the right to drinking water and other internationally recognized human rights is such that it affects peace and security, as failure to ensure adequate water for all has led to conflicts. At worst, growing water scarcity in some parts of the world may lead to international conflict.

The Special Rapporteur submits in this report various suggestions which, if implemented, could serve to advance the realization of the right to drinking water and sanitation.

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Introduction

1. In its resolution 1997/18, the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to entrust to El Hadji Guissé the task of drafting a working paper on the question of the promotion of the realization of the right of access of everyone to drinking water supply and sanitation services. At its fiftieth session, Mr. Guissé submitted his working paper (E/CN.4/Sub.2/1998/7) to the Sub-Commission, which decided, in resolution 1998/7, to appoint Mr. Guissé as Special Rapporteur to conduct a detailed study on the subject. This decision was approved by the Commission on Human Rights in its decision 2002/105.

2. Mr. Guissé submitted his preliminary report to the Sub-Commission at its fifty-fourth session (E/CN.4/Sub.2/2002/10) and his progress report (E/CN.4/Sub.2/2003/WP.3) to the fifty-fifth session. The present report constitutes the final report of the Special Rapporteur.

I. COMMUNICATIONS FROM GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS

3. In Commission decision 2002/105 and Sub-Commission resolution 2003/1, Governments, United Nations bodies and interested institutions were requested to provide relevant information to the Special Rapporteur. Information was received from the Governments of Austria, Azerbaijan, Bolivia, Greece, Mexico and Switzerland; from the Division for Sustainable Development of the United Nations Department of Economic and Social Affairs; from the United Nations Environment Programme (UNEP); from the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO); and from the Organisation for Economic Cooperation and Development (OECD).

4. The Government of Austria expressed its full support for the goals established under the Millennium Declaration and the Johannesburg Declaration on Sustainable Development. It recognized the importance of having access to adequate drinking water and sanitation; however, the various issues raised in securing this need were to be addressed at the national level. The Government conveyed the view that national authorities were to establish the necessary framework, whether from the legal or practical perspective, to ensure access to water. The role of national authorities was crucial as regards the determination of questions relating to the ownership of water resources and the distribution of water. In considering various aspects linked to the uses of water resources, the Sub-Commission should take into account the work undertaken by other international bodies in order to avoid duplication of effort.

5. The Government of Azerbaijan informed the Special Rapporteur of the reforms which it had undertaken in its policies for the protection and use of water resources. There was a certain shortage of water in parts of the country which required the construction of regulating structures on the rivers and a redistribution of the flow of certain rivers to the affected regions.

6. The Government of Bolivia stated that prior to entering into discussions on the right to drinking water management it was necessary to bear in mind that access to water in the country was provided in accordance with the difficulties and limitations that developing countries

continuously faced. The country had been facing a terrible economic crisis necessitating drastic reform of the national budget, resulting in dramatic reductions affecting all levels of public administration.

7. The Government of Greece asserted that as of December 2003, a new legislative and institutional framework in the form of a Law on Water Protection and the Sustainable Management of Water Resources entered into force. Under this law, an innovative and holistic approach had been adopted by the Government to water management. The targets of its National Strategy for Sustainable Development (2002) regarding the management of water resources, the efficient protection of water ecosystems and the attainment of high-quality standards for all surface and groundwater bodies were consistent with the Johannesburg Plan of Implementation for water supply and sanitation as well as for integrated water management and water efficiency plans.

8. The Government of Mexico submitted that human rights were indivisible and that economic, social and cultural rights were fundamental to the realization of all human rights, which in turn was closely linked to access to basic services such as water and sanitation. It was within that context that the Government had established, through the National Water Commission, a National Hydraulic Programme (2001-2006), intended to ensure access to drinking water.

9. The Government of Switzerland asserted that its commitment to the promotion of human rights included economic, social and cultural rights. Referring to general comment No. 15 (2002) of the Committee on Economic Social and Cultural Rights, the Government expressed the view that special procedures and treaty bodies should pay particular attention to the right to drinking water as well as the rights to food, health and housing under their respective mandates. The right to drinking water was closely linked to other economic social and cultural rights, and the absence of a specific mention of the right to drinking water under the International Covenants on Human Rights and other human rights instruments did not preclude its existence as an autonomous right. In that regard, the Government recommended that a process of reflection be undertaken as to the specificity of the right of access to water and its linkages to other economic, social and cultural rights.

10. FAO emphasized its position that the right to water was a component of the right to food. In this regard, the necessity of ensuring access to adequate water for subsistence agriculture could often be equated to the use of water for drinking purposes and should be protected and prioritized in a similar manner. The Special Rapporteur was pleased to receive from FAO its legislative studies: No. 79 - Legislation on water user's organizations - A comparative analysis, 2003; No. 80 - Preparing national regulations for water resources management - Principles and practice; and No. 81 - Administración de derechos de agua, 2003.

