



# INTERNATIONAL STANDARD SETTING WITH REGARD TO THE RIGHT TO WATER

Maria Napiontek

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PROMOTOR PRACY

prof. dr hab. Zdzisław Kędzia

ORGANIZATOR KONKURSU

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REDAKCJA JĘZYKOWA

Anita Kołodyńska

OPRACOWANIE GRAFICZNE I SKŁAD

Marek Łomacz

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## Abbreviation list

- » **CEDHA** – Centro de Derechos Humanos y Ambiente;
- » **CESCR** – Committee on Economic, Social and Cultural Rights;
- » **COHRE** – Center on Housing Rights and Evictions;
- » **FAO** – Food and Agriculture Organisation;
- » **FIAN** – Fighting Hunger with Human Rights;
- » **GC** – General Comment;
- » **GC 15** – General Comment No. 15 (2002), The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights); E/C/12/2002/11;
- » **ICESCR** – International Covenant on Economic, Social and Cultural Rights (1966);
- » **ICPCR** – International Covenant on Political and Civil Rights (1966);
- » **ILO** – International Labour Organisation;
- » **UNICEF** – The United Nations Children’s Fund;
- » **UPR** – the Universal Periodic Review;
- » **MDGs** – Millennium Development Goals;
- » **NGO** – non-governmental organisation;
- » **OHCHR** – UN Office of the High Commissioner for Human Rights;
- » **PAH** – Polska Akcja Humanitarna (Polish Humanitarian Action);
- » **SMRTP** – Standard Minimum Rules for the Treatment of Prisoners;
- » **UN** – United Nations;
- » **WHO** – World Health Organisation;
- » **WLA** – Water Law Act;
- » **WTO** – World Trade Organisation;
  
- » **Art.** – article
- » **l/c/d/** – litre per capita per day
- » **Para.** – paragraph
- » **P./pp.** – page/pages
- » **S.** – section

*'Water is fundamental for life and health. The human right to water is indispensable for leading a healthy life in human dignity. It is a pre-requisite to the realization of all other human rights.'*

(The UN CESCR, *Environment News Service*, 27 Nov 02)

## Preface

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Even to people familiar with legal issues the notion of the right to water poses a rather abstract idea. Some may try to associate it with problems related, for instance, to property law, however, few people at least at the first moment understand it as the right to a substance that conditions human life, i.e. to water needed for personal and domestic uses including drinking water. Until very recently, I have been one of those people who take presence of water in their taps almost for granted. Now, my attitude to the right to water has changed, but still I think that it is a great privilege for most people from Western societies that they do not need to worry whether they will have something to drink or to wash their clothes in. However, for millions of people this simple fact has an absolutely different dimension. For them, it may be a matter of survival.

Taking into account the importance of the topic, I have decided that the aim of my work will be to show that we are the witnesses of the birth of a new right and that consequently we are responsible for setting its new international and national standard. This right is the right to water needed mainly for personal and domestic purposes. The matter is truly urgent as millions of people in the world suffer from lack of the access to clean water and sanitation. Sanitation, however, by some treated as a separate right and by the others as a part of the right to water, will not be the subject of my work. I have focused on the issue of water only, trying to stress at the same time the growing importance of economic, social and cultural rights in general. Additionally, when conducting my research, I have concentrated on the data available till the end of March 2011. The timeframe must have been restricted due to the recent ongoing development in the field.

During my research I had to pose and consider some difficult questions. The most important one was whether in the light of the recent development in the field (July and September 2010 UN resolutions), it is possible to treat the right to water as a legally binding right. Consequently, it led me to consider what is the current status and standard of the right to water, how this right is and should be understood from the legal and from the human or moral point of view.

In order to solve my doubts, I have used a number of different resources. Most of them are electronic resources, for instance, online databases and archives of the UN, its agencies and other international or national organisations including NGOs dealing with water issues. I also referred to numerous legal instruments concerning the right to water. There are lots of interesting electronic materials available, however, they are rather dispersed and require good research, especially that there are only few books available on the topic. Additionally, as the issue of the right to water is rather complicated and poses lots of controversies and vagueness at times, its analysis must be very careful. Another problem that I faced was that most materials are based on the same fundamental documents on the right to water (e.g. General Comment 15) and sometimes I had a feeling that the number of available resources is rather misleading as one always comes back to the same source. On the other hand, however, this proves that the right to water for personal and domestic uses is a relatively fresh idea and that its current, a little bit limited, perception is a result of a rapid development in the field in recent years. Finally, I have presented some case analyses of existing water policies and violations of the right to water. The most interesting and diverse examples have been chosen, as they allow to show the variety of approaches towards the right to water. Therefore, I have applied more analytical and qualitative approach to the conducted research in my work.

In this paper the following issues related to the right to water have been mainly discussed: its legal basis, normative content, obligations, implementation and violations. In my view, these are the crucial points that may allow to determine the status, as well as the current and future standard of the right to water.

## Chapter 1

# RIGHT TO WATER – PROBLEM CONCEPTUALISATION

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### 1. General meaning of the right to water

At the beginning, it is crucial to specify what kind of ‘right to water’ will be a subject of this work. As it has already been mentioned, it will not be the right to water e.g. in terms of the property law, but my aim will be to analyse the developing standard of the right to water needed mainly for personal and domestic uses.

According to General Comment No. 15 (2002) on the right to water<sup>1</sup> (GC 15), water is necessary for a number of different purposes [GC 15, para. 6, para. 12a)]. First of all, these are personal and domestic purposes which usually include drinking, personal sanitation, washing of clothes, food preparation, as well as personal and household hygiene. GC 15 explains precisely the meaning of the above-mentioned elements. Drinking, for instance, includes water consumption through beverages and food. Personal sanitation, in turn, means disposal of human excreta. Food preparation focuses on food hygiene and preparation of foodstuffs both when water makes part of food or when it comes into contact with it. Finally, personal and household hygiene includes personal cleanliness and hygiene of the whole household environment [GC 15 para. 12a)]. Certainly, apart from personal and domestic uses, water may be required for other purposes, too. For example, water is necessary to produce food, to ensure environmental hygiene, it may be needed for securing livelihoods, as well as to enjoy the cultural practices. Also the WHO report on *The right to water*<sup>2</sup> lists a number of water uses which to large extent overlap with the ones presented in GC 15, including: 1) water for daily needs, requirements and uses, which allows to reduce the risk of water-related diseases, is necessary for consumption and preventing death by dehydration, as well as is used in cooking and hygiene; 2) water for food, environment, culture, employment and housing.

Without any doubt, the priority ought to be given to the right to water for personal and domestic uses, as well as to the water resources necessary to prevent starvation and disease, and to meet the core obligations of the International Covenant on Economic, Social and Cultural Rights (ICESCR) [GC 15 para. 6]. At the same time, it is worth remembering that all those water purposes (personal, domestic and others) help to realise many of the rights stemming from the ICESCR, such as the right to food, the right to health, the right to work and the right to take part in cultural life [GC 15, para. 6]. This is one of those moments when one can observe the interconnected, interrelated, as well as universal and indivisible nature of human rights<sup>3</sup>.

Therefore, in my work when using the expression of the ‘right to water’, I will mean all the above-mentioned water purposes with an emphasis on water needed for personal and domestic uses and especially potable water.

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1 CESCR General Comment 15. The right to water. 2002. E/C.12/2002/11

2 *The Right to Water*. WHO. pp. 16-21

3 Amnesty International. *Economic, social, cultural rights: Questions and Answers*. Information sheet



## 2. Water in science, philosophy, culture, religion and law

Certainly, the importance of water for the above-discussed purposes finds its justification in different sources, including the scientific, philosophical, cultural, religious and legal ones.

First of all, water is a chemical compound essential to life. About 70% of the world's surface is covered in water. It is surrounding us in the form of oceans, seas, lakes and rivers. It is also a part of us. About 60% of human body is water. The brain is in 70% composed of water, lungs have nearly 90% of it and about 83% of our blood is water. Every person needs about 2.5 litre of water per day to function properly. In some organisms water makes up to 90%.<sup>4</sup>

Naturally, all this exact scientific data had not been known to people living centuries ago, it is something we have been familiar with from the relatively short period of time. Nevertheless, from the very beginning of human presence on the Earth, people felt the value and importance of water. They understood instinctively that water equalled life. Water was respected, loved, worshipped, longed for, sometimes feared. This influence can be seen, for example, in different philosophies. Philosophy tried to understand the very essence of water and the role it played. Thales of Miletus said that the principle and the end of all things was water (according to him the Earth rested on water). Water, thus, was the beginning and the end.<sup>5</sup> Empedocles, on the other hand, regarded water as one of the four classical elements together with fire, air and earth.<sup>6</sup> Water constitutes also one of the elements of the traditional Chinese philosophy.

Water has had a variety of meanings also in culture, especially in literature. For instance, according to Władysław Kopaliński, water was a symbol of chaos, changeability and transformation, as well as power, fertility, source of life and resurrection. There were artists and authors who associated it with danger and death, others glorified it as a symbol of knowledge, truth and wisdom.<sup>7</sup> In short, water has always been a broad metaphor for different aspects of human life.

Furthermore, water has a special religious meaning. In Christianity, it is used for the baptism and ceremonial washings symbolising purification and cleansing. In Buddhism, it plays a major role at the funerals. In Islam, it is used for ablutions before the prayers and to Hindus, all water is sacred, especially rivers.<sup>8</sup>

Finally, water has been a subject of interest of international and national laws, which overlaps with the efforts to constitute the legally-binding human right to drinking water. However, interestingly, in some (slightly controversial) cases this is water that is given rights similar to humans<sup>9</sup>. For instance, Ecuador was the first country to approve a constitution recognising, inter alia, some inalienable rights of nature allowing to protect it from economic overuse. According to the constitution (Chapter on the Rights of Nature), Pachamama has the '*right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution*' and '*every person, people, community or nationality, will be able to demand the recognitions of [those] rights.*'<sup>10</sup>

4 U.S. Geological Survey. *Water Science for Schools* [online]. Available: <http://ga.water.usgs.gov/edu/propertyyou.html> [accessed 1 December 2010]

5 European Science Parliament. *Water in philosophy* [online]. Available: <http://www.science-parliament.eu/forums/2010-water-science-politics/1151/water-in-philosophy> [accessed 1 December 2010]

6 Stanford Encyclopedia of Philosophy [online]. Available: <http://stanford.library.usyd.edu.au/entries/empedocles/> [accessed 8 December 2010]

7 Kopaliński, W. (1990). *Słownik symboli*. Warszawa.

8 UNESCO. *Valuing Water* [online]. Available: [http://www.unesco.org/water/wwap/facts\\_figures/valuing\\_water.shtml](http://www.unesco.org/water/wwap/facts_figures/valuing_water.shtml) [accessed 28 November 2010]

9 Guardian.co.uk. (2008). *The new law of nature* [online]. Available: <http://www.guardian.co.uk/environment/2008/sep/24/ecuador.conservation> [accessed 10 November 2010]

10 Community Environmental Legal Defense Fund. (2008). *LAW: Following Pa. mining's town example, Ecuador OKs constitution giving right to nature* [online]. Available: <http://celdf.org/article.php?id=i85> [accessed 10 November 2010]

### 3. Contemporary problems of access to water

People have always been dependent on water and 21<sup>st</sup> century brought no change in this matter. In Western societies water is usually taken for granted as the access to it is generally easy. However, in many countries all around the world the situation is the total opposite. There are people who have no access to clean water that could be used for drinking and other domestic purposes. Those people can be counted in millions. What is more, it is important to highlight that lack of the access to water is not a problem on its own. It is a complicated and complex phenomenon that influences people's lives in different ways and shapes their daily routines. It touches especially such vulnerable groups as women, children and the disabled, generating their ability to go to school or to work, spend time with their family or simply develop their interests. For instance, in many countries of Africa and Asia these are women that are responsible for fetching water, often in dangerous conditions and from long distances which often consumes most of their time during the day<sup>11</sup>. A well-thought reduction of this time, although difficult, could make a major change not only to their lives, but also to the lives of their communities.

The issue of lack of the access to water has been reflected in numerous surveys and reports conducted by different international organisations (e.g. the UN Water, WaterAid, UNICEF and many others). Their research makes it possible to understand the gravity and complexity of the problem and shows *inter alia* that:

- » around 1 billion (out of almost 6 billion) people have no access to safe drinking water;
- » around 884 million people (37% of whom live in Sub-Saharan Africa) do not use an improved source of drinking-water, which makes about 13% of the world population;
- » 2.6 billion people (72% of whom live in Asia) lack access to improved sanitation; this includes around 1 billion children and makes almost 40% of the world population;
- » 1.4 million children die every year from diarrhoea caused *inter alia* by unclean water and poor sanitation;
- » it is estimated that 443 million school days are lost each year due to water-related diseases;
- » 8 out of 10 people without safe water live in rural areas;
- » the weight of water that women in Africa and Asia carry on their heads is usually around 20 kg;
- » the average person in the developing world uses 10 litres of water every day for their drinking, washing and cooking while the average European uses 200 litres of water and north Americans use up to 400 litres;
- » agriculture accounts for over 80% of the world's water consumption;<sup>12</sup>

Unfortunately, the worrying statistics are not the only problem connected with the lack of access to water. Even more terrifying may be its other consequences. Ryszard Kapuściński, a great Polish writer and reporter, said that 21<sup>st</sup> century will be the century of water wars and he was not the only one to presume that. Also Kofi Annan thinks that *'fierce national competition over water resources has prompted fears that water issues contain the seeds of violent conflict'*<sup>13</sup> and Ismail Serageldin, World Bank vice president for Environmental Affairs in 2000, said that *'the wars of the twenty-first century will be fought over water.'*<sup>14</sup> This problem has been approached also in a book of a Polish author, Piotr Kowalczak, on *Water Conflicts*<sup>15</sup>. According to Kowalczak, one of the main problems is the growth of the world's population and water overconcentration, especially that the water use in industry and agriculture is constantly growing. The tangible examples of water conflicts have already appeared, *inter alia*, in the Tigris-Euphrates river basin or Mekong river basin where water is the subject of a conflict between China, Laos, Cambodia and Vietnam.<sup>16</sup>

11 WaterAid. *Problems for Women* [online]. Available: [http://www.wateraid.org/uk/what\\_we\\_do/the\\_need/206.asp](http://www.wateraid.org/uk/what_we_do/the_need/206.asp) [accessed 10 November 2010]

12 Statistics come from the websites of the UN-Water, WaterAid, WHO/UNICEF (*Progress on Sanitation and Drinking Water Report 2010*) [online]. [accessed 10 November 2010]

13 BBC News. (2002). *UN warns of looming water crisis* [online]. Available: <http://news.bbc.co.uk/2/hi/1887451.stm> [accessed 20 April 2011]

14 quoted in Marq de Villiers' *Water: the fate of our most precious resource*. Boston, MA: Houghton Mifflin, 2001

15 Kowalczak, P. (2007). *Konflikty o wodę*. Przeźmierowo: Kurpisz S.A.

16 Wyborcza.pl. (2007). *Wojny o wodę* [online]. Available: <http://wyborcza.pl/1,75476,4320834.html> [accessed 22 April 2011]

## 4. UN Millennium Development Goals

Having realised the gravity of the above mentioned problems, the UN reflected the issue of the access to water in the Millennium Development Goals (MDGs). At the Millennium Summit in 2000, all the UN Member States decided to co-operate and agreed on eight goals, later called the MDGs. Celebrating this special date the countries wanted to stress the need to reduce poverty and provide people all around the world with the access to food, water, healthcare and other economic opportunities. The goals are to be achieved gradually, but ideally ought to be reached by the end of 2015.<sup>17</sup>

The MDGs are: 1) to eradicate extreme poverty and hunger; 2) to achieve universal primary education; 3) to promote gender equality and empower women; 4) to reduce child mortality; 5) to improve maternal health; 6) to combat HIV/AIDS, malaria and other diseases; 7) to ensure environmental sustainability; 8) to develop a partnership for development<sup>18</sup>. Interestingly, the goal no. 7 about ensuring environmental sustainability includes, *inter alia*, the mission of halving the proportion of people without sustainable access to safe drinking water<sup>19</sup>. According to *the Millennium Development Goals: 2010 Progress Chart*<sup>20</sup>, the improvement is already visible with many regions having high coverage in halving proportion without improved drinking water (Northern Africa, Western Asia, Latin America and Caribbean, Commonwealth of Independent States – Europe) or moderate coverage (Eastern and South-Eastern Asia, Southern Asia, Commonwealth of Independent States – Asia) and only two having low coverage (Sub-Saharan Africa and Oceania). Trends, however, towards meeting the target by 2015 vary noticeably depending on a country and on a year (especially when compared with *the Millennium Development Goals: 2007 Progress Report*).<sup>21</sup>

## 5. Right to water in broader context

Using the background of the MDGs, it can be seen that the lack of access to water is not only an issue on its own, but makes part of a bigger problem, namely the problem of poverty. The UN Secretary-General, Ban Ki-moon, said that *‘safe drinking water and adequate sanitation are crucial for poverty reduction, crucial for sustainable development, and crucial for achieving any and every one of the Millennium Development Goals’*.<sup>22</sup> According to WHO, approximately 1.2 billion people in the world live in extreme poverty (less than 1 dollar per day). Poverty, in turn, *‘forces people to live in environments that make them sick, without decent shelter, clean water or adequate sanitation’*.<sup>23</sup> This issue touches both developing and developed countries, however, developing countries suffer the most.

There are many definitions of poverty. According to M.T. Feuerstein *‘poverty means being in want of the essential elements to sustain human life and human health.’* Those ‘essential elements’ are reflected in the basic human needs which include physical human needs, psychological and spiritual needs, environmental needs, adequate shelter needs, personal and communal assets.<sup>24</sup> At the same time, the UN Committee on Economic, Social and Cultural Rights (CESCR) defined poverty as *‘a human condition characterised by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights’*.<sup>25</sup> Poverty reduction is a challenge for today’s world and a main purpose of development policymaking<sup>26</sup>.

17 UN. *Everything you always wanted to know about the United Nations*. Booklet. p. 41

18 UN. *Everything you always wanted to know about the United Nations*. Booklet. p. 43

19 UN. *ibid.* p. 43

20 UN. *The Millennium Development Goals: 2010 Progress Chart*. Report

21 UN. *Everything you always wanted to know about the United Nations*. *op.cit.* p. 48-49; UNESCO. *The Millennium Development Goals and Water* [online]. Available: [http://www.unesco.org/water/wwap/facts\\_figures/mdgs.shtml](http://www.unesco.org/water/wwap/facts_figures/mdgs.shtml) [accessed 5 December 2010]

22 UNICEF. (2010). *Water, Sanitation and Hygiene* [online]. Available: [http://www.unicef.org/wash/index\\_bigpicture.html](http://www.unicef.org/wash/index_bigpicture.html) [accessed 5 January 2011]

23 WHO. *Poverty and health* [online]. Available: <http://www.who.int/hdp/poverty/en/> [accessed 5 November 2010]

24 Feuerstein, M.T. (1997). *Poverty and Health*. London and Basingstoke: MacMillan Education Ltd. p. 9

25 WHO, UN Human Rights. (2008). *Health and Poverty Reduction Strategies*. Booklet.

26 UN OHCHR. *FAQ on a Human Rights-Based Approach to Development Cooperation*. Information sheet

Consequently, it can be seen that economic, social and cultural rights play a major role in this process. However, it is important to realise that for many years economic, social and cultural rights had not been noticed at the international forum which, naturally, concerned the right to water, too. The priority of importance was usually given to political and civil rights (ICCPR, 1966). This was due to many factors including the post-war political situation in the world. It has been only very recently that the world started paying more attention to those rights realising that guaranteeing economic, social and cultural rights is the first step and the only way to empower people and encourage them to reach for political and civil rights. Thus, there is a strong bond between those two groups and another proof that human rights are not only universal and indivisible, but also interrelated and interdependent. Certainly, the notion of economic, social and cultural rights is broad and includes a number of more specific rights. Basing on the ICESCR, these are mainly: 1) the right to adequate standard of living; 2) the right to education; 3) the right to family life; 4) the right to food; 5) the right to health; 6) the right to social security; 7) *the right to water*; 8) the right to work and workers' rights; 9) cultural rights (including the right to take part in cultural life, to enjoy the benefits of scientific progress and its applications and to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author).