11. UNEP asserted that in considering issues connected with the right of access to water, it was important to reinforce the references to the environment in order to highlight that environmentally unsustainable water use makes realization of the right to drinking water and sanitation difficult. By means of example, UNEP submitted that if water is polluted significantly, it not only damages ecosystems, but also restricts use by humans as drinking water. Additionally, the absence of sanitation degrades the environment, reduces water availability and

contributes to increasing the incidence of waterborne diseases. Therefore, environmentally sustainable water use is directly linked to the realization of the right to drinking water supply and sanitation.

12. The Division for Sustainable Development informed the Special Rapporteur that at its twelfth session (14-30 April 2004) the Commission on Sustainable Development undertook a review of the issues connected with water, sanitation and human settlements, which amounted to the thematic focus of its work for the 2004-2005 Implementation Cycle. During the thematic discussions, the importance of maintaining water resources within the public domain was emphasized. Reference was also made to the report of the Secretary-General (E/CN.17/2004/4) on freshwater management and the need to ensure access to it while highlighting the observation that access to drinking water had moved high up on the international agenda and was now recognized as a “basic human right” (para. 71, citing general comment No. 15).

13. OECD sent a copy of its publication entitled *Social Issues in the Provision and Pricing of Water Services* (2003), which explored the affordability of household water services along with the current social measures aimed at resolving affordability problems in OECD countries. The publication also examined the potential role of the private sector in incorporating the social dimension into water pricing decisions as some OECD countries had yet to fulfil the public health requirements of “access” to public water supply and waste-water collection and treatment.

14. WHO informed the Special Rapporteur about a manual on the right to water that it was currently preparing together with the American Association for the Advancement of Science (AAAS) and the Centre on Housing Rights and Evictions (COHRE) Right to Water programme. WHO expects the manual will be finalized in 2004. The manual, which was described as a tool for policy makers and practitioners in Government, international agencies, civil society and the private sector, will serve to address practical difficulties in improving access to water and the role those sectors can play in implementing the right to water. The manual would supplement general comment No. 15 by demonstrating the manner in which the right to water and human rights mechanisms could be used to influence governance in that field and how available resources could be used to expand basic access to clean water. Although the manual would focus on access to water for personal and domestic uses, it also considered sanitation as that was intricately connected with the right to water.

II. GENERAL CONSIDERATIONS

15. In his preceding reports, the Special Rapporteur examined the fundamental nature of water as essential to life and as a crucial factor in the viability and success of civilizations. The Special Rapporteur noted that in many parts of the world, access to water continued to be extremely limited both as a vital resource necessary for the maintenance of life in the form of drinking water and within its multidimensional usage as regards health and sanitation and socio-economic development. The Special Rapporteur also noted that access to drinking water and sanitation promoted health and contributed to both social well-being and economic productivity, thereby giving expression to the enjoyment of basic human rights.

16. As mentioned in his previous reports, the Special Rapporteur established that a large segment of the world’s population amounting to approximately 1.1 billion people have no access to safe drinking water and almost 2.4 billion do not have access to hygienic means of personal

sanitation.¹ According to WHO, each day, an estimated 5,483 deaths occur from diarrhoeal diseases, bringing this figure up to 2 million each year. Many other diseases, such as cholera and trachoma, are associated with lack of water, sanitation and hygiene.² These consequences result from the fact that only a limited number of people, particularly in developing countries, have access to water of drinkable quality and adequate sanitation facilities.

17. Although sanitation has often been neglected, its critical role in preserving life is also increasingly recognized. The States attending the World Summit on Sustainable Development in 2002 pledged to halve the proportion of people without access to basic sanitation by 2015. This pledge supplements the Millennium Declaration's commitment also to reduce by half the proportion of people unable to reach or afford safe drinking water. The absence of adequate sanitation systems in many parts of the world has led to widespread pollution of water sources that communities rely upon for survival. The presence of faecal contaminants in water is one of the leading causes of diarrhoea. Millions of children are left malnourished, physically stunted and mentally retarded as a result of excreta-related diseases and intestinal worm infections.³ Adequate sanitation is also important to promote and protect human dignity and privacy. It is within this context that WHO submits that "[t]he provision of sanitation is a key development intervention - without it, ill-health dominates a life without dignity".⁴

18. In many communities, primarily in rural areas, the lack of sanitary facilities places women in situations whereby relieving themselves exposes them to harassment and sexual violence or they have to wait until night time, an option that could result in severe internal organ damage. The lack of separate, adequate sanitary facilities in schools is a major factor preventing school attendance for girls. By contrast, schools benefiting from programmes providing such facilities have experienced enrolment increases of girls by 11 per cent.

19. The poor and other marginalized groups bear the brunt of water scarcity and sanitation. Lack of water and sanitation also undermines the ability of the poor to grow food and engage in income-generating activity. Diseases resulting from lack of water and sanitation burden the poor with high health-care costs and loss of ability to work to secure a livelihood. The poor, many of whom rely on informal water vendors, often pay exorbitant prices for drinking water, thereby affecting their ability to provide for other basic needs such as food, shelter, clothing, housing, health and education. Women and children often have the traditional role of collecting water from great distances, affecting their health, their access to education, their ability to earn a livelihood and exposure to violence.⁵

20. The largest consumer of water is agriculture, on which food production and the livelihood of farmers depends. Although the global food supply has generally kept pace with population growth in the last few decades, almost 777 million people do not have access to sufficient and adequate food because they do not have the resources to purchase food or, in the case of subsistence farmers, sufficient resources to grow food.⁶ A contributing factor has been the inability of poor farmers to gain access to traditional or new water sources. In this connection, it is important to note that in its general comment No. 15 on the right to water, the Committee on Economic, Social and Cultural Rights affirmed the existence of a link between the right to adequate food and access to water. The Committee asserts that "[a]ttention 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" (para. 7). It should be stressed that the elimination of hunger and

malnutrition and the guarantee of the right to proper nutrition for all is one of the key objectives of the Declaration on Social Progress and Development. The International Covenant on Economic, Social and Cultural Rights provides explicitly that it is a “fundamental right of everyone to be free from hunger” (art. 11, para. 2).

21. In his preliminary report, the Special Rapporteur discussed the causes of the lack of safe water globally and the management methods needed to conserve water. In summary, it is established that the main threats to water quality include changing weather patterns caused by climate change, destruction of catchment areas, harmful agricultural practices based on the heavy use of pesticides and other chemicals, human and animal waste caused by a lack of sanitation facilities and the dumping of toxic wastes. Many developing countries cannot afford to treat municipal and industrial waste. Water shortages occur owing to a lack of efficient industrial and agricultural use of water. This is accompanied in many situations by the lack of adequate technology for water abstraction and the lack of finances to implement such technology.

22. It should be noted that there is sufficient water for every person’s basic needs in all geographical regions and in almost all countries. The main challenge is one of distribution, including the existence of supply networks and facilities to ensure that water is of an acceptable quality. Another problem lies in the absence of sufficient water infrastructure to carry water to locations inside or close to households, or for communities to gain access to groundwater. Deprived urban areas and rural areas are frequently neglected or totally ignored in infrastructure development and maintenance, and are not assisted with small-scale water purification technologies. As general comment No. 15 observes, many States have invested resources in expensive water supply services and facilities that are often accessible only to a limited number of persons who amount to the privileged fraction of the population, rather than investing in water supply services that benefit a larger section of the population (para. 14).

III. LEGAL BASIS OF THE RIGHT TO DRINKING WATER AND SANITATION

A. International law and the right to drinking water

23. The right to drinking water and sanitation is a part of internationally recognized human rights and may be considered as a basic requirement for the implementation of several other human rights. Support for the right to drinking water globally is significant and there is an increased recognition of the right to sanitation.⁷ Access to drinking water is a prerequisite for the realization of other human rights and drinking water is specifically mentioned in two conventions, namely the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. According to the Action Plan adopted at the United Nations Water Conference held in Mar del Plata, Argentina, in 1977, all peoples have the right to have access to drinking water in quantities and of a quality equal to their basic needs. The commonly agreed premise is that all peoples, notwithstanding 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.

24. General comment No. 15 notes that the right to water forms part of the International Covenant on Economic, Social and Cultural Rights. 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. According to the Committee, the right to water 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.

25. The Committee also noted that the right to water is closely connected to both the right to health and the right to food. Likewise, the Universal Declaration of Human Rights has arguably already implicitly recognized the right in its provision which states that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services” (art. 25, para. 1). The Special Rapporteur’s preliminary report considered in detail the relationship between the right to drinking water and other internationally recognized human rights. A summary of these linkages must embrace the link between human rights and peace and security, as failure to ensure adequate water for all has led to conflict, primarily at the local level.⁸ States have generally engaged in cooperation, rather than conflict, over shared water resources. However, growing water scarcity in some parts of the world may lead to international conflict.

26. With regard to the right to self-determination, States must have the ability to exercise control over water resources on behalf of all of their citizens, free of unjustified interference. Article 1 (2) of the International Covenant on Economic, Social and Cultural Rights recognizes that “in no case may a people be deprived of their means of subsistence”, which should include water resources.

27. The enjoyment of the right to development is impeded in part by unequal distribution of water and lack of sustainable sanitation systems. Many water and sanitation projects ignore the direct role of beneficiaries in planning and implementing such projects. The Declaration on the Right to Development states that “the human person is the central subject of development and should be the active participant and beneficiary of the right to development” (art. 2, para. 1). The Declaration also refers to the obligation that all States have “to cooperate with each other in ensuring development and eliminating obstacles to development” (art. 3, para. 3).