## Chapter 2

# LEGAL FOUNDATIONS OF THE RIGHT TO WATER

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### 1. Introductory information

Having understood basic issues related to the right to water, it is time to consider its legal foundations. There are numerous sources where the right to water has been expressed either explicitly or implicitly. However, as it will be shown, the task of determining the legal basis is difficult for three reasons. Firstly, because of the huge amount of available resources that may be difficult to classify. Secondly, since there are few documents including explicit provisions and many including implicit provisions. Finally, everything is complicated by the fact that in the light of the available materials, it is rather difficult to say that the right to water has a legally binding character. Therefore, an idea of comparing the legal basis of the right to water to an *'ongoing struggle from implied to explicit'*<sup>27</sup> is, in my opinion, truly justified.

Taking into account all the above-mentioned difficulties, I have decided to reverse a traditional order and start this overview of the legal basis of the right to water with two recent (2010) UN resolutions which, although non-binding, are thought to be a major development in the field. In my view, they are of great importance, especially that their release provoked many contradictory opinions showing that the issue of the right to water is a very vivid political issue. Afterwards, I will move to discussing the ICESCR and GC 15 which are the most important documents in terms of the right to water. Finally, I will present other resources categorised in several different groups.

### 2. UN Resolutions 2010: Resolution Recognising Access to Clean Water and Sanitation (General Assembly), and Resolution on Human Rights and Access to Safe Drinking Water and Sanitation (Human Rights Council)

On 28 July 2010 the UN General Assembly declared safe and clean drinking water and sanitation a human right saying that it is essential to the full enjoyment of life as well as all other human rights (Resolution Recognising Access to Clean Water and Sanitation<sup>28</sup>). For many, it was a long-expected answer to the global problem of the lack of access to safe drinking water. Subsequently, in September 2010 the UN Human Rights Council affirmed that the right to water (and sanitation) is derived from the right to an adequate standard of living (Resolution on Human Rights and Access to Safe Drinking Water and Sanitation<sup>29</sup>). Catarina de Albuquerque, the UN Special Rapporteur on the human right to safe drinking water and sanitation, commented that for the UN this meant that *'the right to water and sanitation is contained in existing human rights treaties and is therefore legally binding.'*<sup>30</sup> Similarly, according to the UN Office of the High Commissioner for Human Rights (OHCHR), the decision of the Human Rights Council specified that the right to water entailed legally binding obligations in opposition to the July resolution which recognised the right to water as a fundamental human right. Still, both decisions are thought to be a landmark.

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27 Nair, R. (2011). The Right to Water: Another Desert Mirage. *Chicago-Kent Journal of Environmental and Energy Law*. p. 5

28 UN General Assembly GA/10967. For media information. *GA adopts resolution recognizing access to clean water, sanitation as human right* [online]. Available: <http://www.un.org/News/Press/docs/2010/ga10967.doc.htm> [accessed 10 March 2011]

29 Human Rights Council. *Human Rights and access to safe water and sanitation*. 2010. A/HRC/15/L.14

30 WHO (2011). *Recent Developments on the recognition of safe and clean water and sanitation as a human right* [online]. Available: [http://www.who.int/water\\_sanitation\\_health/recognition\\_safe\\_clean\\_water/en/index.html](http://www.who.int/water_sanitation_health/recognition_safe_clean_water/en/index.html) [accessed 10 March 2011]

Interestingly, it was the General Assembly's resolution that caused numerous controversies. It was mainly due to the fact that although 122 countries voted in favour of the resolution and nobody against, 41 countries decided to abstain from voting. From among the European countries these were e.g. Poland, Denmark, Austria, Bulgaria, Sweden, Ukraine, the United Kingdom. Other countries included e.g. USA, Australia, Canada, Kenya, Republic of Korea. The whole situation provoked a justified question of why so many developed countries did not want to recognise the human right of access to clean water. Some of the abstaining countries based their argument on the fact that it would undermine a process in the UN's Human Rights Council in Geneva to build a consensus on water rights<sup>31</sup>. Poland did not officially explain why it abstained from voting<sup>32</sup>. It seems, however, that at least in some cases personal interests might have won over the sense of global responsibility.

### 3. International Covenant on Economic, Social and Cultural Rights, and CESCR General Comment No. 15

The ICESCR (1966) is a covenant that allows the states to affirm the right to self-determination of peoples. It indicates that people have the right to dispose of their natural wealth and resources. At the same time it shows that the dignity of the human person depends, *inter alia*, on the possibility to enjoy economic, social and cultural rights. Together with the Universal Declaration of Human Rights (1948) and the Covenant on Political and Civil Rights (ICPCR, 1966), it makes part of the International Bill of Human Rights. One of the main aims of this Covenant is to combat poverty and poverty-related issues.<sup>33</sup> Finally, it is worth mentioning that in the times of the Cold War the ICESCR was supported by the communist countries, while the ICPCR was represented mainly by the capitalist countries<sup>34</sup>. Thus, it was only after 1989 when the relations between all those rights had been noticed and affirmed.

The implementation of the ICESCR is supervised by the CESCR established in 1985. The Committee meets twice a year for sessions where the countries' reports are presented and evaluated. At the end of each session concluding observations are issued that include the (non-binding) recommendations for the countries. However, sometimes, when some of the Covenant rights pose many difficulties and doubts as to their interpretation, the Committee may issue so-called general comments. These are official and authoritative interpretations of the articles included in a given treaty, convention or other document, and usually focus on thematic issues. The Committee's most important comment devoted entirely to the right to water is GC 15 (2002). GC 15 is an interpretation of Article 11 and Article 12 of the ICESCR and constitutes a sole document that attempts to tackle a difficult nature of the right to water. It is also a fundament of a contemporary understanding of the right to water.

Article 11 of the ICESCR concerns the right to an adequate standard of living. It says 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, and to the continuous improvement of living conditions*'. It is true that the right to water has not been mentioned in this paragraph, however, the word 'including' suggests that listed elements have exemplary character only. Thus, they may include water, too. This is strengthened by the fact that the right to water, as included in Article 11(1) of the ICESCR, was recognised in GC 6 (1995) on the economic, social and cultural rights for older persons. What is more, the right to water can be related specifically to the right to adequate housing and adequate food (included in Article 11(1) of the ICESCR) which has been affirmed in GC 4 (1991) on the right to adequate housing<sup>35</sup> as well as in the numerous reports of UN special rapporteurs [GC 15 para. 3].

31 BBC. (2010). *UN declares clean water a 'fundamental human right'*. [online]. Available: <http://www.bbc.co.uk/news/world-us-canada-10797988> [accessed 10 March 2011]

32 Wyboreza.pl. (2010). *Brudna woda, nieczyste sumienie* [online]. Available: [http://wyboreza.pl/1,76842,8199146,Brudna\\_woda\\_\\_nieczyste\\_sumienie.html](http://wyboreza.pl/1,76842,8199146,Brudna_woda__nieczyste_sumienie.html) [accessed 10 March 2011]

33 Ed. Forsyth, T. (2005). *Encyclopedia of International Development*. Oxon: Routledge. pp. 368-369

34 Nygren-Krug, H. (2008). *Health and human rights - a historical perspective*. WHO.

35 CESCR General Comment 4. (1991). *The right to adequate housing*. E/1992/23

Article 12 of the ICESCR, on the other hand, proclaims the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. It says that it ought to be realised by: (a) the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) the improvement of all aspects of environmental and industrial hygiene; (c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness. In my view, all those aspects could be to a large extent achieved only by securing access to water of appropriate standard. This approach had been confirmed in GC 14 (2000) on the right to the highest attainable standard of health<sup>36</sup>.

Finally, the right to water should be considered through the prism of all the rights included in the International Bill of Human Rights, and especially through the right to life and human dignity [GC 15 para. 3] that are the fundamental human rights.

## 4. Hard and soft law sources on the right to water

As it has already been explained, the right to water has been reflected, either explicitly or implicitly, in numerous legal instruments. Those legal instruments may have different status in human rights law. According to the COHRE report on the *Legal resources for the right to water*<sup>37</sup> one can differentiate between: 1) covenants, conventions and treaties; 2) declarations and recommendations; 3) general comments and general recommendations; 4) concluding observations; 5) regional human rights instruments; 6) resolutions; 7) other instruments. Certainly, the already discussed ICESCR and GC 15 also belong to one of those groups, however, they were presented separately because of their great importance to the subject.

### 4.1. International treaty law

The notions of treaty, covenant and convention are synonymous. They determine the instruments that are legally binding upon the Governments that have ratified or acceded to them. Governments that have signed, but have not ratified a covenant, convention or treaty are not legally bound by its provisions, but at the same time are not allowed to undertake activities that violate its object or purpose.<sup>38</sup> Consequently, if a government is a State Party to a covenant, convention or treaty that includes regulations on the right to water, then it has a legal obligation to implement those provisions.

Explicit provisions on the right to water include e.g.: Convention on the Rights of Persons with Disabilities (2006), Article 28; Convention on the Rights of the Child (1989), Article 24; Convention on the Elimination of all forms of Discrimination against Women (1979), Article 14(2);

Implicit provisions on the right to water include e.g.: International Covenant on Economic, Social and Cultural Rights (1966), Article 1(2), 2, 11, 12; International Covenant on Civil and Political Rights (1966), Article 1(2), 2(1), 6(1), 17 and 26; International Convention on the Elimination of all Forms of Racial Discrimination (1965), Article 2, 5; Rome Statute of the International Criminal Court (1998);

Additionally, both explicit and implicit provisions on the right to water are included in Geneva Conventions III and IV (1949, the treatment of prisoners of war and protection of civilian persons in time of war) and in their additional protocols (1977).<sup>39</sup>

### 4.2. International soft law

International soft law encompasses mainly declarations and recommendations. Declarations and recommendations differ remarkably from previously discussed covenants, conventions and treaties as they

36 CESCR General Comment 14. (2000). *The right to the highest attainable standard of health*. E/C.12/2000/4

37 COHRE. (2004). *Legal Resources for the Right to Water*. Report. pp. 14-15

38 COHRE. (2004). *Legal Resources for the Right to Water*. Report. p. 14

39 Examples of explicit and implicit provisions come from: COHRE. *ibid.* pp. 16-30

are not legally binding upon the states. Still, they are of great help in interpretations of the international treaties and other provisions. They mark a ‘pathway’ of human rights trends and most importantly of water trends. What is more, in some rare cases a declaration (or at least some of its provisions) may gain the force of international customary law, which makes it binding. This is a case of the Universal Declaration of Human Rights being a cornerstone of all human rights.<sup>40</sup> Interestingly, there are even actions that promote adding to the Universal Declaration a new article (Article 31) establishing access to clean and potable water as fundamental human rights<sup>41</sup>.

Explicit provisions on the right to water include e.g.: Mar del Plata Declaration, UN Water Conference (1977), preamble; Agenda 21, UN Conference on Environment and Development (1992);

Implicit provisions on the right to water include e.g.: Universal Declaration of Human Rights (1948); Stockholm Declaration, UN Conference on the Human Environment (1972), Principle 7; Alma-Ata Declaration, International Conference on Primary Health Care (1978); Rio Declaration on Environment and Development, UN Conference on Environment and Development (1992); Agenda 21, UN Conference on Environment and Development (1992); Habitat Agenda, UN Habitat II Conference, Istanbul, (1996); Rome Declaration on World Food Security (1996); Johannesburg Plan of Implementation of the World Summit on Sustainable Development (2002);<sup>42</sup>

### 4.3. Treaty bodies’ general comments

General comments are official and authoritative, although non legally binding interpretations of a particular right included in a covenant, convention or treaty. They are issued by the UN committees that are composed of independent experts elected by the UN Member States. The role of the committees is to monitor the implementation of specific covenants, conventions and treaties by the state parties. In terms of the right of water the crucial role plays GC 15 on the right to water issued in 2002 by the CESCR.<sup>43</sup> Other general comments that at least mention the problem of water include, for instance, General Comment No. 6, General Comment No. 8 and General Comment No. 16 of the CESCR<sup>44</sup>.

### 4.4. Treaty bodies’ concluding observations

Concluding observations are adopted by UN human rights treaty-monitoring committees (such as the CESCR). They concern a specific country and are released after a review or examination of a state’s report. They are aimed at determining whether countries implement the obligations arising from a covenant, convention or treaty and to show any inconsistencies. State parties are expected to take the committee’s observations into consideration, however, there are no mechanisms that make it possible to enforce them. In such cases, effects may be reached with a help of so-called follow-up mechanisms.<sup>45</sup> In my opinion, with regard to water an interesting example can be the UN-Water being an inter-agency mechanism that focuses on providing information on water, educating on water issues as well as providing a platform for discussions<sup>46</sup>. Concluding observations in relation to the implementation of the right to water will be discussed in more detail in the next chapters of this work.

### 4.5. Regional human rights instruments

Regional human rights instruments are the treaties and declarations adopted by the specific regional international organisations. As a result, they are agreed by the states of a particular region and apply to this region

40 COHRE. op.cit. p. 14

41 Article 31. [online]. Available: [www.article31.org](http://www.article31.org) [accessed 20 February 2011]

42 Examples of explicit and implicit provisions come from: COHRE. (2004). *Legal Resources for the Right to Water*. Report. pp. 30-38

43 COHRE. (2004). *Legal Resources for the Right to Water*. Report. p. 14

44 UN OHCHR. *Committee on Economic, Social and Cultural Rights – General Comments* [online]. Available: <http://www2.ohchr.org/english/bodies/cescr/comments.htm> [accessed 21 February 2011]

45 COHRE. (2004). *Legal Resources for the Right to Water*. Report. p. 15

46 UN-Water. *A Guide to the UN Water*.



only.<sup>47</sup> They are very important as they take into account particular characteristics of a given region and thus often encounter more trust and acceptance on part of the local communities and political leaders. Below I have presented several examples of regional human rights instruments relating to different continents.

#### a) Europe

- » Explicit provisions on the right to water are included e.g. in: Recommendation 14 of the Committee of Ministers to Member States on the European Charter on Water Resources (2001);
- » Implicit provisions on the right to water are included e.g. in: Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 'Aarhus Convention' (1998); Convention for the Protection of Human Rights and Fundamental Freedoms, (1950); European Social Charter, (1961); Revised European Social Charter, (1996); Protocol on Water and Health (1999) to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes;

#### b) Africa

- » Explicit provisions on the right to water are included e.g. in: African Charter on the Rights and Welfare of the Child (1990);
- » Implicit provisions on the right to water are included e.g. in: African (Banjul) Charter of Human and People's Rights (1981);

#### c) Americas

- » To my knowledge, there are no documents that include explicit provisions on the right to water;
- » Implicit provisions on the right to water are included e.g. in: American Convention on Human Rights, 'Pact of San Jose, Costa Rica' (1969); American Declaration of the Rights and Duties of Man (1948); Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 'Protocol of San Salvador', (1988),<sup>48</sup>

### 4.6. Resolutions by intergovernmental bodies

Resolutions are official texts adopted, *inter alia*, by the UN bodies. Generally, they are not thought to be binding. Still, they play a major role in determining the international law trends, as well as in affirming new or existing principles of customary international law. Additionally, the importance of the resolutions can be reflected in the fact that their adoption by the international community makes a significant political pledge towards a particular aim (e.g. the right to water). Exception to the non-binding character of the principle of resolutions are the UN Security Council resolutions.<sup>49</sup>

As it has been explained earlier, in terms of the right to water two resolutions deserve particular attention, namely the UN Human Rights Council resolution from September 2010 and the UN General Assembly resolution from July 2010.

- » Explicit provisions on the right to water include e.g.: UN Human Rights Council resolution on human rights and access to safe drinking water and sanitation (September 2010); UN General Assembly resolution on the right to water and sanitation (July 2010); Human Rights Council Resolution on human rights and access to safe drinking water and sanitation (March 2008); Programme of Action of the International Conference on Population and Development, Cairo (1994);
- » Implicit provisions on the right to water include e.g.: UN Principles for Older Persons (1991);<sup>50</sup>

### 4.7. National legislation

National legislation plays a very important role in the process of recognising the right to water. Provisions concerning water are included in many constitutions of different countries, mainly those of Af-

47 COHRE. *op.cit.* p. 15

48 Examples of explicit and implicit provisions come from: COHRE. (2004). *Legal Resources for the Right to Water*. Report. pp. 38-44

49 COHRE. *ibid.* p. 15

50 Examples of explicit and implicit provisions come from: COHRE. (2004). *Legal Resources for the Right to Water*. Report. pp. 38-44

rica, Asia or South America. It is provoked by their geographical location often implying limited water resources or difficult access to water. Among such countries are e.g. South Africa, Ecuador, Uganda, Cambodia, Colombia, Ethiopia, Laos, Mexico, Panama, and Zambia. At the same time, it ought to be mentioned that many of those provisions are rather general. Explicit references, on the other hand, can be found, *inter alia*, in the Article 27 of the Constitution of South Africa (1996) saying that ‘*everyone has the right to have access to [...] sufficient water*’ or in the Constitution of Uganda (1995) which in its preamble expresses that ‘*all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water [...].*’ In Europe, on the other hand, water is rarely mentioned in the constitutions. One can find some provisions, for instance, in the Portuguese constitution (Article 81, Primary Duties of the State: ‘*[...] to adopt a national water policy, with rational use, planning and management of water resources.*’). Also Belgium is in the course of planning to introduce new provisions concerning the access to water at the constitutional level<sup>51</sup>. However, most countries decide to regulate matters concerning water in different ways, for instance, in acts lower than a constitution. In Poland, one of such documents is the Water Law Act (Ustawa z dnia 18 lipca 2001r., Prawo wodne, Dz.U.2001.115.1229).<sup>52</sup>

#### 4.8. Other sources

Provisions concerning water are included in numerous other documents, too. Thus, when discussing the issue of water, it is worth taking into account the recommendations of experts specialising in water problems (numerous conferences and summits e.g. Water Forums<sup>53</sup>) as well as reports presented by the UN special rapporteurs (especially reports of Special Rapporteur on the human right to safe drinking water and sanitation, currently the office is held by Catarina de Albuquerque). Also the European Union has accepted the Resolution on the Recognition of the Right to Drinking Water in the Member States of the European Union (European Council on Environmental Law, 2004) and imposes or suggests different solutions concerning water issues to its members. Finally, it is worth considering international and national courts decisions, such as the rulings of the Belgian Constitutional Court when it was confirmed that Flanders (one of Belgian regions) had the right to introduce a specific amount of drinking water free of charge (ruling 36/98, 1 April 1998)<sup>54, 55</sup>. All of those ‘other resources’, even if not binding, show world trends and may inspire future changes. I will relate to them very often in the next chapters of my work.