28. A healthy environment cannot be possible if drinking water is undergoing increasing degradation and contamination from household, agricultural and industrial sources. This problem is exacerbated by a growing reliance on agricultural chemicals, especially pesticides. General comment No. 15 asserts that States parties should adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations (para. 28).

29. The right to drinking water and sanitation is also linked to other human rights, such as: (a) the right to life - the lack of access to drinking water and sanitation jeopardizes the lives of millions of individuals; the right to drinking water is therefore an essential component of the right to life; (b) the right to health - as noted above, the quality of the water supply and the presence of sanitation services is crucial for health; (c) the right to adequate housing - access to drinking water is a component of the right to adequate housing, which is incorporated in a number of international human rights instruments, for example, article 11 (1) of the International Covenant on Economic, Social and Cultural Rights which stipulates that “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.” Safe drinking water and sanitation are two key aspects of the right to adequate housing. Safe drinking water and sanitation are also related to the right to education. For example, when the enjoyment of the right to drinking water is not achieved, it can lead to failure to attend school since children - often girls - must walk long distances, often several times a day, to collect water for their families. Additionally, the lack of water and sanitation undermines the ability of the poor to grow food and engage in income-generating activity.

30. At the regional level, the Committee of Ministers of the Council of Europe, which adopted the European Charter on Water Resources, came to a conclusion similar to the ones discussed above. Paragraph 5 of the Charter states: “Everyone has the right to a sufficient quantity of water for his or her basic needs.” In the Americas, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights refers to the rights to live in a healthy environment and to have access to basic public services (art. 11, para. 1). The African Charter on the Rights and Welfare of the Child is more specific in providing that States parties shall undertake to pursue the full implementation of the right to health and in particular shall take measures to ensure the provision of adequate nutrition and safe drinking water (art. 14, para. 2 (c)).

31. The Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1999) provides in article 4 (2), *inter alia*, that “Parties shall, in particular, take all appropriate measures for the purpose of ensuring: (a) adequate supplies of wholesome drinking water ...; (b) adequate sanitation” Article 5 states that “the Parties shall be guided in particular by the following 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”. Article 6 (1) asserts that “the Parties shall pursue the aims of: (a) access to drinking water for everyone; (b) provision of sanitation for everyone ...”.

32. The 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters also provides an important precedent for ensuring participation and accountability in matters of water quality. The standards in this Convention are relevant to the enjoyment of the right to water including physical accessibility and affordability.

33. The right to drinking water is the right of every individual to have access to the amount of water required to meet his or her basic needs. Basic needs with respect to the right to water have been defined in general comment No. 15 to include “personal and domestic uses” (para. 2). The Committee’s interpretation is consistent with that of many experts. However, the question remains as to whether the “basic amounts” should cover certain subsistence uses, for example kitchen gardening or water for livestock, as has been recognized by several countries of Africa. The right to water covers access by households to drinking water supplies and waste-water treatment services managed by public or private bodies. The other question which arises concerns whether water for additional uses should be encompassed within the right to water.

34. Another question arises whether the right to water includes water intended for commercial, industrial and agricultural activities. Water is inextricably linked to all the other human rights, particularly economic, social and cultural rights, which cover various aspects of

the implementation of the right to life. Apart from air, water is the only natural resource that the human species cannot do without. Conceptually and practically, however, it is difficult to conclude that the right to water extends automatically to all other uses, since human beings have varying requirements, often depending on their livelihoods. Such a broad view is also complicated by the scarcity of the resource and the competing demands for it. A better approach would be to further explore the often-neglected water dimensions of other human rights, in particular the right to food and the right to work. In any case, water should certainly be the subject of regulation and supervision by public authorities. Water, while an economic good of great value, should nonetheless not be treated as a mere commodity like other consumer goods.

B. National legal standards governing the right to drinking water

35. National legal systems are increasingly developing legislation that recognizes and protects the right to drinking water and sanitation. In some countries, the right to water is either enshrined in national constitutions or incorporated via international instruments that recognize the right. However, legislative standards vary from one country to another, particularly in relation to the price to be paid for water and sanitation and the obligations of the Government to ensure access to water by everyone.

36. The right to water is enshrined in the national legislation of several States. According to the decree of 20 December 1996 of the Flemish Community of Belgium, every subscriber is entitled to a minimum, uninterrupted supply of electricity, gas and water for household use in order to live according to the prevailing standard. Every individual is entitled to the quality and quantity of drinking water required for food and for household and health needs. Since January 1997, every inhabitant has been receiving a free supply of 15 m³ of water per year.

37. In South Africa, the Government has established a comprehensive legal framework to implement the right to water and sanitation through the Water Services Act (1997) and the National Water Act (1998). Under the Acts, water service authorities are required to progressively ensure efficient, affordable, economic and sustainable access to water services. In the event that a water services authority is unable to provide access to water for all potential customers in its area - due to resources limitations for example - it must prioritize 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 requires that water service authorities draw up a development plan, indicating a time frame for achieving universal access to basic water supply and sanitation. Every year, these authorities must publicly report on the implementation of this plan. The legislation also provides for protection against disconnection - even where the user cannot pay. Although concern has been raised by NGOs and experts as to the high rate of water disconnections and the need to ensure that these aspects of the Act are implemented, South Africa maintains a free water policy allowing 6,000 litres of safe water per household per month. This policy clearly offers access to water to vulnerable groups, but it is contingent upon the Government ensuring that less able water service providers have sufficient resources to provide such free water.