### 5. Issues encountered when determining the standard of the right to water in the light of its legal foundations

The review of the legal instruments that enshrine the right to water is of extraordinary importance. First of all, it gives an idea of how many legal resources there actually are and proves that the notion of the right to water is not an abstract idea. Secondly, it is worth remarking that this issue has been noticed all around the world, both in international and national legislation. Therefore, it proves that it is a common problem of different communities and societies and not an idea limited to a small group of people, nations or influential individuals.

What is more, one can notice that there is no one major binding act that constitutes the right to water. Instead, there are many different and more specific acts where this right has been enshrined. However, only a few treaties include explicit binding provisions on the right to water. These are:

- » Convention on the Rights of Persons with Disabilities, 2006; Article 28 concerns adequate standard of living and social protection and says that State Parties have ‘*to ensure equal access by per-*

51 International Environmental Law Research Centre. *The Right to Water in Belgium*.

52 COHRE. *op.cit.* pp. 45-79

53 UNESCO. *Milestones* [online]. Available: <http://www.unesco.org/water/wwap/milestones/index.shtml> [accessed 27 February 2011]

54 The Rights to Water and Sanitation. *The Rights to Water and Sanitation in National Law* [online]. Available: <http://www.righttowater.info/progress-so-far/national-legislation-on-the-right-to-water/#BE> [accessed 25 February 2011]

55 COHRE. (2004). *Legal Resources for the Right to Water*. Report. pp. 126-130

*sons with disabilities to clean water services.'*

- » Convention on the Rights of the Child, 1989; Article 24 says that States parties shall '*combat disease and malnutrition, [...], through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water [...].*'
- » Convention on the Elimination of all forms of Discrimination against Women, 1979; Article 14(2) states that States parties ought to ensure the right '*to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.*'
- » Geneva conventions (in times of war)
- » African Charter on the Rights and Welfare of the Child, 1990; Article 14 says that States Parties shall '*ensure the provision of adequate nutrition and safe drinking water.*'

Furthermore, apart from the explicit provisions some implicit ones are crucial, too. These are Article 11 and 12 (the right to an adequate standard of living and the right to the highest attainable standard of health) of the ICESCR from which the right to water has been interpreted in GC 15 making it one of the leading sources of the right to water. Finally, there are two recent (2010) resolutions that recognised the right to water and that by some are thought to make it legally binding. In short, everything seems to indicate that the right to water exists and is a legally binding right. 'Seems', however, is the right word, as the pure facts prove something slightly different. The problem is that there is no general article that establishes the right to water. All the explicit and legally binding provisions relate to specific situations, for example, the situation of children or the disabled. What is more, GC 15 that interprets the right to water from Article 11 and 12 of the ICESCR is not binding either, but is an 'authoritative interpretation.' Furthermore, two recent (2010) UN resolutions that recognise the right to drinking water are not binding either, as the only binding resolutions comes from the UN Security Council and not from the UN General Assembly or the UN Human Rights Council. Certainly, it is impossible not to see and not to appreciate the effort of many members of the international community to make the right to water a legal reality, however, when approaching this right at least at this stage from the strictly legal point of view, one has to be very critical. Writing this, I do not claim that the right to water for personal, domestic and other purposes does not and should not exist. It would be very unreasonable to say so, especially that one can already 'sense' the presence of this right in different legal instruments. However, this proves that the right to water is the right '*in statu nascendi*' and that the international community is in the process of setting the standard of the right to water where one of the most challenging steps will be a legally binding recognition of the right to water, for instance, in the form of a new or additional, general article in the treaty or covenant.

Finally, going back to GC 15, it is worth realising that the right to water existed in the consciousness of the international community long before the Comment was issued in 2002. However, before that date it was often ignored by the states usually due to the political and economic reasons, and it is only now that the feeling of global responsibility in terms of the right to water is growing. Another problematic matter was that when the Universal Declaration 1948 was drawn up, the right to water has been treated as something obvious and thus was not regulated and named as a right.<sup>56</sup> Today, although the legal binding basis for the right to water is rather limited, every effort to recognise this right is precious and provokes lots of interest. Last 60 years can be perceived with certainty as a period of a major improvement in setting the international standard of the right to water.

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56 World Water Council. *FAQ* [online]. Available: <http://www.worldwatercouncil.org/index.php?id=1764#e9500> [accessed 2 March 2011]

## Chapter 3

# CONTENT OF THE RIGHT TO WATER

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### 1. Definition of the right to water in General Comment No. 15 (2002)

#### 1.1. Introductory information

Having presented legal basis of the right to water and difficulties connected with it, it is time to analyse the construction of the right to water itself. In this respect, the most important and the only source of information is the already mentioned GC 15.

GC 15 para. 10 stresses the fact that the right to water is composed both of freedoms and entitlements. The freedoms of the right to water include: 1) the right to maintain access to existing water supplies necessary for the right to water and 2) the right to be free from interference, e.g. the right to be free from arbitrary disconnections or contamination of water supplies. The entitlements, on the other hand, include the right to a system of water supply and management that provides equal opportunities for people to enjoy the right to water. In my opinion, the correct understanding of this issue will be especially important in terms of the states' obligations related to access to water. This problem, however, will be discussed in detail in the next chapters of this paper.

Nevertheless, it seems that the very essence of the right to water has been reflected in the following sentence of GC 15 para. 2: *'the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses'*. All those aforementioned adjectives determining the right to water (i.e. sufficiency, safety, acceptability, physical accessibility and affordability) find their justification in the elements of the right to water presented in the further part of GC 15 [para. 12]. Thus, the right to water composes of the following three elements: 1) water availability; 2) water quality; 3) water accessibility (water accessibility includes: physical accessibility, economic accessibility, non-discrimination and information accessibility).

GC 15 para. 11 highlights that all the aforementioned components of the right to water must be adequate for human dignity, life and health, in accordance with the Article 11 and 12 of the ICESCR, as well as sustainable. The adequacy of water should not be measured only through the reference to its quantity or modern technologies as water is not only an economic, but also a social and cultural good. Therefore, the adequacy of water may vary depending on different conditions. The sustainable realisation of the right to water, on the other hand, means that it must be available not only for present, but also for future generations.

#### 1.2. Elements of the right to water

1.2.1. Water availability. GC 15 para. 12 a) states that water supply for each person must be sufficient and continuous for personal and domestic uses. Therefore, there are two adjectives that have a key meaning when describing water availability, i.e. sufficiency and continuity. Water is sufficient when its quantity meets the needs of a situation or a specific purpose<sup>57</sup>. Continuity, on the other hand, relates to the water supply that must be regular in order to satisfy water needs.

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57 Merriam Webster Dictionary, (2011). *Sufficient* [online]. Available: <http://www.merriam-webster.com/dictionary/sufficient> [accessed 25 March 2011]

The quantity of water that is necessary for healthy life is not uniform and depends largely on place, climate, country etc. In order to clarify this matter the World Health Organisation issued guidelines on *Domestic Water Quantity, Service, Level and Health* which try to define an acceptable minimum of water that can satisfy basic water needs<sup>58</sup>. Those minimums are very detailed and show that the problem of water quantity can be considered in different dimensions relating to different aspects of life, e.g. cooking and hygiene. It is estimated that reasonable access to water requires about 20 l/c/d from a source located within one kilometre from where one lives, however, optimal access requires a minimum of 100 l/c/d, where water is supplied through multiple taps continuously. This satisfies all consumption and hygiene needs and allows to preserve good health.<sup>59</sup> Unfortunately, many developing countries are not able to provide their populations with this amount of water.

1.2.2. Water quality. According to GC 15 para. 12 b) water must be safe. This means that it must be free from micro-organisms, chemical substances, as well as radiological dangers. Furthermore, water should be of acceptable colour, odour and taste both for personal and domestic use. Unfortunately, in many countries people have access to water that cannot be described in such terms. In order to define water quality, as well as the factors that endanger water quality, the WHO prepared *Guidelines for drinking-water quality (2008)*<sup>60</sup>. Understanding of the meaning of the notion of quality water will allow to reduce the consequences of access to water of insufficient quality and to combat waterborne and water-related diseases, such as diarrhoea, cholera, hepatitis, malaria, trachoma, dengue and many others<sup>61</sup>.

1.2.3. Water accessibility. As it has been stated in GC 15 para. 12 c) water, water facilities and other services relating to water must be accessible to everyone without discrimination within the jurisdiction of the State party. Interestingly, one can differentiate between four aspects of the problem:

*Physical accessibility.* Water, water facilities and other water services must be placed within safe physical reach for the whole population. It is important to guarantee physical security when accessing water, water facilities and other services [GC 15 para. 12 c) (i)]. For Western societies it is difficult to imagine a situation when collecting water implies a risk of being exposed to violence (such as rapes). Still, this is a fate of many women in developing countries facing difficult political situation. This is mainly due to the fact that in developing countries these are usually women that are responsible for running the households and fetching water. Therefore, ideally, water ought to be accessible within or in the immediate vicinity of each household, educational institution and workplace. Additionally, GC 15 states that all water facilities must be of sufficient quality, culturally appropriate, as well as sensitive to gender, life-cycle and privacy requirements [GC 15 para. 12 c) (i)].

*Economic accessibility.* Water, water facilities and water-related services must be affordable for all. ‘The direct and indirect costs and charges associated with securing water must be affordable, and must not comprise or threaten the realization of other Covenant rights’ [GC 15 para. 12 c) (ii)]. However, it is worth mentioning that a state is not obliged to guarantee water free of charge. Human rights require services that will be affordable and that will not limit the realisation of other human rights. Certainly, the word ‘affordable’ will be understood differently in different parts of the world. Still, ‘those who can have to contribute financially or in kind’ in order to have access to water.<sup>62</sup>

*Non-discrimination.* Another element of water accessibility dimension is non-discrimination. The principle says that water, water facilities and other services must be accessible to everyone without discrimination on any of the prohibited grounds. This includes the most vulnerable and marginalised groups of the society. The principle of non-discrimination must be preserved both in law and in fact [GC 15 para. 12 c) (iii)]. At the same time, it is worth remarking that the rule of non-

58 Howard, G. (2003). *Domestic Water Quantity, Service Level and Health*. WHO

59 Howard, G. *ibid.* p. 1, executive summary: table St.

60 WHO, (2008). *Guidelines for Drinking-water quality*. 3<sup>rd</sup> ed. Volume 1

61 WHO, (2011). *Water and sanitation related diseases fact sheet* [online]. Available: [http://www.who.int/water\\_sanitation\\_health/diseases/diseasefact/en/index.html](http://www.who.int/water_sanitation_health/diseases/diseasefact/en/index.html) [accessed 26 March 2011]

62 Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation. *The Human Right to Water and Sanitation FAQ*.

discrimination has a broader character as it applies not only to the right to water, but to other human rights, too (so called special topics of broad application). Following the structure accepted in GC 15 and taking into account the importance of this matter, the issue of non-discrimination, as well as equity between men and women will be addressed in more detail in the further part of this chapter.

*Information accessibility.* Information accessibility includes the right to seek, receive and impart information on water issues [GC 15 para. 12 c) (iv)]. It is reflected, *inter alia*, in the activities of the UN agencies and numerous non-governmental organisations dealing with water problems. In Poland, one of the leading organisations in this field is the Polish Humanitarian Action (Polska Akcja Humanitarna, PAH). Currently PAH is running a Water Campaign (Kampania Wodna) trying to popularise the issue of the lack of access to drinking water in the world<sup>63</sup>.

### 1.3. Non-discrimination and equality

As announced earlier, at this point I find it necessary to go back to one of the parts of the right to water included in the element of water accessibility, namely, the non-discrimination and equality. Article 2(2) of the ICESCR says that all rights enunciated in the Covenant must be exercised without discrimination. As the right to water is interpreted from Article 11 and 12 of the Covenant, thus, the principle of non-discrimination applies to the right to water, too. Therefore, any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS issues), sexual orientation, as well as civil, political, social or other status that is nullifying or impairing the equal enjoyment or exercise of the right to water is forbidden. Furthermore, the right to water must be exercised equally between men and women (Article 3 of the ICESCR) [GC 15 para. 13].

This approach had already been expressed less directly in General Comment No. 3 in 1990 where '*the Committee underline[d] the fact that even in times of severe resources constraints whether caused by a process of adjustment, of economic recession, or by other factors the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes*'.<sup>64</sup> At the same time the GC 15 stresses the fact that states have an obligation to combat de facto discrimination on the prohibited grounds. Interestingly, State parties should also ensure that the allocation of water resources and investments concerning water serves everyone. Wrong allocation can lead to discrimination, too and therefore nowadays is the subject of lots of scientific research [GC 15 para. 14]. The Asian Development Bank, for instance, has recently prepared a report on *Water Rights and Water Allocation. Issues and Challenges for Asia* (2009)<sup>65</sup>. Finally, state parties have a very special obligation to help those who do not have sufficient means and to provide them with the necessary water and water facilities, as well as to prevent discrimination on internationally prohibited grounds. Last but not least, *inter alia* from GC 15 surfaces the notion of vulnerable and marginalised groups, i.e. people who, for different reasons, face serious problems when trying to exercise their right to water.<sup>66</sup> GC 15 points out at the following ones:

*Women.* Women very often face difficulties when trying to gain or improve their access to water. The matter concerns mainly developing countries. In Europe, for instance, gender issues in water supply practically do not exist. Therefore, it was agreed that women should participate more actively in the water decision-making process [GC 15 para. 16 a)], especially taking into consideration that in many developing countries they are the ones that are responsible for fetching, transporting, storing and using water. Currently, however, these are usually men that make decisions about water, water facilities and water management.<sup>67</sup>

63 PAH. *Kampania Wodna* [online]. Available: <http://www.wodapitna.pl/kampania> [accessed 27 March 2011]

64 CESCR General Comment 3. (1990). The nature of States parties obligations. E/1991/23. para 12

65 Bird, J., W.L., Arriens, D., Von Custodio. (2009). *Water Rights and Water Allocation. Issues and Challenges for Asia*. Asian Development Bank

66 COHRE, AAAS, SDC, UN-HABITAT. (2008). *Manual on the Right to Water and Sanitation*.

67 Irura, C. (2008). *Women, water and sanitation*. Special issue: Pambazuka News 379. SOAWR. pp. 8-9

*Children.* Children should not be prevented from enjoying their human rights because of the lack of water in schools, households or because they have to collect water. States should focus especially on providing water to those educational institutions where it is not yet available [GC 15 para. 16 b)]. Enabling access to water of good quality and proper amount can influence children's lives starting with their health and ending up with better education prospects. One of the leading organisations trying to improve children's situation in terms of water issues is the UNICEF.

*Rural and deprived urban areas.* People living in rural and deprived urban areas (this includes also informal settlements such as slums) must have access to properly maintained water facilities. Traditional water sources in rural areas should be protected from unlawful encroachment and pollution. Also deprived urban areas should have access to properly maintained water facilities. '*No household should be denied the right to water on the grounds of their housing or land status*' [GC 15 para. 16 c)]. Taking more practical approach, it is worth remembering that this year's World Water Day (2011) motto was '*Water for Cities*.' This included such actions like the one in slum area of Dhaka, Bangladesh, where their inhabitants were taught by the volunteers about safe hygiene practices.<sup>68</sup>

*Indigenous peoples.* For indigenous peoples, access to water is important from traditional and spiritual point of view. Thus, they should have access to water resources on their ancestral lands where this access must be protected. States are also obliged to provide resources that will allow them to design, deliver and control their access to water [GC 15 para. 16 d)]. Still, in many parts of the world, indigenous peoples encounter serious problems when trying to realise their right to water. For instance, in the Andes, in India, and in the Philippines, they are facing continuously increasing competition for their limited water reserves from agricultural plantations, as well as hydroelectric, mining, and drinking water companies<sup>69</sup>. Current situation of indigenous peoples can be followed, *inter alia*, in the reports of the Special Rapporteur on the rights of indigenous peoples<sup>70</sup>.

*Nomadic and traveller communities.* Nomadic and traveller communities should have access to adequate water both at traditional and designated halting sites [GC 15 para. 16 e)], especially that they often suffer from drought and encroachment on their traditional sources of water. Water policy in this respect has to be wise in order to meet both the nomadic and settled communities interests.<sup>71</sup>

*Refugees, asylum-seekers, internally displaced persons and returnees.* Above-listed groups of people must have access to adequate water no matter if they stay in camps or in urban and rural areas. They should be guaranteed the right to water on the same conditions as this right is granted to nationals [GC 15 para. 16 f)]. This means that the right to water should not depend on legal residence, nationality, formal rental contracts or other similar conditions<sup>72</sup>. One of the organisations dealing with the refugees' issues is the UN Refugee Agency.

*Prisoners and detainees.* Prisoners and detainees must have access to water in accordance with requirements of international humanitarian law and the UN Standard Minimum Rules for the Treatment of Prisoners [GC 15 para. 16 g)]. The latter say that '*prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness*' [SMRTP para. 15] and that '*drinking water shall be available to every prisoner whenever he needs it*' [SMRTP para. 20(2)].

*Groups facing difficulties with physical access to water.* This includes mainly elderly people, the disabled, victims of natural disasters, people who live in disaster-prone areas, arid and semi-arid areas or in small islands. All of them ought to be provided with safe and sufficient water [GC 15 para. 16 h)].

68 Francis, J. (2011). *Marking World Water Day 2011*. UNICEF [online]. Available: [http://www.unicef.org/wash/bangladesh\\_57967.html](http://www.unicef.org/wash/bangladesh_57967.html) [accessed 27 March 2011]

69 Lutz, E.L. (2005). *Indigenous Peoples and Water Rights*. Cultural Survival [online]. Available: <http://www.culturalsurvival.org/publications/cultural-survival-quarterly/none/indigenous-peoples-and-water-rights> [accessed 27 March 2011]

70 UN OHCHR. (2011). *Special rapporteur on the right of indigenous peoples* [online]. Available: <http://www2.ohchr.org/english/issues/indigenous/rapporteur/> [accessed 27 March 2011]

71 Sheik-Mohamed, A., J.P. Velema. (1999). Where health care has no access: the nomadic populations of sub-Saharan Africa. *Tropical Medicine and International Health*. Volume 4 No. 10. pp. 695-707

72 COHRE, AAAS, SDC and UN-HABITAT, (2007). *Manual on the Right to Water and Sanitation*

## 2. Confirmation of General Comment No. 15 approach to the right to water

Even though GC 15 is a basic document listing the elements of the right to water and thus allowing to construct to some extent a definition of this right, one has to be conscious that the notion of the right to water is very complex and, with high probability, composes of more elements than the ones listed above. In order to find them one should relate to other parts of GC 15 (i.e. not only to part No. 2 on the normative content of the right to water which includes the elements of this right but, for example, to part No. 3 on States parties' obligations, part No. 5 on the implementation at the national level and part No. 6 on obligations of actors other than states), as well as other documents. One of the most interesting ones is the report on *the Realization of the Right to Drinking Water and Sanitation*<sup>73</sup>.

After the CESCR had issued GC 15 on the right to water, Sub-Commission on the Promotion and Protection of Human Rights requested Special Rapporteur Mr El Hadji Guissé to prepare a set of guidelines discussing the realisation of the right to drinking water and sanitation. The report on the *Realization of the Right to Drinking Water and Sanitation* (adopted in 2006), clarified the way in which the right to water should be implemented and reconfirmed the elements of the right to water included in GC 15. At the same time it was stressed that the guidelines handled only the most urgent components of the right to water (and sanitation) and did not attempt to give a complete definition of the right to water (and sanitation). Additionally, the report highlighted its consistency with the relevant international documents on the right to water, in particular with GC 15 and the *Final Report of the Special Rapporteur on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation* [E/CN.4/Sub.2/2002/20].<sup>74</sup>

The importance of the Sub-Commission's report has been reflected in the approach of many different international organisations (such as WHO, COHRE) that build the definition of the right to water both on GC 15 and the Sub-Commission's report. For instance, the COHRE report titled *The Human Right to Water and Sanitation, Legal Basis, Practical Rationale and Definition* (2008) gives the following elements of the right to water basing on GC 15 and Sub-Commission's guidelines: sufficient water, clean water, accessible water and affordable water. Other elements (applying to all human rights and not only to the right to water) include: non-discrimination and inclusion of vulnerable or marginalised groups, access to information, participation and accountability (meaning that people denied their right to water have the possibility of judicial or other remedies)<sup>75</sup>. Almost the same elements have been listed in the report prepared by the UN-HABITAT *Manual on the Right to Water and Sanitation*<sup>76</sup>. Additionally, the report on *Legal Resources for the Right to Water and Sanitation* apart from the already mentioned elements added such components as duties to respect, protect and fulfil the right to water, international obligations and obligations on non-state actors<sup>77</sup>. They will be discussed in further parts of this paper.

## 3. Common misconceptions regarding the right to water

Having defined the elements of the right to water and having understood its complex nature, it is worth considering some of the misconceptions surrounding it.

First of all, it is not true that the right to water entitles people to free water. Water has to be affordable which means that people are expected to contribute to it in some way (financially or in other ways). Still, however, it is good, if at least in some situations states are ready to provide water free of charge.

73 Commission on Human Rights. Sub-Commission on the Promotion and Protection of Human Rights. E/CN.4/Sub.2/2005/25, 11 July 2005

74 Commission on Human Rights. *ibid.* p. 4

75 COHRE. (2008). *The Human Right to Water and Sanitation.: Legal basis, Practical Rationale and Definition*

76 COHRE, AAAS, SDC, UN-HABITAT, (2008). *Manual on the Right to Water and Sanitation*. Executive summary, p. XX

77 COHRE. (2008). *Legal Resources for the Right to Water and Sanitation*. 2<sup>nd</sup> ed. pp. 13-15



Secondly, the right to water does not allow for unlimited use of water as the only requirements for its accessibility are sufficiency and sustainability. One should also remember that water availability is strongly limited by resource constraints and, thus, the human right to water can apply to basic needs only<sup>78</sup>.

Thirdly, as surprising as it may be, the right to water does not include an entitlement to a household connection. It is enough when water facilities are within or in the close vicinity of the household (such as wells). Still, water services have to comply with certain standards, such as availability, acceptability, accessibility, affordability and quality, however, different places and circumstances will require different solutions<sup>79</sup>.

Furthermore, the right to water does not allow people to use water resources in other countries. However, according to the international customary law on transboundary watercourses, in some circumstances they may be shared with priority given to human needs. This issue may imply very serious consequences that have already been mentioned in the first chapter of this work, i.e. water conflicts and water wars. In today's world and especially in the countries where water resources are limited, gaining access to it may equal political domination in a region. Therefore, nobody really wants to share the 'blue gold' with the others.

What is more, it is not true that a state violates the right to water when not all of its inhabitants have access to it. States are only obliged to take steps to the maximum of available resources which means that they have to do their best in order to guarantee the right to water. Thus, states do not have to provide access to water directly unless some extraordinary situation takes place (natural disasters, droughts, etc.)<sup>80</sup>.

Finally, human rights accept private provision of water services including privatisation. However, actions both of public and private suppliers cannot provoke violations of human rights. Still, one should be conscious that water privatisation, especially in connection with high corruption, is a very difficult and controversial matter as it may lead to giving access to water to privileged groups only.

Last but not least, it is true that the costs of the realisation of the right to water are very high and some people pose a question whether it is really worth investing this much money and effort into such undertakings. Still, the costs of not ensuring the right to water seem to be much higher, especially in terms of public health, lost work and school days. It was estimated that for each dollar spent on the access to water there is a return of 8 dollars. It is also worth reminding that the states do not have to realise the full right to water immediately, not even within a few years. It is a very gradual process requiring time, however, states are obliged to participate in it actively and effectively<sup>81, 82</sup>.

#### **4. Difficulties connected with the existing normative content of the right to water**

As it has been explained earlier, the elements of the right to water are included in GC 15 in part No. 2 on the normative content of the right to water. However, it seems that when defining the right to water one has to take into account also the remaining parts of GC 15 (especially part No. 3 on States parties' obligations, part No. 5 on the implementation at the national level and part No. 6 on the obligations of actors other than states) and the works of the Sub-Commission on the Promotion and Protection of Human Rights that adopted the guidelines on the realisation of the right to drinking water and sanitation. These are, in my opinion, the most important sources that allow to draw, still a little bit blurred, borders of the right to water (the components of the right to water that stay beyond the elements included in part No. 2 of GC 15 on the normative content of the right to water will be discussed in the further chapters of this paper).

78 Gleick, P. (2007). *The Human Rights to Water*. Pacific Institute. p. 4

79 Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation. *The Human Right to Water and Sanitation FAQ*

80 Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation. *The Human Right to Water and Sanitation FAQ*

81 Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation. *ibid.*

82 All types of misconceptions come from: COHRE, AAAS, SDC, UN-HABITAT. (2008). *Manual on the Right to Water and Sanitation*. p. XVI

Taking this into account, the elements of the right to water seem to be exhaustive as they address the issue in a relatively detailed way. It would be difficult to come up with some other necessary components of this right. However, even though they are perfect in theory, the greatest problem may pose their implementation and, therefore, this should make one of the countries' priorities (implementation will be discussed separately in the next chapters of my work). Additionally, one cannot forget that GC 15, although authoritative, has a non-binding character, thus, if needed, it will always be possible to undermine it.

Finally, the whole construction of the right to water, as well as the misconceptions surrounding it, show that the right to water may have different 'faces' and may be understood in different ways depending on the region, country and circumstances. Certainly, there will always be a common basis, a common 'standard' composed of three features (availability, quality, accessibility), however, at least at the present stage and in the nearby future it will be realised in different ways regarding different economic, cultural and social situation of different countries all around the world.

## Chapter 4

# OBLIGATIONS RELATED TO THE RIGHT TO WATER

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### 1. Overview of the resources dealing with obligations related to right to water and sanitation

As it has been explained in the previous chapters of my work, the right to water can be interpreted from Article 11 and Article 12 of the ICESCR (1966). Thus it applies to the states that accepted the Covenant. Currently (4<sup>th</sup> of April 2011), there are 69 signatories and 160 parties to the Covenant. Poland, for instance, ratified the ICESCR on 18<sup>th</sup> March 1977.<sup>83</sup> Certainly, being a party to the Covenant implies numerous obligations arising from this fact, including the ones relating to the right to water. Nevertheless, at this point it must be highlighted that States parties to the Covenant are not the only duty-bearers in terms of the right to water. Different organisations, companies, corporations and even individuals can be obliged from this title, too.

In the ICESCR the obligations of the States parties have been expressed in Article 2. Article 2(1) says that *'each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.'* Article 2(2), on the other hand, enshrines the principle of non-discrimination, and Article 2(3) highlights that developing countries may determine to what extent the economic rights of the Covenant will be guaranteed to non-nationals, taking into account human rights and countries' economic situation. Thus, one can see that developing countries have been treated in this matter in a privileged, but justified way.

However, taking a closer look at the Article 2(1) of the ICESCR one notices how many different notions it includes and in how many different ways it could be interpreted and understood. Taking into account the gravity of the issue, it must have been one of the reasons why in 1990 the CESCR decided to issue General Comment No. 3 on the nature of the State Parties' obligations. This General Comment was an analysis of the above-cited Article 2(1) of the ICESCR. Although the interpretation of the Article 2(1) is relatively long and focuses on the obligations relating to all the rights protected under the Covenant in general, I find it important to mention it also in terms of the obligations regarding the right to water. The Committee noticed that *'Article 2 is of particular importance to a full understanding of the Covenant and must be seen as having a dynamic relationship with all of the other provisions of the Covenant.'*<sup>84</sup> Additionally, when talking about the ICESCR it is also worth mentioning two other documents that play a major role in terms of the obligations and violations regarding the right to water, i.e. the Limburg Principles on the Implementation of the ICESCR (1986) and the Maastricht Guidelines on Violations on Economic, Social and Cultural Rights (1997).

Still, one of the leading documents in terms of the countries' obligations related to the right to water seems to be GC 15. In part No. 3 it addresses States parties' obligations as understood in the light of the right to water differentiating between general legal obligations, international obligations and

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83 United Nations Treaty Collection, (2011). *The ICESCR* [online]. Available: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-3&chapter=4&lang=en#2](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-3&chapter=4&lang=en#2) [accessed 4 April 2011]

84 CESCR General Comment 3. (1990). The nature of States parties obligations. E/1991/23, para. 1

core obligations [GC 15 para. 17-38]. At the same time, when mentioning GC 15 one cannot forget about *the Report on the realization of the right to drinking water and sanitation*<sup>85</sup> (guidelines of the Sub-Commission on the Promotion and Protection of Human Rights, adopted in 2006). The guideline No. 10(1) says that ‘states should refrain from actions that interfere with the enjoyment of the right to water and sanitation in other countries and should prevent individuals and companies under their jurisdiction from taking such actions’, while the guideline No. 10(2) concerns the duty of solidarity of the developed countries towards the developing ones.

Subsequently, in 2007, the UN Human Rights Council in its decision 2/104 on human rights and access to water asked ‘the Office of the United Nations High Commissioner for Human Rights, taking into account the views of States and other stakeholders, to conduct, within existing resources, a detailed study on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments, which include[d] relevant conclusions and recommendations thereon [...]’. The report called the *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*<sup>86</sup> has been a very important step, especially when taking into consideration how many different countries, organisations, universities, groups and individuals decided to participate in it and to share their knowledge on the issue. Furthermore, this report shows several fields that need to be improved in terms of the obligations relating to the right to water. Those issues requiring further elaboration, have been taken up by the Special Rapporteur on the human right to safe drinking water and sanitation (former Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation) and include: 1) the normative content of human rights obligations relating to right to sanitation (and water); 2) the human rights obligations connected with the improvement of national strategies in the field of water and sanitation; 3) regulation of the private sector supplying water; 4) criteria as to how protect the right to water and sanitation in case of disconnections, 5) as well as the obligations of the local authorities<sup>87</sup>.

## 2. States Parties’ obligations

### 2.1. General legal obligations

The ICESCR imposes on the States parties’ to the Covenant a number of obligations relating to the right to water. First of all, it provides for progressive realisation of the right to water admitting that sometimes it may be hampered by limited water resources. Thus, the states must realise the right to water constantly, however, at times gradually depending on the available resources. Secondly, the Covenant determines the obligations which are of immediate effect in relation to the right to water. They include the guarantee that the right will be exercised without discrimination (Article 2(2) of the ICESCR) and the duty to take steps towards the full realisation of Article 11(1) and Article 12 of the Covenant. All the undertaken steps must be deliberate, concrete and targeted towards the full realisation of the right to water [GC 15 para. 17]. What is more, the States Parties have a constant and continuing obligation to work as efficiently and effectively as possible in order to realise the right to water. At the same time, the realisation of the right to water should be feasible and practicable, especially when one takes into consideration the variety of different tools and resources that states usually administer, such as water, technologies, financial means and others [GC 15 para. 18]. Furthermore, all the retrogressive measures are forbidden under the ICESCR. It has been confirmed in General Comment No. 3 (1990) on the nature of the State Parties’ obligations [E/1991/23. para 9]. However, if a state decides to undertake such measures on purpose, it has to prove that they were preceded by a very careful consideration of all the possible options and that those retro-

85 UN Economic and Social Council. *Realization of the right to drinking water and sanitation*. E/CN.4/Sub.2/2005/25

86 UN Human Rights Council. A/HRC/6/3. 2007.

87 UN OHCHR. *Special Rapporteur on the human right to safe drinking water and sanitation. Overview of the mandate* [online]. Available: <http://www2.ohchr.org/english/issues/water/expert/overview.htm> [accessed 3 April 2011]

gressive measures are ‘*duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party’s maximum available resources*’ [GC 15 para. 19]. Finally, it is important to remark that the right to water just like any other human right imposes three types of obligations: obligation to respect, obligation to protect and obligation to fulfil [GC 15 para. 20].

### **2.1.1. Obligation to respect**

The obligation to respect demands State parties to forbear from interfering directly or indirectly with the person’s access to water. It can manifest itself in the actions of public authorities or institutions. The obligation includes, for example, refraining from: 1) the activities that deny or limit access to adequate water; 2) interfering with customary or traditional decisions concerning water allocation by arbitrary means; 3) unlawfully diminishing or polluting water (testing or weapons, contamination from State-owned facilities, etc.); 4) limiting access to or destroying water services and water facilities in order to punish a local population, for example, during the war, etc [GC 15 para. 21]. At the same time, if the interference cannot be avoided, people should be informed about it in advance and should be given a possibility of consultations and submitting official complaints<sup>88</sup>. Additionally, at the times of war, natural disasters and other emergency situations, the right to water implies such obligations as are binding under international humanitarian law. This includes, for instance, protection of all those water facilities that are necessary for the survival of the civil population, protection of natural environment, as well as ensuring that everyone has access to water of sufficient quality and amount [GC 15 para. 22].

### **2.1.2. Obligation to protect**

The obligation to protect focuses on the fact that State parties have to prevent third parties (individuals, groups, corporations, other entities) from interfering in any way with the enjoyment of the right to water. This includes, for instance, the adoption of the legislative measures that allow to prevent third parties from activities endangering the right to water [GC 15 para. 23]. What is more, States must pay special attention in situations when water services are operated or controlled by third parties. For instance, privatisation of water facilities is not wrong in itself, but a state must ensure that all the elements of the right to water have been fulfilled. In order to achieve this, GC 15 suggests establishing a regulatory system which would focus on monitoring and public participation and that would impose penalties for those actors that do not comply with the regulations [GC 15 para. 24].

### **2.1.3. Obligation to fulfil**

The obligation to fulfil composes of the obligation to facilitate, the obligation to promote and the obligation to provide. It requires the states to take active steps in order to ensure the right to water.<sup>89</sup>

- » *The obligation to facilitate* says that states must take positive measures in order to help people enjoy their right to water, such as the digging of wells, installing and maintaining pipelines<sup>90</sup>.
- » *The obligation to promote* requires states to do everything possible in order to educate people on the topics concerning water, its hygienic use, protection of water resources and dealing with water wastage.
- » *The obligation to provide* expresses that the states are obliged to provide access to water when people are not able, for reasons that are beyond their control, to realise this right on their own [GC 15 para. 25].

At the same time, the obligation to fulfil requires the states to adopt measures that are necessary towards the realisation of the right to water. They may include, for example, sufficient recognition of the right to water in the national political and legal system, adopting a national water strategy or a plan of action, making sure that water is affordable for everyone, as well as facilitating access to water particularly in rural and deprived urban areas [GC 15 para. 26]. Additionally, ensuring that water is af-

88 Knight, L. (2003). *The Right to Water*. WHO. p. 28

89 Knight, L. (2003). *The Right to Water*. WHO. p. 30

90 WHO. *States obligations regarding the right to water* [online]. Available: [http://www.who.int/water\\_sanitation\\_health/humanrights/en/index3.html](http://www.who.int/water_sanitation_health/humanrights/en/index3.html) [accessed 3 April 2011]

fordable may require adoption of some specific measures, too. They can include special pricing policies or application of cheaper technologies. States have to remember in particular about disadvantaged or marginalised groups of people no matter if water services are publicly- or privately-owned [GC 15 para. 27]. What is more, in order to realise their obligation to fulfil, states should adopt strategies and programmes guaranteeing water for present and future generations. GC 15 lists a number of examples that have one common feature: the use of water should be efficient, as well as nature- and future-focused [GC 15 para. 28]. Finally, one of the most important mechanisms for the protection of the drinking water quality and its resources is providing access to adequate sanitation. It has been reflected, *inter alia*, in the Convention on the Elimination of All Forms of Discrimination Against Women (Article 14(2)) and in the Convention on the Rights of the Child (Article 24(2)). Moreover, in accordance with the rights to health and adequate housing, states have an obligation to take care of sanitation facilities with special focus on rural and deprived urban areas, children's and women's needs (General Comment No. 4 on the right to adequate housing and General Comment No. 14 on the right to the highest attainable standard of health) [GC 15 para. 29]. Last but not least, when discussing the states parties' obligations, it is worth stressing the role of local governments as the implementation of the right to water is very often delegated to them. In such a case, this is still the State party that is responsible for the compliance with the ICESCR and thus should ensure that the local authorities have at their disposal resources that are sufficient and that allow to provide appropriate access to water. The principle of non-discrimination must be preserved, too.<sup>91</sup>

## 2.2. Core obligations

General Comment No. 3 (1990) para. 10 says that States parties to the Covenant have a core obligation to ensure that each of the rights enshrined in the ICESCR has been fulfilled at least at the minimum level. Consequently, the CESCR in GC 15 listed nine so-called core obligations related directly to the right to water. The core obligations are of immediate effect, as well as non-derogable<sup>92</sup> which means that they must be fulfilled and that their satisfaction cannot be postponed or changed in any way. According to M. Woodhouse they can be classified into three interconnected groups depending on the level where the effects of states' actions may appear: at the national, community or individual level. Each category composes of three elements.<sup>93</sup>

- » *Core obligations at the national level* include: 1) adoption and implementation of national water strategy and plan of action that would be addressing the whole population; the strategy or plan of action must be regularly reviewed and must include appropriate methods so that the progress can be controlled; it should pay a particular attention to disadvantaged or marginalised groups; 2) control of the extent of the realisation or the non-realisation of the right to water; 3) adoption of relatively cheap programmes to protect vulnerable and marginalised groups [GC 15 para. 37 f), g), h)].
- » *Core obligations at the community level* include: 1) provision of access to water and water facilities in accordance with the principle of non-discrimination, especially taking into account the situation of disadvantaged or marginalised groups; 2) ensuring physical access to water facilities and services that provide sufficient, safe and regular water; there must be a sufficient number of water outlets and the distance from the household cannot be too far; 3) water facilities and services should be distributed equitably [GC 15 para. 37 b), c), e)].
- » *Core obligations at the individual level* include: 1) ensuring access to the minimum essential amount of water that is sufficient and safe for personal and domestic uses to prevent disease; 2) ensuring that personal security is not threatened when accessing to water; 3) taking measures to prevent, treat and control water-borne and water-related diseases and, in particular, providing access to appropriate sanitation [GC 15 para. 37 a), d), i)].