38. The right to water and the corresponding government obligation to ensure its realization is expressly referred to in the constitutions of Ecuador, Ethiopia, Panama, the Gambia, the Islamic Republic of Iran, South Africa, Uganda, Venezuela and Zambia and the draft constitution of Kenya. Similarly, the constitutions of Cambodia, Colombia, Eritrea, Guyana,

the Lao People's Democratic Republic, Mexico, Panama, Switzerland and Venezuela require the Government to protect water resources. Some states of the United States of America have incorporated in their state constitutions the right to pure water, including Massachusetts, Pennsylvania and Texas. The Constitutions of over 100 countries, including Belgium, Brazil, Chile, Colombia, Ecuador, Hungary, Indonesia, the Netherlands, Nicaragua, Peru, Poland, Portugal, the Republic of Korea, South Africa, Spain, Turkey and Viet Nam, and all recognize the right to a healthy environment.

39. The right to water has been tested through several judicial decisions. In Belgium, the Court of Arbitration recognized the right of everyone to a minimum supply of drinking water relying on article 23 of the Constitution (the right to the protection of a healthy environment).⁹ In India, the Supreme Court derived the right to water from the right to life and found that the right to life is a fundamental right under article 21 of the Constitution and it includes the right of enjoyment of pollution-free water. In a series of cases on the right to health in Argentina, courts have ordered the Government and water service providers to provide a minimum amount of water (between 50-100 litres per person per day) regardless of a person's ability to pay.¹⁰ Brazilian and South African courts have ruled on the basis of the right to water, to reject decisions on the part of water service providers to cut off water supplies.¹¹

C. International law and national legal standards on the right to sanitation

40. A range of international human rights instruments refer to access to adequate sanitation. The Convention on the Elimination of All Forms of Discrimination against Women obliges States parties to ensure to women in rural areas the right "to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications" (art. 14, para. 2 (h)). The Convention on the Rights of the Child requires States parties to ensure that all segments of society "are informed, have access to education and are supported in the use of basic knowledge of ... hygiene and environmental sanitation" (art. 24, para. 2 (e)). The Committee on Economic, Social and Cultural Rights has affirmed in general comments Nos. 4 and 14 that there is an entitlement to sanitation under the right to adequate housing and the right to the highest attainable standard of health. The right to sanitation could thus be derived from article 11 (1) of the International Covenant on Economic, Social and Cultural Rights, which states that everyone has a right to an adequate standard of living "including adequate food, clothing and housing". Article 12 (2) (b) also provides in the context of the right to health that States parties must take steps to improve "all aspects of environmental and industrial hygiene".

41. Under international humanitarian law, the right to adequate sanitation is addressed with regard to prisoners of war. The Geneva Convention relative to the Treatment of Prisoners of War provides under article 29 that: "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 toilet and for washing their personal laundry; the necessary installations, facilities and time shall be granted them for that purpose".

42. Programmes of action of international conferences have explicitly affirmed the right to sanitation. For instance, the Programme of Action of the International Conference on Population and Development (Cairo, 1994) affirmed under principle 2 that all people have “the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and sanitation”.

43. As regards the right to sanitation, recognition of this right is increasing at the national level. The Constitutions of Ecuador, the Islamic Republic of Iran and Venezuela refer to the obligation of States to provide sanitation and/or hygiene. The South African Water Services Act (1997) recognizes the right of all to access to basic sanitation. The draft constitution of Kenya, prepared after two and a half years of consultations with citizens from every region of Kenya, contains a right with reference to sanitation: “everyone has a right to a reasonable standard of sanitation”.¹²

44. It is arguable that the right to adequate sanitation can be identified under international human rights law and this should be affirmed authoritatively by the international community. The more difficult question remains the scope of the content of this right. Sanitation has both an individual and a collective dimension. The individual aspect would entail affordable access of each person to sanitation services, facilities and installations that are adequate for the promotion and protection of human dignity and the health of individuals. However, it is also important to recognize that the full protection of the health of the individual requires protection of the environment from human waste and this can only be done if everyone has, and utilizes, adequate sanitation.