<sup>91</sup> Knight, L. (2003). *The Right to Water*. WHO. p. 31; CESCR General Comment 15. *ibid.* para. 51

<sup>92</sup> Muller, A. (2009). *Limitations to and derogations from economic, social and cultural rights*. H.R.L. Rev. 557 [online]. Available: Westlaw database [accessed July 2010] p. 18

<sup>93</sup> World Water Council, (2010). *FAQ. Question 9* [online]. Available: <http://www.worldwatercouncil.org/index.php?id=1764#c9476> [accessed 6 April 2011] Columbia Water Center. *Water Policy* [online]. Available: [http://water.columbia.edu/?id=learn\\_more&navid=water\\_policy](http://water.columbia.edu/?id=learn_more&navid=water_policy) [accessed 4 April 2011]

Apart from listing the core obligations, it is important to realise that they are a landmark point when determining the violations of the right to water. According to the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (E/C.12/2000/13, p. 18, para. 9) and General Comment No. 3 (E/1991/23, para. 10) *'the violations of the Covenant occur when a state does not satisfy 'a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights [...] Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, violating the Covenant'*. What is more, core obligations must be respected regardless of the economic, social or cultural situation of a country and consequently, they apply to the right to water, too. Finally, it is worth remembering that States parties, as well as other actors have an obligation to help developing countries in the fulfilment of their core obligations, especially through the economic and technical international assistance and cooperation [GC 15 para. 38]. Also developing countries should support one another, for instance, through such projects as South-South Cooperation and Knowledge Exchange<sup>94</sup>.

### 2.3. International obligations

State parties international obligations arise from international treaties. This applies to water issues, too. Consequently, parties to the ICESCR are obliged to international cooperation and assistance in matters regarding the right to water on the basis of Article 2(1), Article 11 and Article 23 of the Covenant. If necessary, they ought to take joint or separate actions in order to realise the right to water [GC 15 para. 30]. What is more, states are obliged to respect the right to water in other countries and are not allowed to interfere with it in any way. Additionally, they should not impose embargoes or other similar limitations that could restrict access to water. In short, water should not serve as one of the means of achieving political and economic goals [GC 15 para. 31, 32] as it has been confirmed in General Comment No. 8 (1997) on the relationship between economic sanctions and respect for economic, social and cultural rights (E/C.12/1997//8. 1997). What is more, states parties should apply specific measures in order to prevent their citizens and companies from encroaching on other countries' right to water. In order to avoid possible violations, a state should use different legal and political means being in accordance with the Charter of the UN and applicable international law [GC 15 para. 33]. Furthermore, if possible, states should support other countries in their realisation of the right to water. It can be achieved in many different ways, for instance, through financial or technical help. Any international assistance should be conducted in accordance with the ICESCR, human rights standards, the principle of sustainability and cultural appropriateness. At the same time, as it has already been mentioned, developed countries are bound by the duty of responsibility and interest towards the developing countries in terms of the right to water [GC 15 para. 34]. Finally, States parties ought to ensure that the right to water has been reflected in the right way and has been given due attention in the international documents. At the same time it is their responsibility to initiate the development of other instruments that would serve positively to the right to water. Additionally, agreements concerning trade liberalisation should not limit country's capability to ensure the realisation of the right to water. Also states parties that are members of different international organisations, should always stress the importance of the right to water in their work. This applies to members of financial institutions and regional development banks, too [GC 15 para. 35, 36].

### 3. Obligations of non-state actors

As it has been shown in the previous parts of this chapter, States parties have a primary obligation to ensure the enjoyment of the right to water. However, its realisation does not depend on the states only. One should be conscious that to some extent everyone is involved and, thus, responsible for the realisation

94 The South-South Opportunity. (2011). [online]. Available: <http://www.southsouth.info/> [accessed 5 May 2011]

of the right to water. Interestingly, there seems to be one obligation that is common to all individuals and other stakeholders, namely, the duty to comply with the national authorities' laws, policies, plans, programmes and actions aimed at the realisation of the right to water and serving its respecting, protection and fulfilment<sup>95</sup>.

The first group responsible for the realisation of the right to water are citizens. Their obligation usually has a form of compulsory financial (or other) contribution to the costs of access to water. They may e.g. pay an affordable fee for connection to water and for disposal of human excreta. Apart from that they may also be responsible, for instance, for maintaining the water connection or waterpoint and ensuring that water is not contaminated.<sup>96</sup>

Secondly, also the water private sector participates in the fulfilment of the right to water. It involves mainly water providers, as well as those that are responsible for construction of water facilities (e.g. plumbers, well-builders). All of them may contribute to the right to water, for example, through application of responsible and sustainable methods of water provision or allowing the local communities to participate in the undertaken investments.<sup>97</sup>

Thirdly, an important role in the fulfilment of the right to water play local non-governmental organisations (NGOs). They do it in different ways, mainly through promotional actions in their regions, educating about the right to water, informing people about human rights and ensuring that the national authorities have a special water policy that is implemented.<sup>98</sup> Apart from the local NGOs it is crucial to point out the international NGOs. Acting at the international level, they also deal with promotion of the right to water, educate people and institutions, document the violations and are often active in advocating or developing international policies.<sup>99</sup> Their strength is the fact that they can be heard worldwide.

Subsequently, an important role in the fulfilment of the right to water play the UN specialised agencies and programmes that are trying to integrate human rights into their development work. It allows them to support governments effectively. It is possible, for instance, by making sure that all their policies or programmes comply with the right to water or by preparing international guidelines supporting countries in their work towards the realisation of the right to water (such as WHO Guidelines for Drinking Water Quality).<sup>100</sup> Also GC 15 para. 60 stresses the importance of UN agencies and other international organisations referencing e.g. to WHO, FAO, UNICEF, UN-Habitat, ILO, WTO and many others.

Finally, an important role play financial institutions, such as the World Bank or the International Monetary Fund, especially in their development programmes (e.g. granting special credits), which allows for the promotion of the right to water [GC 15 para. 60]. One also needs to mention the World Trade Organisation, the growing role and consciousness of national and multinational private service providers (companies, corporations and other businesses), as well as the research community.<sup>101</sup>

When discussing the issue of obligations of other stakeholders than states, it is worth mentioning the report of the then Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation (Catarina de Albuquerque, 2010) submitted to the Human Rights Council in accordance with Council resolution 7/22. The report focuses on the human rights obligations and responsibilities which apply in cases of non-state service provision of water and sanitation. It outlines, *inter alia*, the human rights obligations of States and the responsibilities of non-state service providers (especially companies and other businesses) pointing out three most challenging areas nowadays: decision-making, operation of services, and accountability and enforcement.<sup>102</sup>

95 Knight, L. (2003). *The Right to Water*. WHO. p. 32

96 Knight, L. *ibid.* p. 32

97 Knight, L. *ibid.* p. 32

98 Knight, L. (2003). *The Right to Water*. WHO. p. 33

99 Knight, L. *ibid.* pp. 33-34

100 Knight, L. *ibid.* p. 34;

101 Knight, L. *ibid.* p. 35-36

102 Human Rights Council. A/HRC/15/31. 2010. summary, para. 18-28, 29-60



In my view, the importance of the role of ‘other stakeholders’ has also been reflected in a very special way in the already mentioned at the beginning of this chapter *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*. This report was created with a help of many different states, intergovernmental organisations, local governments, national human rights institutions, civil society, private sector, universities, special rapporteurs and individuals that decided to prepare answers to OHCHR questionnaires sent along with publications, articles, books, etc. The responses of over 100 participants are available at the OHCHR website<sup>103</sup>. Unfortunately, it is impossible to present them in this paper, however, their willing participation shows that the issue of realisation of the right to water is in the process of moving from the ‘states’ responsibility only’ to a greater consciousness and participation of other groups.

#### **4. Problems encountered when specifying legal obligations of state and non-state actors in practical situations**

One can notice that the issue of the obligations in terms of the right to water is a relatively fresh idea as it has been taken up in the international arena only in the last decade. Certainly, the ICESCR dates back to the 70s and includes some articles concerning the obligations of the States parties, but most documents and reports concerning the duties in relation to the right to water appeared from 2002 onwards, i.e. from the moment when GC 15 was issued. At the same time, it is worth noticing that while at the beginning only the obligations of the states were visible, now this idea seems to be much broader including also other stakeholders, such as companies, corporations, different organisations and even individuals. It shows that the right to water commences to appear as a common problem that can be realised only through the cooperation of different groups which, in turn, will allow to define its new future standard. However, apart from the numerous positive aspects of the development of the obligations regarding the right to water, one can also remark some difficulties. First of all, only those states that are parties to the Covenant are bound by its provisions. Secondly, GC 15, from which, *inter alia*, the obligations regarding the right to water arise, has a non-binding character so the states are not obliged to comply with it. Finally, these are usually states that bear the responsibility for non-compliance with the right to water (under the ICESCR) and the consequences of the other actors will depend to large extent on the national legislation or simply their goodwill.

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<sup>103</sup> OHCHR. *Study on human rights obligations related to equitable access to safe drinking water and sanitation – Contributions received* [online]. Available: <http://www2.ohchr.org/english/issues/water/contributions.htm> [accessed 7 April 2011]

## CHAPTER 5

# IMPLEMENTATION OF THE RIGHT TO WATER

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### 1. Introductory information

It has already been stressed that establishing the right to water in legal terms, although very important, has little sense when this right is not applied in practice. Thus, the crucial part of the right to water will be its implementation. Implementation in case of every human right is usually one of the most difficult steps, although in terms of the right to water it seems to be even more complicated. Again, one may pose a justified question whether it is possible to implement a right '*in statu nascendi*', interpreted from other rights and only by some claimed to be legally binding. With no doubt, to large extent it is a question of states' and other duty-bearers' good will. Nevertheless, taking into account that the right to water and the issues connected with it do exist in the consciousness of international community, it may lead to the conclusion that sooner or later the right to water will turn from '*in statu nascendi*' right to the legally recognised and legally binding right. Therefore, in my opinion, one can and ought to talk about the implementation of the right to water, which, although at times difficult, may allow to set and form future standards regarding the right to water. Also, after passing the Human Rights Council resolution in September 2010 Catarina Albuquerque said that '*the right to water and sanitation is a human right, equal to all other human rights, which implies that it is justiciable and enforceable. Hence from today onwards we have an even greater responsibility to concentrate all our efforts in the implementation and full realisation of this essential right.*'<sup>104</sup>

Implementation of the right to water can be encouraged both at international and national level, however, it is at the national level where its practical application takes place. The role of international regulations is to show countries and other entities the way towards the realisation of the right to water. Implementation of the right to water at the national level has been covered in much detail in GC 15, however, in my view, it is important to mention other documents, too. One of them are the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986). The Principles, prepared by experts in international law that convened by the International Commission of Jurists, focus on two important areas, namely 1) nature and scope of obligations of States parties to the ICESCR, as well as 2) consideration of States parties' reports and international cooperation under part IV of the Covenant (this includes, for instance, preparation and submission of reports by States parties under Article 16 and 17 of the Covenant, the role of the CESCR, as well as relations between the Committee and specialised agencies or other international organs). What is more, some matters relating to the implementation of the right to water, such as responsibility and remedies, have also been reflected in the Maastricht Guidelines on the Violations of the Economic, Social and Cultural Rights (1997). Finally, one cannot forget about the report on the *Realisation of the right to drinking water and sanitation (2005)*<sup>105</sup> which to some extent elaborates GC 15. Last but not least, there are numerous reports prepared by different organisations that deal with water issues and want to share their experience on the implementation of the right to water.

Still, giving this short overview, it needs to be highlighted that the above-presented instruments form only a small, although very important, part of all the documents concerning the implementation of the right to water.

<sup>104</sup> UN OHCHR. *UN united to make the right to water and sanitation legally binding* [online]. Available: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10403&LangID=E> [accessed 7 April 2011]

<sup>105</sup> Sub-Commission on the Promotion and Protection of Human Rights. Report of the Special Rapporteur, El Hadji Guissé. (2005). *Realization of the right to drinking water and sanitation*. E/CN.4/Sub.2/2005/25

## 2. Factors to be considered while implementing the right to water

As it has already been mentioned, one of the most important documents in terms of the implementation of the right to water at the national level is GC 15, also because it is almost the sole document that relates directly to the right to water. Consequently, the approach presented in it has been overtaken and improved in numerous other reports issued by different bodies tackling water-related issues.

First of all, GC 15 points out Article 2 of the ICESCR saying that States parties have to use ‘*all appropriate means, including particularly the adoption of legislative measures*’ in order to implement their Covenant obligations. Having admitted that the right to water arises from Article 11 and 12 of the ICESCR, the provision relates to the right to water, too. Thus, in order to implement the right to water, states need to adopt certain legislative measures. Certainly, those measures and other undertaken actions will not be the same, but will differ depending on the circumstances and problems faced by a given state. This is also the aim of the countries’ margin of appreciation, allowing to choose measures aimed at the fulfilment of the right to water. Additionally, when implementing the right to water, states must take all necessary steps in order to ensure that the right to water is enjoyed as soon as possible, as well as they must remember that their actions cannot interfere with the realisation of other human rights [GC 15 para. 45]. Finally, GC 15 discusses the implementation of the right to water at the national level splitting it into three important dimensions, i.e. 1) legislation, strategies and policies; 2) indicators and benchmarks; 3) remedies and accountability.

*Legislation, strategies and policies.* According to GC 15, states need to ensure that all the existing policies are in accordance with the obligations arising from the right to water. In the situation when they are incompatible, they should be changed or even repealed [GC 15 para. 46]. What is more, a State party has a duty to adopt a national strategy or a plan of action that will allow the realisation of the right to water. Such a strategy must be based on human rights law and principles, define clear objectives, set targets or goals to be achieved within certain period of time, develop adequate policies, as well as corresponding benchmarks and indicators, determine institutional responsibility for the conduction of the whole process and establish accountability mechanisms that will allow for the implementation of the right to water. Certainly, at every stage of the implementation of the right to water, States parties can count on the technical assistance and cooperation of the UN specialised agencies, such as WHO, FAO, UNICEF and many others [GC 15 para. 47]. What is more, the national water strategies and plans of action should respect the principle of non-discrimination, as well as people’s participation, *inter alia*, in a decision making process [GC 15 para. 48]. At the same time, implementation of the right to water should be based on the principles of accountability, transparency and independence of judiciary. Additionally, States parties must make sure that the private business sector and the society are conscious of their right to water in all the activities they undertake [GC 15 para. 49]. The authors of GC 15 have also pointed out that States parties may find it useful to adopt framework legislation in order to operationalise their right to water strategy and thus suggest how such framework legislation could look like [GC 15 para. 50]. Furthermore, action should be taken to ensure that national authorities at different levels co-operate with one another which allows to obtain coherent water policies [GC para. 51]. Finally, the realisation of the right to water should be monitored [GC para. 52].

This approach has been confirmed and elaborated in the report on the *Realisation of the right to drinking water and sanitation (2005)* (already mentioned in Chapter 4 of the work, focusing on the obligations related to the right to water). In its part on the implementation, the report stresses, *inter alia*, that States at all levels of governments ought to: give priority to water and sanitation policies and programmes directed at people without basic access to it, adopt and implement a plan of action, formally recognise the right to water and sanitation in relevant laws and regulations, refrain and ensure that other entities also refrain from the violations of the right to water (unless a special procedure has been foreseen), as well as establish a regulatory system for private and public water and sanitation service providers [para 2.3].<sup>106</sup>

<sup>106</sup> Sub-Commission on the Promotion and Protection of Human Rights. Report of the Special Rapporteur, El Hadji Guissé. (2005). *Realisation of the right to drinking water and sanitation*. E/CN.4/Sub.2/2005/25, p. 6

*Indicators and benchmarks.* Indicators and benchmarks are another important point of the GC's 15 discussion on the implementation of right to water. The role of the indicators at the national and international level is to monitor States parties' obligations arising from Article 11 and Article 12 of the Covenant and thus relating to the right to water, too. As they are to help in the monitoring process, they should be present in the national plans of action and water strategies. More specifically, the indicators should relate to different components of adequate water (such as sufficiency, safety, acceptability, affordability and physical accessibility), 'be disaggregated by the prohibited grounds of discrimination' and relate to all persons living under the jurisdiction of the State party or under their control. What is more, as it has already been mentioned, States parties may ask for help and guidance in terms of proper indicators from different UN agencies and other international bodies [GC para. 53]. Consequently, when the indicators have been identified, it is possible for a country to set national benchmarks in relation to each indicator. This usually happens with a help from the CESCR's part which in the next reporting session will check whether the aims determined on the basis of indicators and national benchmarks have been achieved [GC para. 54]. Indicators and benchmarks are one of the most often discussed issues in numerous reports that I have browsed concerning the implementation of the right to water. One of them, *Monitoring Implementation of the Right to Water: A Framework for Developing Indicators* said that 'national and international efforts to implement the right to water for all require the use of indicators to monitor the actions of States and other actors, to identify gaps in implementation and to help prioritise the use of scarce resources [...] [Therefore, the report] describes the start of an international process to develop right to water indicators that can be used by a variety of actors to make their monitoring processes more consistent, rigorous and transparent.'<sup>107</sup> The report gives a number of exemplary indicators, for instance, the indicator for the continuous supply of water could raise the following question: 1) what is the average number of days per year of disruption to supply?<sup>108</sup>

Finally, these are not only states that are involved in the process of creating and applying water indicators and benchmarks, one needs to remember how important a role in this field play NGOs and different businesses. An interesting report, especially in relation to NGOs is, for example, *The Right to Health: A Resource Manual for NGOs* where Chapter No 8 focuses on tools for monitoring, including indicators, benchmarks and statistical data<sup>109</sup>. Guidelines for companies and other businesses, on the other hand, have been included e.g. in *Business, Human Rights & the Right to Water. Challenges, Dilemmas and Opportunities. Roundtable Consultative Report*<sup>110</sup>.

*Remedies and accountability.* Finally, according to GC 15, anyone who had been denied the right to water should have access to judicial or other effective remedies at national and international level. All victims of the violations of the right to water should be entitled to adequate reparation which may include restitution, compensation, satisfaction or guarantee of non-repetition. At the same time, one has to remember that in case of violations, different institutions, including ombudsmen or human rights commissions, can and should react, too [GC 15 para. 55]. What is more, any action of interference with individual's right to water must be conducted in a manner warranted by law, in accordance with the ICESCR and other factors listed in GC15. However, under no circumstances shall an individual be deprived of the minimum essential level of water [GC 15 para. 56]. What is more, the countries are encouraged to incorporate international instruments regarding the right to water into their national legal orders as it allows the courts to relate to the ICESCR directly and thus realise the right to water [GC 15 para. 55]. Finally, all the members of legal professions ought to remember about the right to water, and the work of different human rights organisations trying to tackle water issues should be respected, protected, facilitated and promoted [GC 15 para. 58-59].

107 Roaf, V., Khalfan, A., M. Langrord. (2005). *Monitoring Implementation of the Right to Water: A Framework for Developing Indicators*. COHRE, Global Issue Papers No 14, p. 3

108 Roaf, V., Khalfan, A., M. Langrord. *ibid.* p. 31

109 Asher, J. (2004). *The Right to Health: A Resource Manual for NGOs*. London: Commonwealth Medical Trust, pp. 86-100

110 Institute for Human Rights & Business. (2009). *Business, Human Rights & the Right to Water. Challenges, Dilemmas and Opportunities. Roundtable Consultative Report*. Draft

Still, it needs to be highlighted that an effective complaints mechanism at both international and national level is the key component of the right to water, as well as the necessary tool of its implementation. At the international (UN) level function two complaints mechanisms, namely the charter- and the treaty-based mechanism. The charter-based mechanism includes the activities undertaken by the Human Rights Council having a '1503 procedure' which allows individuals and groups to bring complaints in front of the Council. There is also a Universal Periodic Review system established through the UN General Assembly. The other mechanism, i.e. the treaty-based system, concerns the process of implementation of the treaties by their states parties that is monitored by suitable committees of experts. Interestingly, some treaties have optional protocols which (if ratified by a state), allow groups and individuals to submit complaints against that state for violations of the provisions of a given treaty. Till 2008 the ICESCR did not have an Optional Protocol, however, it has changed recently. The Optional Protocol to ICESCR is not yet in force<sup>111</sup>, however, it has already been thought to be a major development in the field. It will be discussed in more detail in the next part of this chapter.<sup>112</sup>

Finally, there are also complaints mechanisms at regional and sub-regional levels, such as the proceedings in front of the European Court of Human Rights. At national level, on the other hand, all the protection mechanisms depend on the regulator, however, should those mechanisms not be established, the water issues will be dealt with by more independent bodies that monitor the actions of public institutions, such as human rights commissions, ombudsman institutions or the judiciary.<sup>113</sup>

### 3. Monitoring implementation at the international level - protection mechanisms

#### 3.1. Committee on Economic Social and Cultural Rights

The CESCR has already been mentioned several times throughout this paper as it plays a particularly significant role in the process of implementation of the right to water. Now, it is time to look at it again, especially when taking into consideration changes brought by the Optional Protocol to the ICESCR.

The CESCR is a body of independent experts whose main role is to monitor the implementation of the ICESCR by the States parties to the Covenant. The Committee was established in 1985 as a result of the Economic and Social Council Resolution 1985/17 that allowed it to carry out the monitoring functions assigned to the UN Economic and Social Council in the ICESCR. The Committee usually meets in Geneva twice a year and its sessions consist of plenary (three weeks) and pre-sessional (one week) working groups. All States parties have to submit regular reports to the Committee describing the implementation of the Covenant rights, which applies to the right to water, too. States must report within two years since accepting the Covenant and then every five years. Having analysed the report, the Committee issues so-called concluding observations that allow to form future recommendations for the states.

Interestingly, recently, the Committee's function have been broadened. On 10 December 2008 the General Assembly adopted the Optional Protocol (GA Resolution A/RES/63/117) to the ICESCR. The Optional Protocol is a separate treaty open for signature and ratification by States that are parties to the ICESCR. It does not create any substantive rights, however, it creates specific procedural mechanisms<sup>114</sup>, namely three procedures that will be dealt with by the Committee: 1) communications procedure allowing for individual

111 UN Treaty Collection. *Optional Protocol to ICESCR* [online]. Available: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtidsg\\_no=IV-3-a&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtidsg_no=IV-3-a&chapter=4&lang=en) [Accessed 22 April 2011]

112 The rights to water and sanitation. (2010). *Complaint mechanisms* [online]. Available: <http://www.righttowater.info/?s=south+africa> [accessed 22 April 2011]

113 The rights to water and sanitation. *ibid.*

114 ESCR-Net. *Section 2: Improving Supervision of the ICESCR: an Optional Protocol* [online]. Available: [http://www.escr-net.org/resources\\_more/resources\\_more\\_show.htm?doc\\_id=425247](http://www.escr-net.org/resources_more/resources_more_show.htm?doc_id=425247) [accessed 22 April 2011]

complaints; 2) inquiry procedure; and 3) Inter-State complaint mechanism<sup>115</sup>. The Optional Protocol was opened for signature in 2009. At the same time, it is worth mentioning that in addition to the CESCR, also other committees with competence may consider individual communications relating to the issues concerning economic, social and cultural rights in the light of a given treaty. The Optional Protocol is thought to be ‘a historic moment in the evolution of the protection of human rights and in providing access to remedies to victims of violations of economic, social and cultural rights’<sup>116</sup> (High Commissioner for Human Rights Navi Pillay). Finally, the Committee also issues its interpretations of the provisions of the ICESCR, known as general comments. Certainly, one of them is GC 15 on the right to water.<sup>117</sup>

### 3.2. Special Rapporteur on drinking water and sanitation

Independent Experts or Special Rapporteurs are appointed by the Human Rights Council. They examine and report back on a country situation or a specific human rights topic. The position is honorary and thus the rapporteur is not paid. Special Rapporteurs make part of the Special Procedures of the Human Rights Council.<sup>118</sup> Special procedures are a general name for the mechanisms established by the Human Rights Council that concern either specific country or thematic human rights issues. Currently there are 33 thematic and 8 country mandates.<sup>119</sup> It is the Special Rapporteur on the human right to safe drinking water and sanitation that deals with water issues. The mandate was established in 2008 by Human Rights Council resolution 7/22. Currently the post is held by Ms Catarina de Albuquerque (Portugal). Until very recently (i.e. till March 2011) the mandate name was Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, but then it was changed to Special Rapporteur on drinking water and sanitation.<sup>120</sup>

A starting point for the work of the Special Rapporteur was the 2007 report prepared by the 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. Issues listed in the report included: 1) the normative content of human rights obligations in relation to sanitation; 2) human rights obligations related to the elaboration of national strategy on water and sanitation; 3) regulation of private water and sanitation sector; 4) criteria of protection of right to safe drinking water and sanitation in case of disconnections; 5) specific obligations of local authorities. The Special Rapporteur in his work bases mainly on GC 15 and Sub-Commission’s Guidelines for the Realisation of the Right to Drinking Water and Sanitation adopted by the UN Sub-Commission for the Promotion and Protection of Human Rights in August 2006<sup>121</sup>. What is more, the Special Rapporteur is also responsible for 1) the identification and promotion of best practices related to the access to safe drinking water and sanitation; 2) explaining the content of the obligations relating to the access to safe drinking water and sanitation; 3) making recommendations that could help to realise the Millennium Development Goals<sup>122</sup>. During its mandate the Special Rapporteur has made several visits to different countries evaluating the compliance with obligations arising from the right to water (e.g. Costa Rica, Egypt, Slovenia, Japan, USA) and issued several annual and other reports (for instance, one of the 2010 reports was titled *the MDGs and the right to water and sanitation*)<sup>123</sup>.

115 ESCR-Net. *Section 3: What is included under the Optional Protocol?* [online]. Available: [http://www.escr-net.org/resources\\_more/resources\\_more\\_show.htm?doc\\_id=962386&parent\\_id=431553](http://www.escr-net.org/resources_more/resources_more_show.htm?doc_id=962386&parent_id=431553) [accessed 26 April 2011]

116 UN News Centre. *UN urges States to adhere to new instrument to protect human rights* [online]. Available: <http://www.un.org/apps/news/story.asp?NewsID=32207&Cr=cultural+rights&Cr1=> [accessed 26 April 2011]

117 UN OHCHR. *Committee on Economic, Social and Cultural Rights* [online]. Available: <http://www2.ohchr.org/english/bodies/cescr/> [accessed 26 April 2011] OHCHR. *Open-ended working group on an Optional Protocol to the ICESCR* [online]. Available: <http://www2.ohchr.org/english/issues/escr/intro.htm> [accessed 26 April 2011]

118 UN OHCHR. *Special Rapporteur on the human right to safe drinking water and sanitation* [online]. Available: <http://www2.ohchr.org/english/issues/water/iexpert/> [accessed 26 April 2011]

119 UN OHCHR. *Special Procedures of the Human Rights Council* [online]. Available: <http://www2.ohchr.org/english/bodies/chr/special/index.htm> [accessed 26 April 2011]

120 UN OHCHR. (2011). *Mandate extended* [online]. Available: <http://www2.ohchr.org/english/issues/water/iexpert/mandate.htm> [accessed 28 April 2011]

121 UN OHCHR. *Overview of the mandate* [online]. Available: <http://www2.ohchr.org/english/issues/water/iexpert/overview.htm> [accessed 28 April 2011]

122 Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation. *The human right to water and sanitation FAQ* [online]. Available: <http://www2.ohchr.org/english/issues/water/iexpert/docs/watersant.pdf> [accessed 28 April 2011]

123 UN OHCHR. *Annual reports* [online]. Available: <http://www2.ohchr.org/english/issues/water/iexpert/annual.htm> [accessed 28 April 2011]

### 3.3. Other mechanisms

In my opinion, another mechanism that ought to be mentioned is the Universal Periodic Review, which is still a relatively new institution. The UN Secretary General said that *'it has great potential to promote and protect human rights in the darkest corners of the world'*.<sup>124</sup> The UPR was created in 2006 by the UN General Assembly resolution 60/251 (this resolution also established the Human Rights Council). Putting it simply, it is a mechanism of review of the human rights records of all the UN Member States that is to be run every four years. In this complex process conducted under the control of the Human Rights Council, every State must declare what is the state of the realisation of human rights in their country. Although to many people the UPR may seem to be another bureaucracy machine, I find the following UN explanation for this process quite justified: the UPR *'reminds States of their responsibility to fully respect and implement all human rights and fundamental freedoms. The ultimate aim of this new mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur'*.<sup>125</sup> With certainty, the UPR mechanism is, next to the Advisory Committee and the already mentioned Complaints Procedure mechanism, one of the most important tools of the Human Rights Council<sup>126</sup> and, in my opinion, has every chance to succeed also in the field of the implementation of the right to water.

## 4. Analysis of States' policies and practices

It is impossible to discuss all the aspects of the right to water implementation process as the solutions will often vary from one country to another. Therefore, I have decided to present a short overview of different water policies in four different countries. It will allow to see what difficulties those countries are facing and what measures have been applied to overcome them.

### 4.1. Belgium, South Africa, the Philippines

*Belgium.* Belgium has one of the best-developed water policies in Europe. Being more precise, one should talk about three different policies as the adopted solutions are different in the Flemish Region, in the Walloon region and in the Brussels-capital Region. In the Flemish region residents pay a basic connection fee for a minimum amount of water supplied for free to every person. This amount equals 15 m<sup>3</sup> of free water per person per year. The price of excess water depends on the amount used. However, the more water one uses, the higher rates one pays which is a well-thought water saving policy. The Walloon region, on the other hand, recognises the right to access to water in order to satisfy nutrition, food, domestic and health needs. The region adopted a progressive pricing mechanism that consists of four blocks of consumption which determines the water tariff applied. A specific amount of water is available to each household per year at low price (30 m<sup>3</sup> - a minimum block). Interestingly, this water is partially subsidised by large water consumers. At the same time, the Walloon Code (book II of the Environmental Code of 2004) established the so-called Social Fund for Water funded by taxes which aims at helping poorer people to pay their water bills. The Walloon region has also been planning to introduce a special tax that will help developing countries in their work on water projects. Finally, the Brussels-capital region recognises the right to drinking water for household consumption and has a progressive pricing plan which consists of three blocks of consumption followed by a fourth open block at the highest price (over 60 m<sup>3</sup> per person per year). The first 1 m<sup>3</sup> costs almost four times less than 1 m<sup>3</sup> from the highest block. Additionally, poor people can get a refund of the sanitation tax and have access to the Social Fund for Water financed by a tax on water consumption.<sup>127</sup> Chiara Armeni drew the

<sup>124</sup> UN OHCHR. (2011). *Universal Periodic Review* [online]. Available: <http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx> [accessed 29 April 2011]

<sup>125</sup> UN OHCHR. (2011). *Universal Periodic Review* [online]. Available: <http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx> [accessed 29 April 2011] UN OHCHR. (2011). *Basic facts about the UPR* [online]. Available: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx> [accessed 29 April 2011]

<sup>126</sup> UN OHCHR. (2011). *The Human Rights Council* [online]. Available: <http://www2.ohchr.org/english/bodies/hrcouncil/> [accessed 29 April 2011]

<sup>127</sup> UNESCO. (2009). *Outcome of the International Experts' Meeting on the Right to Water*. p. 8; Armeni, C. *The Right to Water in Belgium*. IELRC Briefing Paper 2008-02

following conclusions from the analysis of water legislation, water policies and several courts decisions in Belgium: *'every Belgian region has included the right to drinking water and sanitation within its own legislative framework, and even the jurisprudence of the Court of Arbitration has ruled on its realisation under the 'constitutional shelter'. Nevertheless, this right is not yet recognised as a compelling entitlement at a national level. Belgium is however in process to recognise the right to water and sanitation as a fundamental constitutional right.'*<sup>128</sup> What is more, Armeni also pointed out that in Belgium *'there is an evident social concern in guaranteeing the realisation of this right at the regional level [...]* [and that] *the recent bill towards including the right to water as an independent right in the Constitution is contributing to the coherence of this system. This provision within the constitutional text would give the right to water an official recognition and ensure full implementation.*<sup>129</sup>

*South Africa.* Another interesting country in terms of water policy is South Africa. South Africa is one of the few African countries that have a well-developed water policy. First of all, South Africa has recognised the right to water as a fundamental human right in its Constitution (1996, s. 27). Also the Water Services Act says that *'everyone has a right to basic water supply and basic sanitation'* (Chapter 1, s. 3). However, the legal water policy framework for South Africa constitutes the National Water Act (1998). It abolishes, *inter alia*, private ownership of water. What is more, South Africa has the Free Basic Water policy adopted in 2001 that is an elaboration of the above mentioned National Water Act (1998). The Free Water Policy guarantees each household 6000 litres of free water per month. To water used above this limit varied rates apply, depending on the amount used and the user's socio-economic status. In general, the more water is used, the higher rates one needs to pay, with the highest ones applying to heavy water users, e.g. companies, large landowners, etc. Additionally, in 2003 Strategic Framework for Water Services was adopted aimed at reducing the backlog on basic service provision and introducing the concept of 'water ladder' (progression from the access to basic water to the higher levels). Year 2004, in turn, brought National Water Resources Strategy which provides framework for dealing with water resources in South Africa.<sup>130</sup>

*Philippines.* The Philippines, located in Southeast Asia and surrounded by the Pacific Ocean, certainly require a well-thought water policy, too. A basic document is the Water Code 1976. It determines the rights and obligations of water users. Water from under the ground and flowing in the rivers is owned by the government. People can use water for domestic purposes (drinking, cooking, bathing, other domestic and household uses) as everyone is born with the fundamental right to water. Some individuals, however, such as municipalities, towns or farmer organisations need to have a water permit through which they acquire the right to water. The permit can be granted by the Philippines National Water Resources Board. However, the permit is not needed by people who want to collect water from lakes and rivers using hand-carried receptacles, who need it for washing, bathing, watering or dipping of domestic or farm animals, as well as for boating and water transportation. What is more, in 1997 the Indigenous Peoples Rights Act was adopted which recognises, promotes and protects the right to water of indigenous peoples.<sup>131</sup>

## 4.2. Poland

Finally, I would like to look at Poland in order to check how the right to water is realised and implemented. I think that at first one needs to look for an answer in the Constitution of the Republic of Poland of 2nd April 1997. In my opinion, the right to water arises undeniably (although implicitly) from Article 30, Article 38 and Article 68 (1) of the Constitution. Article 30 concerns human dignity and says that *'the inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citi-*

<sup>128</sup> Armeni, C. The Right to Water in Belgium. IELRC Briefing Paper 2008-02, p. 6

<sup>129</sup> Armeni, C. *ibid.* p. 6

<sup>130</sup> UNESCO. (2009). *Outcome of the International Experts' Meeting on the Right to Water*. p. 7; Right to Water. *South Africa* [online]. Available: [http://www.righttowater.info/code/Legislation\\_5.asp](http://www.righttowater.info/code/Legislation_5.asp) [accessed 15th July 2010]

<sup>131</sup> UNESCO. *ibid.* p. 8; Asian Development Bank. (2007) *Country Water Action: Philippines Securing Water Rights for All* [online]. Available: <http://www.adb.org/Water/Actions/phi/Securing-Water-Rights.asp> [accessed 22 April 2011]



*zens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities.'* Article 38, on the other hand, indicates that *'the Republic of Poland shall ensure the legal protection of the life of every human being.'* Finally, Article 68 (1) concerns the right to health and says that *'everyone shall have the right to have his health protected.'* In the choice of the above-mentioned articles I have followed the thought of the CESCR that interpreted the right to water from the right to health and the right to the highest attainable standard of living of the ICESCR. Subsequently, Article 2 saying that *'the Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice'* ought to be considered, too. Apart from the Constitution that is the most important act in the Polish legal system, there are several other crucial national documents that should be remembered about, namely the Collective Water Supply and Collective Sewage Act of 7 June 2001 (Ustawa z dnia 7 czerwca 2001 r. o zbiorowym zaopatrzeniu w wodę i zbiorowym odprowadzeniu ścieków), the Water Law Act of 18 July 2001 (Ustawa z dnia 18 lipca 2001 r. Prawo wodne), the Environment Protection Act of 27 April 2001 (Ustawa z dnia 27 kwietnia 2001 r. Prawo ochrony środowiska), as well as numerous detailed ordinances relating to those acts.<sup>132</sup> The Water Law Act (WLA) regulates, *inter alia*, water management in accordance with the principle of sustainable development, and in particular formation and protection of water resources, water use and water resources management [WLA, Art. 1(1)]. It also points out that water management is to be run in accordance with the principle of rational and total treatment of surface- and groundwaters taking into consideration their quantity and quality [WLA, Art. 1(2)]. Finally, water management respects the principle of common interests and is designed to satisfy the needs of people, industry, as well as to protect water and environment related to those resources and in particular to ensure appropriate quantity and quality of water for the whole population [Art. 2(1)]. What is more, Poland has recently drafted a *State's Water Policy Project till 2030* (Projekt Polityki Wodnej Państwa do 2030 r. - z uwzględnieniem etapu 2016)<sup>133</sup>. The report discusses Poland's current and future water needs. According to it, the overriding purpose of the Project is to ensure that people have a universal access to clean and safe drinking water, as well as to limit the dangers caused by floods and droughts. It is to happen in connection with a good maintenance of waters and their ecosystems at the same time fulfilling the justified needs of water industry, improving the territorial cohesion and heading towards the equalisation of the regional disparities.<sup>134</sup> Furthermore, water quality is also verified in such reports as the *State Environmental Monitoring Programme for the years 2010-2012* (Program Państwowego Monitoringu Środowiska na lata 2010-2012)<sup>135</sup>. In the end, I have analysed the prices of water in Poland trying to verify country's policy on that matter. Firstly, it must be highlighted that collective water supply and collective sanitation is the municipality's responsibility<sup>136</sup>. In practice, these are usually water services and sanitation companies that supply water and deal with sewage having a permission obtained beforehand from the local authorities as specified in the Collective Water Supply and Collective Sewage Act of 7 June 2001 [Article 16]<sup>137</sup>. Thus, the adopted solutions and consequently the prices will vary depending on the municipality. I have checked the prices of water and sewage disposal in main Polish cities (Poznań, Warszawa, Gdańsk, Kraków, Wrocław, Lublin, Łódź, Katowice, Szczecin, Bydgoszcz). The fees are different with the cheapest household water fees in Kraków (2,93 PLN net price/m<sup>3</sup>) and the most expensive in Bydgoszcz (5,05 PLN net price/m<sup>3</sup>). On the other hand, the cheapest household sewage fees were in Łódź (2,79 PLN net price/m<sup>3</sup>) and the most expensive ones had Katowice (5,66 PLN net price/m<sup>3</sup>). From among the analysed cities only Wrocław and Łódź had different water prices for the households (and other similar recipients) and the industry, while Wrocław, Łódź and Poznań had different sewage fees for the households (and other similar recipients) and for the industry. In such cases the industry-related water and sewage fees were slightly higher (see Table A in appendix).