IV. IMPLEMENTATION OF THE RIGHT TO DRINKING WATER AND SANITATION

A. Rights and obligations regarding the right to drinking water

45. The recognition of a right to drinking water by States implies, at a domestic level, the existence of rights and obligations regarding the supply of drinking water and sanitation. General comment No. 15 asserts that States are required to ensure that each person has access to sufficient, safe, acceptable, accessible and affordable water for personal and domestic uses (see paragraph 6 ff). The right to drinking water also necessarily requires that everyone has access to adequate sanitation because human waste is the primary cause of pollution of freshwater (para. 29). The right to drinking water is linked to the quantity of water required for basic subsistence needs, given the clear importance of water for basic survival and the need to fulfil the human rights to food and to an adequate standard of living.

46. The right to water is defined in significant detail in general comment No. 15. The Special Rapporteur finds value in highlighting a few key features of the right to drinking water, and to consider the rights and obligations flowing therefrom. As specified in general comment No. 15, the right to water requires the following elements: (a) availability - water supply for each person must be sufficient and continuous for personal and domestic uses; (b) quality - water must be safe, free from micro-organisms, chemical substances and radiological hazards that constitute a health threat - water must be of an acceptable colour, odour and taste for personal and domestic use; (c) accessibility: (i) physical accessibility - water, and water facilities and services, must be within safe physical reach of all sections of the population, must

be of sufficient quality and culturally appropriate; (ii) economic accessibility - water must be affordable for all; (iii) non-discrimination - water must be accessible to all without discrimination; (iv) information accessibility - each person must be able to seek, receive and impart information regarding water issues (para. 12).

47. The general comment also specifies that States have obligations to ensure that all groups traditionally vulnerable to discrimination are ensured access to the right to water. It provides detail on the three types of obligations pertaining to the right. They are the obligation to respect, to protect and to fulfil. Under the obligation to respect, States should refrain from interfering directly or indirectly with the enjoyment of the right to water. With regard to the obligation to protect, States are to ensure that third parties such as individuals, groups, corporations and other entities as well as agents acting under their authority do not interfere with the enjoyment of the right to water. The obligation to fulfil comprises the obligation to facilitate, promote and provide - that is, to take positive measures to assist individuals and communities to take steps to ensure appropriate education and to provide the right to those unable to realize it for reasons beyond their control.

48. The general comment goes on to specify the international obligations supporting the necessity of realizing the right to water at all levels. The general comment considers actions that could be undertaken at the domestic level by States and actors other than States to comply with their international obligations in relation to the right to water. The general comment also establishes the core obligations which should be realized as a matter of priority to ensure access to the minimum essential amount of water that is sufficient and safe for personal and domestic uses and provides examples of States' violations of the content of the International Covenant on Economic Social and Cultural Rights with regard to the right to water.

B. Rights and obligations regarding the right to sanitation

49. Similarly, it could be argued that the human right to sanitation requires that States ensure to each person access to safe, accessible, acceptable and affordable sanitation facilities in or near to their homes and public institutions (including educational institutions, hospitals and places of work). It includes the following features: (a) availability: sufficient sanitation facilities; (b) quality: sanitation facilities should be designed in a manner such that they minimize health hazards, are conducive to hygiene, and are consistent with the privacy and dignity of individuals, taking into account cultural preferences and the special requirements of certain individuals and groups such as people with disabilities; (c) accessibility, which comprises: (i) physical accessibility - sanitation facilities should be within safe physical reach for all sections of the population, in the immediate vicinity of each household, educational institution and workplace, in a safe location; (ii) affordability (or economic accessibility) - each person should have access to free or affordable sanitation facilities; (iii) non-discrimination - sanitation facilities and services should be accessible to all without discrimination; (iv) information accessibility - each person should be able to seek, receive and impart information regarding sanitation issues.

50. The right to sanitation relies on the State to create opportunities for active community participation. In order for the right to be fulfilled, particularly in developing countries with limited resources, it is necessary to rely on low-cost sanitation systems rather than expensive sewerage networks. Such systems require community input and active participation in their design and maintenance. The right to sanitation implicitly includes the right to education in

hygiene, since the transmission of disease may occur even where sufficient water and sanitation facilities exist owing to unsafe behaviours. In addition, such education is necessary in some cases in order to stimulate greater demand for sanitation facilities.¹³ Gender concerns are crucial in the design of sanitation facilities - a significant source of insecurity for women is the lack of sanitation facilities in safe locations close to the home. Finally, the right to water and to sanitation are interdependent. The right to water, particularly the aspect of water quality, depends on adequate sanitation for all. Conversely, to ensure hygiene and adequate sanitation, each person should have access to at least a small amount of water on a regular basis.

C. Measures to implement the right to drinking water and sanitation

51. At the domestic level, States should establish a plan of action and programme to promote, realize and protect the right to drinking water and sanitation and abstain from any measure that impedes such access. In implementing the right to drinking water and sanitation, public authorities are obligated to comply with positive obligations (such as supplying drinking water or draining and treating waste water to the maximum of available resources), with the obligation to ensure equal treatment for different users (e.g. by ensuring access for all to a minimum quantity of water of sufficient quality), and with negative obligations (such as not cutting off water supplies without respect for principles of natural justice). Fundamental to the right to water is the implementation of the principle that no person may be deprived of an amount of water sufficient to satisfy basic needs. In order to ensure access to drinking water for all, without discrimination, and to allow the individual right to water to be fully exercised, public authorities should implement certain measures aimed at facilitating access for deprived persons by improving the quality of water and establishing reasonable pricing for household supplies. It is also necessary to ensure mechanisms to hold water and sanitation providers accountable, including procedures for complaints. States must, to the maximum of available resources, ensure that legal assistance is available for users to understand and defend their rights.