132 Izba Gospodarcza Wodociągi Polskie. (2010). *Branżowe akty prawne* [online]. Available: [http://www.igwp.org.pl/index.php?option=com\\_content&view=category&layout=blog&id=17&Itemid=234](http://www.igwp.org.pl/index.php?option=com_content&view=category&layout=blog&id=17&Itemid=234) [accessed 26 April 2011]

133 Krajowy Zarząd Gospodarki Wodnej. (2010). *Projekt Polityki Wodnej Państwa do 2030 r. (z uwzględnieniem etapu 2016)*

134 Krajowy Zarząd Gospodarki Wodnej. (2010). *Projekt Polityki Wodnej Państwa do 2030 r. (z uwzględnieniem etapu 2016)*. p. 6

135 Główny Inspektor Ochrony Środowiska. (2009). *Program Państwowego Monitoringu Środowiska na lata 2010-2012*.

136 Collective Water Supply and Collective Sewage Act of 7 June 2001 (Ustawa z dnia 7 czerwca 2001 r. o zbiorowym zaopatrzeniu w wodę i zbiorowym odprowadzeniu ścieków), Article 3(i)

137 Rp.pl. (2008). *Kto może dostarczać wodę w gminie* [online]. Available: <http://www.rp.pl/artykul/223988.html> [accessed 27 April 2011]

## 5. Issues related to the current right to water implementation policies

After this short presentation of theoretical and practical approach towards the implementation of the right to water, I find it necessary to consider some potential difficulties.

First of all, I would like to notice how many elements of implementation issues overlap with the previously discussed matters and especially with the obligations relating to the right to water. Still, I have decided to separate those topics as, in my view, it allows to look at the right to water from a broader perspective.

Secondly, I find it important to highlight that there is one primary disadvantage or difficulty concerning the implementation of the right to water, namely that the primary ‘rules’ of implementation stated in GC 15 (establishing legal measures, identification of indicators and benchmarks, remedies and accountability) are very general. On one hand, it is quite understandable, as the UN is looking for one standard way of the implementation of the right to water that could be applied by all the countries and other stakeholders. However, at the same time it causes numerous dangers, mainly because the general statements may be understood in different countries or regions of the world in different ways depending on political, social or cultural factors. Certainly, the UN is not to be blamed as it is hard to think about any other reasonable solution, but to me the ‘rules’ of implementation’ only show the direction into which the states should go when realising the right to water. They are necessary and useful, but their practical application may cause serious doubts. E. Anderson and M. Foresti put it in the following way: *‘it is a relatively simple act to ratify a human rights Covenant, and most countries have done so. However, when it comes to implementation, including the compliance of governments with their obligations, the picture is less clear’*.<sup>138</sup> It concerns the analysed four states’ water policies, too. For example, in the Philippines many people who would require a water permit do not realise that they actually need one. In Poland, in turn, attention paid to the right to water seems to be a relatively new idea so the policy has not been very advanced yet, e.g. water and sewage fees of the households and industry are almost the same.

Finally, it is worth remembering that there are countries that are not parties to certain international treaties or covenants and thus are not bound by any international obligations. For instance, Malaysia is not a party to ICESCR and people who contaminate water in extreme situations may be even sentenced to death<sup>139</sup>.

My doubts are also provoked by a small analysis of the Committee’s concluding observations dating back to 2004. Many countries do not comply with the obligations arising from the right to water and often for different reasons are not able to implement them. Most of those countries are developing countries with little or no money to improve water facilities. This must be the case e.g. with Congo where about 83% of the population do not have access to safe drinking water. Certainly they need some encouragement and this seems to be the role of the implementation rules. Developed countries, on the other hand, in general do not have problems with preservation of the right to water as hardly any reservations have been raised in the concluding observations. One of the interesting exceptions was Australia advised to improve access to water of indigenous people. Poland, in turn, in its last report from November 2009 did not present any information on the right to water and therefore was asked by the Committee to do so in the next reporting session. A short analysis of the concluding observations from the Committee’s last sessions presented through the prism of the right to water has been included in Table B in the appendix.

Finally, I evaluate very highly the primary protection mechanisms, i.e. mainly the work done by the CESCR and the Special Rapporteur on drinking water and sanitation. However, in my opinion, states’ priority should be to ensure that similar mechanisms exist at the national level, too.

<sup>138</sup> Anderson, E., M. Foresti. (2008). *Achieving economic and social rights: The challenge of assessing compliance*. No. 46. ODI. P. 1

<sup>139</sup> Inter Press Service. (2006). *Death to Malaysian Water Contaminators?* [online]. Available: <http://ipsnews.net/news.asp?idnews=33160> [accessed 22 April 2011]

## CHAPTER 6

# VIOLATIONS OF THE RIGHT TO WATER

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### 1. Different kinds of violations of the right to water

Some people may ask whether it is possible to discuss the violations of the right to water in the situation when from the legal point of view it is not clear whether this right has a legally binding character and should be rather described as a right that is in the course of being born. Also in here one can notice the clash between what could be called a legal reality and what seems to be a moral obligations or even moral common sense.

Still, regardless of the approach taken in this matter, the violations of the right to water happen every day all around the world and are something affirmed by the international community. Certainly, they are mainly present in the countries that for different reasons suffer from difficult access to water resources. Those violations can be committed both by States parties and by other stakeholders including companies and corporations.

In my view, there are several important documents that one should remember about when trying to approach the problem of the violations of the right to water. First of all, this is the GC 15, then the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997), as well as the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986). For example, the Limburg Principles highlight that a failure by a State party to comply with the obligations contained in the ICESCR is, under international law, a violation of the Covenant [para 70]. The Principles also remind that States parties have a margin of discretion in choosing the means of achieving their aims, and admit that factors beyond the countries' reasonable control may affect the implementation of some rights [para 71]. The Maastricht Guidelines, on the other hand, are an elaboration of the issues raised in the Limburg Principles and focus specifically on violations. They discuss their different aspects, *inter alia*, the meaning of violations, the responsibility for violations, victims of violations, as well as remedies and other responses to violations [para 6-32].

Influence of the above-mentioned documents is visible in GC 15 in which a separate part is devoted to the violations of the right to water. According to it, one of the best ways to see whether violations occur, is to check whether the States parties and other stakeholder act in accordance with the content of the right to water (i.e. the requirement of its availability, quality and accessibility) and their obligations (i.e. core obligations, general obligations, international obligations) [GC 15 para. 39]. Also the FIAN report titled *Identifying and Addressing Violations of the Human Right to Water* (2008) says that in order to see whether a violation of the right to water occurred, it is important to check whether a state complies with the content of the right to water (availability, accessibility, quality), other human rights principles (non-discrimination, participation, access to information, accountability and rule of law) and its obligations to respect, protect and fulfil the right to water<sup>140</sup>.

Consequently, in order to show their compliance with general and specific obligations, States parties need to determine if they have taken all the necessary and feasible steps towards the fulfilment of the right to water. The opposite situation will be regarded as a violation of the right to water under inter-

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<sup>140</sup> Gorsboth, M., E. Wolf. (2008). *Identifying and Addressing Violations of the Human Right to Water. Applying the Human Rights Approach*. 2 ed. Stuttgart: Brot für die Welt. pp. 8-11

national law as states are obliged to act in good faith. Finally, one has to remember that there are no exceptions in case of core obligations that are non-derogable [GC 15 para. 40].

GC 15 (para 41) also highlights the difference between country's inability and unwillingness to comply with the obligations relating to the right to water. It has been confirmed in Article 2(1), Article 11(1) and Article 12 of the ICESCR (obligation to take the necessary steps to the maximum of available resources, right to an adequate standard of living and the right to health). A State party violates the right to water if it does not want to use all its available resources in order to secure the access to water. However, if resources are so limited that it is impossible for a country to comply with those obligations, then a violation does not occur, however, a state must justify that every possible effort has been made in order to comply with the right to water. This regulation is very important as it shows that for every country the realisation of the right to water, although happening at different levels (e.g. in case of developing and developed countries) will be just as difficult since it requires every state to act to the maximum of available resources and with the maximum of effort.

Generally, violations of the right to water can be committed through acts of commission and acts of omission. Violations through commission are direct actions of the states and other stakeholders that are usually insufficiently regulated, e.g. in the national legislation. They may include, for instance, adoption of retrogressive measures that are incompatible with core obligations or adoption of legislation that does not comply with the right to water. Violations through the acts of omission, on the other hand, may include, for example, a failure to take all the necessary steps to realise the right to water or the failure to have a national policy or plan of action concerning water [GC 15 para. 42-42]. Another way to group the violations may be, for instance, by the types of obligations (e.g. violation of obligation to respect, protect and fulfil; violation of core obligations), GC 15 lists examples of the violations of the general obligations related to the right to water [GC 15 para. 44]. It is also possible to differentiate between the violations depending on the entities that commit them, e.g. states and other stakeholders.

## 2. Examples of violations

Below, I have decided to illustrate the nature of the violations of the right to water by the examples of three different cases. I do not want my approach to be over-critical or biased, on the contrary, my aim is to show the complex nature of water violations that often depend on a country, circumstances and participants. It is easy to call some actions a 'violation' or to present our expectations concerning access to water, but, unfortunately, strictly from the legal point of view it seems to be less clear as the real-life situations often go far beyond everything that has already been agreed on this matter forcing us to make difficult choices. In my opinion, the three examples of the situations when the right to water has been endangered only opens the door to understanding how difficult sometimes a problem is, even though it is not a justification for water violations. The first case concerns the judgement of the South African Constitutional Court and gives us the chance to observe how the courts' reasoning throughout the instances changes. The next one is a more typical and less controversial case of access to water in Argentina where one of the local NGOs played a major role. The last case concerns the violations performed by other than states duty-bearers.

### South Africa

South Africa is one of those countries where the right to water has always been treated as something of great importance. It has been due to many reasons including geographical, historical and social ones. This approach has been reflected, *inter alia*, in the South African Constitution (1996, s. 27) which says that '*everyone has the right to have access to (...) sufficient food and water (...)*' and that '*the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.*' Apart from the Constitution, there is also a number of other

acts that concern water issues. In turn, one of the last landmark cases in terms of the right to water was *Lindiwe Mazibuko case* (2009)<sup>141</sup> and the ruling issued by the Constitutional Court of South Africa. The main issues of the case concerned, *inter alia*, an alleged violation of the right to have access to sufficient water under s. 27 of the South African Constitution, scope of the right of access to sufficient water and legality of the pre-paid water meters<sup>142</sup>.

*Short summary:* Five residents of Phiri in Soweto brought a case against the City of Johannesburg, Johannesburg Water (a company owned by the City) and the national Minister for Water Affairs and Forestry, presenting two issues: 1) whether the City's policy in relation to the supply of free basic water (the decision to supply 6 kilolitres of free water per month to every account holder in the city, so-called the Free Basic Water policy) was in conflict with the Water Services Act and the right to have access to sufficient water expressed in the Constitution; 2) whether installation of the pre-paid water meters in Phiri, which implied charging consumers for use of water exceeding the free basic water allowance, was lawful.<sup>143</sup>

At first, the South Gauteng High Court found that the installation of the pre-paid water meters in Phiri was unfair and unlawful. At the same time, it held that the City's Free Basic Water policy was unreasonable and unlawful (it ruled that the City should provide 50 litres of free basic water daily to the applicants and others). Subsequently, on appeal, the Supreme Court of Appeal presented a slightly different approach. It held that 42 litres of water per day would be sufficient in the light of the Constitution. It also decided that installation of the pre-paid water meters was unlawful on the basis of the fact that the City's by-laws did not regulate this matter and that the cut-off in water supply at the moment when the free basic water limit has been exhausted was a violation, too.<sup>144</sup>

Finally, the Constitutional Court, overturned the Appeals Court decision and held that the right of access to sufficient water did not require the state to provide on demand every person with sufficient water. It did, however, require the state to take reasonable legislative and other measures in order to gradually and progressively realise the right of access to sufficient water within available resources. Additionally, the Court concluded, in contradiction to the High Court and the Supreme Court of Appeal, that it is not the court's role to give a quantified content determining what constitutes sufficient water as such matters should be decided by the government. Thus, the City's Free Basic Water policy did not contravene s. 27 of the Constitution and the national legislation. Furthermore, as regards the pre-paid meters, the Court held (again in opposition to the High Court and the Supreme Court of Appeal) that the national legislation and the City's by-laws allowed for the pre-paid water meters. According to the Court, a break in water supply caused by the pre-paid meter stopping should be understood as a temporary suspension and not a discontinuation in water supply. Thus, the installation of the meters was not unlawful. Concluding, the Court upheld the appeal by the City, Johannesburg Water and the Minister while the orders of the High Court and Supreme Court of Appeal were set aside.<sup>145</sup>

*Lindiwe Mazibuko case* was the first case when the South African Constitutional Court considered the right to water arising from the Constitution. It has decided that there was no violation of the right to water in the matter raised by the applicants. However, it must be highlighted that the decision has met with a lot of criticism, especially by socio- and economic rights activists, academics, as well organisations dealing with the right to water. One of the attorneys in this case, Jackie Dugard, said that '*the Court has rejected or ignored pro-poor jurisprudential options and arguments, which might have directly promoted transformation in South Africa and most certainly would have improved the living conditions of the claimants*'.<sup>146</sup>

141 Lindiwe Mazibuko & Others v City of Johannesburg & Others. Case CCT 39/09, [2009] ZACC 28

142 ESCR-Net. *Caselaw. Lindiwe Mazibuko Case* [online]. Available: [http://www.escr-net.org/caselaw/caselaw\\_show.htm?doc\\_id=1110326](http://www.escr-net.org/caselaw/caselaw_show.htm?doc_id=1110326) [accessed 15 April 2011]

143 ESCR-Net. *ibid.*

144 ESCR-Net. *Caselaw. Lindiwe Mazibuko Case* [online]. Available: [http://www.escr-net.org/caselaw/caselaw\\_show.htm?doc\\_id=1110326](http://www.escr-net.org/caselaw/caselaw_show.htm?doc_id=1110326) [accessed 15 April 2011]

145 ESCR-Net. *ibid.* Constitutional Court of South Africa. *Media summary* for the Lindiwe Mazibuko Case. [e-Library]. Available: <http://www.constitutionalcourt.org.za/site/home.htm> [accessed 10 April 2011]

146 ESCR-Net. *op. cit.*

## Argentina

Another example is the case of the non-governmental organisation CEDHA (Centre for Human Rights and Environment) that won lawsuit against Municipality and State Province in Argentina. In October 2004 it was ruled in the first instance (by the Civil and Commercial Court of the 8<sup>th</sup> Nomination) that the Provincial State was responsible for violations of the rights to a healthy environment, to an adequate standard of living, to health, and of the human right to safe drinking water. The court's order based both on the ICESCR and GC 15, and thus explicitly recognised the right to water.<sup>147</sup>

*Short summary:* In Córdoba, Argentina, a number of remote and poor neighbourhoods had been suffering for years from the lack of access to the public water distribution network and from pollution of their local water sources. One of the reasons of this pollution was the public sewage treatment facility which was not properly maintained and thus caused water contamination. As the Constitution of Argentina guarantees the right to a healthy environment and incorporates several international human rights instruments, including the ICESCR, CEDHA together with four affected communities decided to file an action against the Municipality and the Province State of Córdoba. As a result, the Municipality was ordered by the court to maintain the sewage treatment facility properly and the Province State was to provide 200 litres of drinking water daily to the claimants until their access to the public water service was effected. In December 2004, the Provincial State started works allowing to provide safe water, and the Municipality presented a plan for the reparation of the sewage system. Additionally, the Municipality Congress passed a law which ensured that all revenue made from sewage and sanitation taxes was to be invested in the sewage system only.<sup>148</sup>

## India

The last case concerns a well-known Coca-Cola company. The Coca-Cola company has large soft bottling facilities in India and needs water for its production. As a result, in several cases it caused shortages of water and affected quantity and quality of water.

*Short summary:* In 1999 the Hindustan Coca-Cola Beverages Private Limited (subsidiary of the Atlanta based Coca-Cola company) established a plant in Plachimada, India. The company was allowed to start production in 2000. As Coca Cola needed about 510,000 litres of water per day, they took it from boreholes and open wells. One litre of the Coca-Cola drink together with a large amount of waste water was produced for every 3.75 litre of water used in the plant. This situation caused numerous protests in the area as the local communities suffered from water shortages and bad water quality. In 2003, women from Plachimada protested that their wells had dried up because of the overexploitation of the groundwater resources by the Coca-cola plant and, as a result, in 2003 the Coca-Cola plant lost its licence to operate in this area. However, in December 2003, this decision was challenged in the High Court of Kerala State (Perumatty Grama Panchayat vs State of Kerala, 16 December 2003, W.P.(C) No. 34292 of 2003). Two issues were considered: the question of the overexploitation of groundwater, and the justification for the Village Council's decision to revoke the licence. The Court decided that the State had a legal duty to protect natural resources that were to serve everyone and thus cannot be privately-owned. The judge, Justice K Balakrishnan Nair, pointed out that the government had a duty to act to "*protect against excessive groundwater exploitation and the inaction of the State in this regard was tantamount to infringement of the right to life of the people guaranteed under Article 21 of the Constitution of India.*" Consequently, the Coca-Cola plant had to stop drawing groundwater as the amount extracted by them was illegal, however, the Village Council was obliged to renew the licence and do not interfere as long as the water drawn was not the prohibited groundwater. However, both Panchayat and the company appealed the court's decision and in 2005 the division bench of the

<sup>147</sup> Gorsboth, M., E. Wolf. (2008). *Identifying and Addressing Violations of the Human Right to Water. Applying the Human Rights Approach*. 2 ed. Stuttgart: Brot für die Welt.