52. The realization of the right to drinking water and sanitation should meet the challenge of financing. This often requires States to shoulder most of the costs of service provision by charging users. However, in so doing States must play an active role in designing and regulating pricing structures in order to ensure access to affordable water and sanitation, based on the principle of non-discrimination. The degree of affordability of water supply and sanitation should be such that it does not impede a person's enjoyment of other human rights, such as rights to food, housing, education and health care.¹⁴ States should also decide whether to subsidize water and sanitation services for all or to take specific measures to guarantee access to drinking water and sanitation for all, particularly the poorest sectors. Clearly, users should be encouraged to contribute to the management of water and sanitation to the extent of their financial capacity and there should be incentives for users to conserve.

53. As regards the participation of taxpayers, contributions may be adjusted to ensure that every person contributes to ensuring access to water and sanitation in accordance with his or her financial means. However, users' contributions should never reach or exceed the unaffordable threshold. Otherwise, the poor will be forced to restrict their water consumption, rely on poor-quality sources of water, dispose of human waste in a manner that causes a health threat to themselves and their community, or reduce spending on other vital items, such as food, education and health. Progressive tariffs or cross-subsidies should be established in accordance with the economic and financial capacities of users. Moreover, one of the primary barriers to

access resides in connection charges. A major priority for States is to subsidize or provide credit for connections to water and sanitation networks for persons not in a position to afford these services. States must provide assistance to those relying on non-piped sources, including assistance with the input and technology needed to build water and sanitation facilities.

54. Access by everyone to safe drinking water should not be subject to restriction, in any place or at any time. The International Conference on Water and the Environment held in Dublin in 1992 declared that it is vital to recognize the basic right of all human beings to have access to clean water and sanitation at an affordable price. The terms of the Dublin Statement are not particularly precise and certainly lend themselves to interpretation. There are indeed many shades of meaning applicable to terms such as “drinking water” and “clean water” and between adequate sanitation and safe sanitation. In the long term, this discriminatory practice could harm the implementation of the general right of access to drinking water.

55. International cooperation is critical in order to address the financing gap attached to the provision of water and sanitation services. Indeed, the importance of international cooperation for the realization of human rights is enshrined in the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights, the Universal Declaration of Human Rights and the Declaration on the Right to Development.¹⁵

56. In general comment No. 15, the Committee on Economic, Social and Cultural Rights emphasizes that States should facilitate the realization of the right to water in other countries, for example through provision of water resources, financial and technical assistance (para. 34). Financial and technical assistance to developing countries could focus on the development of environmental protection measures, water purification and waste treatment process, distribution networks and small-scale technologies. The sharing of available water resources obviously applies only to those limited circumstances whereby States share a common water body. This reinforces international customary law on this subject, which is reflected in articles 5 and 10 of the Convention on the Law of the Non-Navigational Uses of International Watercourses (1997). Under this treaty, States are required to utilize shared international watercourses in an equitable and reasonable manner, giving priority to the requirements of vital human needs.

57. Privatization of water services is increasingly relevant to the right to drinking water. At the domestic level, in adopting decisions on permitting the private delivery of water and sanitation services, States should ensure that there has been a process of genuine consultation with the concerned public, thereby ensuring that communities are afforded an opportunity to be heard. Community management is often the ideal vehicle for delivery of basic services and should be considered wherever possible. Therefore, States should offer to communities the opportunity and assistance to manage their own water and sanitation services. The decision on privatizing should also take into account the existence of a technically competent water and sanitation service regulator, which could be involved in the design of the concession.

58. In many developing countries, the privatization of water supplies during the last decade has created further water shortages. Water has become more expensive and the system of management by exclusion has exacerbated poverty in many countries. Although the constitutions of many developing States refer to their obligations under international human rights instruments and to the right to water in particular, concession agreements and bilateral investment agreements risk reducing the ability of these countries to meet these obligations in

certain situations. It is based on the aforementioned impediments that communities should have a voice in managing drinking water supplies and should have the opportunity to be heard and to participate in decisions on the privatization of water supplies. This reasoning takes into consideration the fact that treatment and distribution of water incur costs which cannot be disregarded. Notwithstanding this cost, the supply of water should be at a reasonable price affordable to all, regardless of financial means.

59. According to general comment No. 15, where the private sector controls water supply, the State is required to regulate and establish independent monitoring, genuine public participation and penalties for non-compliance in order to ensure that equal, affordable and physical access to sufficient, safe and acceptable water is not compromised (para. 24). The Special Rapporteur considers that, in such circumstances, the role of the State is to intervene in the event of shortage or cut-off based on non-payment, for instance. States should in any event monitor and, if necessary, take action with respect to the financing of works, the quality and quantity of water, the management of shortages, pricing specifications, the state of sanitation services and participation by users. In some cases special measures should be adopted to avoid abuses stemming from companies enjoying a monopoly.

60. A particular concern emerging with the involvement of transnational companies is the phenomenon of companies' raising prices when the local currency is devalued. Any concession contracts should specify that the risk of devaluation shall not be borne by the poorest consumers. Finally, control over water services to large areas substantially increases the power of the private provider to demand a renegotiation of the contract. Therefore, any concession agreement should incorporate tools such as performance bonds to ensure full performance of the contract.

61. There is a need for States, as well as international organizations and civil society, to jointly develop tools to implement the right to drinking water and sanitation. The Special Rapporteur is of the view that the following suggestions could be useful in this regard:

(a) Guidelines on water and sanitation service delivery could be developed to enable service providers to gain a clear and detailed statement of their human rights obligations in the provision of water and sanitation services. Such guidelines could also assist States in designing their regulations of service providers and should specifically distinguish the manner in which these rights apply to piped water and to other sources of water service provision;

(b) Indicators for the right to water and sanitation would be useful, as there is a need to modify current indicators on access to water and sanitation and to devise new indicators that capture the human rights aspect of water and sanitation programmes. Pursuant to general comment No. 15, right to water indicators can help monitor progress of a national water strategy and plan of action (para. 37 (f));

(c) Model legislation and regulations on water and sanitation can be developed, drawing upon the experiences of current legislative frameworks, to assist countries in integrating the right to water and sanitation into their legislative frameworks.

V. CONCLUSIONS

62. The present report, together with the previous ones 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, establishes the close linkages that exist between, on the one hand, access to water and sanitation and, on the other hand, other human rights. The problems connected with water and sanitation are universal, as they affect survival, and realizing the right to water and sanitation requires sustained efforts at both the national and international level. As mentioned above, various international instruments call for such cooperation.

63. The Special Rapporteur submits in this report various suggestions which, if implemented, could serve to advance the realization of the right to drinking water and sanitation. The Special Rapporteur invites input from States, international organizations and civil society on means to best advance and implement the rights to drinking water and sanitation through tangible and urgent action.

Notes

¹ WHO and UNICEF, *The Global Water Supply and Sanitation Assessment*, 2000, p. 1.

² FAO, *World Water Development Report 2003*, p. 102.

³ UNICEF, *Sanitation and Hygiene: A Right for Every Child*, 1998, p. 3.

⁴ World Health Organization, *The Sanitation Challenge: Turning Commitment into Reality*, 2004, sect. 1.

⁵ See Water Aid, *Women and Water: Development Issue*, June 2000.

⁶ FAO, *op. cit.*, pp. 192-194.

⁷ See *Legal Resource for the Right to Water: International and National Standards* (Geneva, COHRE, 2004).

⁸ The Declaration on the Right to Development stipulates that States have a duty to “promote the establishment, maintenance and strengthening of international peace and security” (art. 7).

⁹ *Arrêt no. 36/98*, 1 April 1998, Commune de Wemmel, *Moniteur belge*, 24 April 1998. See further, Henri Smets, “Le Droit à l’eau”, *Rapport de l’Académie de l’eau* (2002), http://www.oieau.fr/academie/gege/DroitAIEau_01.PDF,

¹⁰ *Menores Comunidad Paynemil s/accion de amparo*, Expte. 311-CA-1997. Sala II. Cámara de Apelaciones en lo Civil, Neuquen, 19 May 1997; *Valentina Norte Colony, Defensoría de Menores No. 3 c/Poder Ejecutivo Municipal s/acción de amparo*. Expte. 46-99. Acuerdo 5

del Tribunal Superior de Justicia. Neuquen, 2 March 1999, and *Quevedo Miguel Angel y otros c/Agua 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) 8 April 2002.

¹¹ See *Bill of Review 0208625-3*, Special Jurisdiction Appellate Court, Paraná, August 2002 and *Residents of Bon Vista Mansions v. Southern Metropolitan Local Council*, High Court of South Africa (Witswatersrand Local Division), Case No. 01/12312, 2001.

¹² See WHO, *The Sanitation Challenge: Turning Commitment into Reality* (2004) at s. 4.

¹³ UNICEF, *Sanitation and Hygiene: A Right for Every Child*, 1998, p. 3.

¹⁴ General comment No. 15, para. 12 (c) (ii).

¹⁵ Charter of the United Nations, arts. 55-56, International Covenant on Economic, Social and Cultural Rights, art. 2.1, Universal Declaration of Human Rights, art. 28, Declaration on the Right to Development, art. 3.