<sup>148</sup> Gorsboth, M., E. Wolf. *ibid.* p. 16; COHRE. *Housing and ESC Rights Law Quarterly*. The right to safe drinking water as a human right [online]. Vol. 2 – No. 1

Kerala High Court reversed the decision of the single bench. The High Court permitted the company to extract 500,000 litres from the common ground water per day in the year 2005-2006 saying that the groundwater was a private source and the landowner had the rights over it and did not need permission from the local authorities. At the same time, it affirmed that the Village Council decision of cancelling Coca Cola's licence was not justified as no full scientific assessment had been conducted. In November 2005, the Panchayat appealed the High Court's decision in the Supreme Court.<sup>149</sup> An interesting analysis of the case and its possible future applications, also in relation to the Supreme Court's decision, has been presented in the IELRC report on the *Legal Implications of Plachimada* (2007)<sup>150</sup>. Additionally, I find it important to mention that in February 2011 India passed a rather controversial law allowing residents to seek compensation from the Coca-Cola company for alleged environmental damage from the plant<sup>151</sup>.

### 3. Meaning of the discussed violations

Three situations presented above are only their short overviews, the reality is usually much more complex. However, for the purpose of this work it was not my aim to discuss them in detail, but to show what doubts and difficulties one can face when solving the problems of violations of the right to water for personal and domestic uses. For instance, the South African case proves in how many different ways the violation can be interpreted depending on the court's instance. It also indicates that even a decision made by the Constitutional Court may not end, but only begin the discussion on the meaning of the scope of the right to sufficient water. In the Argentinean case, on the other hand, one observes how important a role may play NGOs uniting people to realise their basic rights. It is also promising to see that the court did not hesitate to accept the right to water as interpreted in GC 15. Finally, the Coca-Cola case is very interesting, too. First of all, because it concerns one of the most famous international companies. Secondly, because it motivated people all around the world through numerous protests to act against the alleged violations. Thirdly, because although it seems that the violation did occur, it is also worth listening to the arguments of the accused party (i.e. Coca-Cola) that said, *inter alia*, that '*Coca-Cola has a shared interest with the communities where we operate in healthy watersheds — because they sustain life and our business. And the last thing we would ever do is spend millions of dollars to build a plant that would run itself dry.*'<sup>152</sup> At the same time, the 'Coca-Cola case' points out the very important problem nowadays i.e. the issue of corporate obligations related to the right to water that recently has become a subject of many discussions. An interesting overview has been presented, for instance, in one of the EUI Working Papers on the *Corporate Obligations under the Human Right to Water* (MWP 2009/2010). They describe the influence the corporations may have on human rights, argue that they bear a responsibility in the fulfilment of the right to water stemming both from international and national law, as well as confirm that this duty is separate and independent from the states responsibility. In short, the report proves that the corporations have an obligation to respect, protect and fulfil the right to water that is derived primarily from the national legal orders.<sup>153</sup>

Another important question that should be posed is what one can do with the violations of the right to water, is it possible to prevent them? The FIAN report *Identifying and Addressing Violations of the*

149 The Rights to Water and Sanitation. *Case against Coca-Cola Kerala State: India* [online]. Available: <http://www.righttowater.info/ways-to-influence/legal-approaches/case-against-coca-cola-kerala-state-india/> [accessed 15 April 2011]  
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*Human Right to Water*<sup>154</sup> shows that at the local and national level it is important to raise public awareness of the issue and to inform people about their rights. A useful tool may be, for example, media. It is also important to talk directly to the responsible authorities and to inform them that their violations have been noticed. Additionally, in many countries there are human rights commissions or ombudsmen that are responsible for tackling human rights issues. Moreover, one can seek help within different organisations including NGOs. Secondly, at the regional and international level there are usually human rights commissions (e.g. Inter-American Commission on Human Rights, the African Commission on Human and Peoples' Rights) or other bodies. Moreover, within the structure of the UN an extremely important role plays the CESCR, as well as the Special Rapporteur on water and sanitation, and other special rapporteurs or independent experts that deal with water related rights. Additionally, it is worth mentioning the Universal Periodic Review<sup>155</sup>. Finally, one cannot forget about the importance of international NGOs and other international organisations, and it is worth highlighting the help coming from different churches and other religious institutions all around the world.

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<sup>154</sup> Gorsboth, M., E. Wolf. (2008). *Identifying and Addressing Violations of the Human Right to Water. Applying the Human Rights Approach*. 2 ed. Stuttgart: Brot für die Welt. pp. 17-18

<sup>155</sup> OHCHR. (2011). *Universal Periodic Review* [online]. Available: <http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx> [accessed 17 April 2011]



## Final conclusions

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The presented analysis of the right to water inspires me to separate four possible approaches to the right to water. First of all, some people are of the opinion that the right to water does not exist (although nowadays it is a rarely encountered approach). Secondly, there are groups that accept the existence of the right to water, but for different reasons sometimes do not want to admit it openly (just as it has been seen when the July 2010 resolution was voted). Additionally, there are those who think that the right to water exists and is a legally binding right (especially thanks to the last UN resolutions 2010). Finally, there is an approach that to some extent connects all the aforementioned options, according to which the right to water is the right ‘*in statu nascendi*’, present very strongly in the consciousness of the international community and noticed in numerous pieces of legislation, but still a little bit too weak and gaining too little support and attention to make a right on its own. In my opinion, this paper has reflected and justified *raison d’être* of the last approach. The right to water is the right that is in the course of being born and thus the whole international community is in the process of indentifying its current and future standard. It is a process that requires lots of time and effort, however, although difficult, it already seems to be quite fruitful.

From the broader, more global point of view, it is difficult to talk about one right to water. On the opposite, I have an impression that while it is possible to separate one general standard, the right to water itself has many different faces. It is conditioned by economic, cultural and social factors, and will always differ all around the world. Every region, sometimes even every state presents a different policy on that matter. It was seen especially when discussing the content of the right to water, its implementation and violations.

It has been shown that the contemporary standard of the right to water has been drawn to large extent from GC 15 and especially its parts on the normative content of the right to water and core obligations. Certainly, numerous other instruments have elaborated this approach. In the first chapter on the legal foundations of the right to water one could see that this right has already been noticed in numerous documents and reports. The greatest problem, however, poses the fact that the existing regulations usually concern some specific situations, are interpreted from implicit provisions, or may be thought to have a non-binding character. Still, the noticeably growing number of resources and initiatives (such as last UN resolutions 2010) proves that we are on our way to form a certain standard of the right to water and that, with high probability, one day it will gain a status of a legally binding right. M. Langeford pointed out, for instance, that GC 15 ‘*has helped lay a base for new and ongoing action that seeks to transform the human right to water into effective discourses, practices and legal framework*’.<sup>156</sup>

Furthermore, if it is about countries’ obligations, their realisation and the rules governing the implementation of the right to water, one can see that special attention has been paid to this problem during last years. It is a very promising observation allowing to hope that the right to water will, finally, stop being an abstract idea and will become a reality adjusted thoughtfully to the local needs. Some doubts may pose a generality of many solutions, however, it can be turned into an advantage, too. It seems to me that the UN’s role and the role of the whole international community is to construct a general standard that could be a landmark point for everyone involved and on which everyone could be building ‘its own’ right to water. A particularly important role in this process play core obligations drawing the uncrossable borders of the right to water.

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<sup>156</sup> Langeford, M. (2006). Ambition that overleaps itself? A response to Stephen Tully’s critique of the general comment on the right to water. *Netherlands Quarterly of Human Rights*, Vol.24/3, p. 459

Certainly, it would be rather naive to hope that all the countries and other entities would welcome such developments in the field of the right to water with great enthusiasm. Therefore, the care for and the development of the protection mechanisms should be a priority. The existing ones have proved very well and, apart from the practical role they play, they serve also as a significant and constant reminder of *inter alia* water issues. It is especially important in terms of the developing countries that need help with reaching certain standards which for the developed states may be easy to comply with. Finally, it is true to admit that the so-called protection mechanisms do not always manage to prevent breaches of the right to water. However, taking into consideration that several years ago such situations were often left unnoticed, it is already a huge step towards the fulfilment of the right to water.

Furthermore, it is worth noticing that not all the countries are bound by the regulations of the international conventions and treaties, such as the ICESCR. This is another challenge for the international community, namely to help the inhabitants of those countries to enjoy the realisation of their right to water. At this point, it is also important to notice the growing role of international organisations and other non-political bodies. Finally, the acceptance of certain standards of the right to water by companies and other businesses may also bring a huge change into the lives of the local communities and into the ways in which the right to water is there perceived.

Thus, realising that today's minimum standard of the right to water can be defined mainly through the GC 15 and some other acts, it is time to think about the next step in determining the standard of the right to water. In my view, it should be finding or creating a legally and internationally binding basis on which all the current standards could rest. This basis would have to be general enough in order to encompass all the already existing standards. Therefore, it seems to me that it is time to 'convince the unconvinced' and show that the transition time we live in, at least in terms of the right to water is a common responsibility of the whole international community, and that we have a chance to set a standard of the right to water not because we feel pressured to do so, but because we want to and need to do it. The existing fundament is a good beginning that, hopefully, in the nearby future will allow to state without a doubt that the right to water is not only a fundamental, but also a legally binding right, and that this fact will be enshrined in the official way and not only felt as a moral obligation. Therefore, the challenge of the today's world is to make people treat water as common interest and common good, and to unite them in reaching its common standards. It is especially important when taking into account numerous dangers related to the lack of the access to water, such as water wars. At the same time, one has to bear in mind that nowadays water is also to some extent a commodity, but a commodity of special value which must be governed by special rules. Establishing a legally binding right to water, e.g. in a form of a new or additional general article, could and should be of interest to everyone. It seems, however, that it requires time and maturity of the whole international community.

In the end, one may ask what about the remaining approaches towards the right to water. There is a group that is perhaps a little bit overoptimistic and sometimes too willing to think that the right to water has already gained a legally binding character. This was the case, for example with last 2010 UN resolutions that caused lots of justified, but perhaps a little bit exaggerated excitement. However, thanks to the enthusiasm of this group, the issue of the right to water has been constantly present all around the world. The most problematic approach is presented by those who for different (but usually economic and political) reasons seem to be afraid to accept the right to water officially. To me, such attitude is not only dangerous, but also unwise as in the light of the recent development in the field, it is impossible to deny the existence of the right to water even if there are doubts regarding its legal status. This problem, however, is faced by many economic, social and cultural rights that only for a relatively short period of time have been noticed and appreciated. Therefore, in my view, it is important to understand that all the economic, social and cultural rights, including the right to water, are a basis and a natural step towards the realisation of other human rights. They could be compared to a fundament on which one can build more complex structures (such as political and

civil rights). It ought to be considered especially by those who perceive themselves as human rights supporters since in many situations a denial of the right to water may equal a denial of other human rights, and especially when the lack of access to water may become very soon a problem of the whole international community. It would be better not to wait until the last moment as Lord Byron in *Don Juan* (canto II, st. 84) wrote:

*'Till taught by pain,  
Men really know not what good water's worth;  
If you had been in Turkey or in Spain,  
Or with a famish'd boat's-crew had your berth,  
Or in the desert heard the camel's bell,  
You'd wish yourself where Truth is—in a well.'*

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## Appendix

**Tables A. Water and sewage price lists in main Polish cities<sup>157</sup>**

**Table A 1**

City →	Poznań	Warszawa	Gdańsk	Kraków	Lublin
<b>Price list (2011)</b> for 1 m <sup>3</sup> of water supplied to households and other similar recipients	3.34 PLN (net price)	3.08 PLN (net price)	3.64 PLN (net price)	2.93 PLN (net price)	2.96 PLN (net price)
<b>Price list (2011)</b> for 1 m <sup>3</sup> of water supplied to the industry	3.34 PLN (net price)	3.08 PLN (net price)	3.64 PLN (net price)	2.93 PLN (net price)	2.96 PLN (net price)
<b>Price list (2001)</b> for 1 m <sup>3</sup> of sewage received from the households and other similar recipients	4.54 PLN (net price)	4.02 PLN (net price)	5.31 PLN (net price)	4.00 PLN (net price)	3.99 PLN (net price)
<b>Price list (2001)</b> for 1 m <sup>3</sup> of sewage received from the industry	4.65 PLN (net price)	4.02 PLN (net price)	5.31 PLN (net price)	4.00 PLN (net price)	3.99 PLN (net price)

**Table A 2**

City →	Wrocław	Łódź	Katowice	Szczecin	Bydgoszcz
<b>Price list (2011)</b> for 1 m <sup>3</sup> of water supplied to households and other similar recipients	3.50 PLN (net price)	3.21 PLN (net price)	4.60 PLN (net price)	3.38 PLN (net price)	5.05 PLN (net price)
<b>Price list (2011)</b> for 1 m <sup>3</sup> of water supplied to the industry	3.75 PLN (net price)	3.81 PLN (net price)	4.60 PLN (net price)	3.38 PLN (net price)	5.05 PLN (net price)
<b>Price list (2001)</b> for 1 m <sup>3</sup> of sewage received from the households and other similar recipients	3.55 PLN (net price)	2.79 PLN (net price)	5.66 PLN (net price)	4.92 PLN (net price)	5.11 PLN (net price)
<b>Price list (2001)</b> for 1 m <sup>3</sup> of sewage received from the industry	3.71 PLN (net price)	5.27 PLN (net price)	5.66 PLN (net price)	4.92 PLN (net price)	5.11 PLN (net price)

<sup>157</sup> Data used in the tables 'A' comes from the following websites:

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Wodociągi krakowskie. (2011). *Cennik* [online]. Available: [http://www.mpwik.krakow.pl/\\_files/TARYFA\\_2011.pdf](http://www.mpwik.krakow.pl/_files/TARYFA_2011.pdf) [accessed 22 April 2011]

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**Table B. Right to water in the CESCR concluding observations<sup>158</sup>**

CESCR session	Examined states	Committee's concluding observations related to the right to water
<b>November 2010</b>	Netherlands, Switzerland, Uruguay, Dominica Republic, Sri Lanka	<u>Dominica Republic</u> (E.C.12.DOM.CO.3, para. 26): the country should fully integrate human rights and especially economic, social and cultural rights into the poverty reduction strategies, as well as reduce social inequalities also in the light of GC 15; <u>Sri Lanka</u> (E.C.12.LKA.CO.2-4, para. 29, 36): stress should be put on access to water in schools; Remaining states have not been mentioned in terms of water issues
<b>May 2010</b>	Algeria, Colombia, Mauritius, Kazakhstan and Afghanistan	<u>Algeria</u> (E/C.12/DZA/CO/4, para. 19): problem of water in rural areas and among internally displaced persons' <u>Colombia</u> (E.C.12.COL.CO.5, para. 23): access to water is not universal, especially in rural areas; <u>Mauritius</u> (E/C.12/MUS/CO/4, para. 26): problem of affordable access to water; <u>Kazakhstan</u> (E/C.12/KAZ/CO/1, para. 31): problem with access to water in rural areas; <u>Afghanistan</u> (E/C.12/AFG/CO/2-4, para. 35): problems in urban and rural areas, lack of basic drinking water services, special attention should be paid to marginalised and disadvantaged groups;
<b>November 2009</b>	The Republic of Korea, Poland, Chad, Madagascar, the Democratic Republic of Congo	<u>The Republic of Korea</u> (E/C.12/KOR/CO/3, para. 32): problem of water contamination and overexploitation of groundwaters; <u>Poland</u> (E/C.12/POL/CO/5, para. 34): no information on water issues, the Committee asks to include it in the next report; <u>Chad</u> (E/C.12/TCD/CO/3, para. 26): poor access to water in urban and rural areas; <u>Madagascar</u> (E/C.12/MDG/CO/2, para. 25): 50% of the population do not have access to clean drinking water, especially in rural areas; <u>The Democratic Republic of Congo</u> (E/C.12/COD/CO/4, para. 29): serious water problems, 83% of the population have no access to safe drinking water;
<b>May 2009</b>	Brazil, Cyprus, UK, Australia, Cambodia	<u>Brazil</u> (E/C.12/BRA/CO/2, para. 25): should improve water facilities; <u>Australia</u> (E/C.12/AUS/CO/4, para. 27): climate change has a negative influence on the right to water, affecting especially indigenous peoples; <u>Cambodia</u> (E/C.12/KHM/CO/1, para. 30): serious problems of forced evictions, relocations sites should be provided with basic services such as drinking water; Remaining states have not been mentioned in terms of water issues
<b>November 2008</b>	Philippines, Angola, Kenya, Nicaragua, UNMIK (UN Interim Administration Mission in Kosovo), Sweden	<u>Philippines</u> (E/C.12/PHL/CO/4, para. 30): serious problem of forced evictions, relocation sites should be provided with safe drinking water; <u>Angola</u> (E/C.12/AGO/CO/3, para. 30, 35): stress should be put on access to water in informal settlements such as slums, psychiatric hospitals and prisons; <u>Kenya</u> (E/C.12/KEN/CO/1, para. 30): difficult access to water in informal settlements, arid and semi-arid areas; <u>Nicaragua</u> (E/C.12/NIC/CO/4, para. 24): should improve access to water; Remaining states have not been mentioned in terms of water issues
<b>April/May 2008</b>	Benin, France, India, Bolivia	<u>India</u> (E/C.12/IND/CO/5, para. 34, 74): poor access to water, water of poor quality; Remaining states have not been mentioned in terms of water issues

CESCR session	Examined states	Committee's concluding observations related to the right to water
<b>November 2007</b>	Costa Rica, Ukraine, San Marino, Belgium, Paraguay	<u>Costa Rica</u> (E/C.12/CRI/CO/4, para. 15, 26, 27, 35): poor access to water of indigenous peoples, Afro-descendant and migrants; <u>Ukraine</u> (E/C.12/UKR/CO/5, para. 25, 47, 48, 49): should improve minorities' access to water; <u>San Marino</u> (E/C.12/SMR/CO/4, para. 7): access to water is guaranteed to the whole population (exceptional case); <u>Paraguay</u> (E/C.12/PRY/CO/3, para. 16): issues with contamination of water supply; Remaining states have not been mentioned in terms of water issues
<b>May 2007</b>	Latvia, Hungary, Finland, Nepal, Netherlands Antilles	<u>Hungary</u> (E/C.12/HUN/CO/3, para. 22, 48): one fifth of the Roma population lives with no access to running water; <u>Nepal</u> (E/C.12/NPL/CO/2, para. 42, 43): should improve access to water especially for marginalised groups; problems with preservation of the principle of non-discrimination; Remaining states have not been mentioned in terms of water issues
<b>November 2006</b>	Albania, El Salvador, Tajikistan, The Former Yugoslav Republic of Macedonia, the Netherlands	<u>Tajikistan</u> (E/C.12/TJK/CO/1, para. 34, 41, 66): should improve access to safe and sufficient water; <u>The Former Yugoslav Republic of Macedonia</u> (E/C.12/MKD/CO/1, para. 23, 43): problems with access to water for Roma minorities; Remaining states have not been mentioned in terms of water issues
<b>May 2006</b>	Monaco, Lichtenstein, Canada, Morocco, Mexico	<u>Canada</u> (E/C.12/CAN/CO/4-5, para. 15, 30, 64): 'the Committee regrets that the State party does not recognize the right to water as a legal entitlement'; marginalised groups have problems with access to water; <u>Morocco</u> (E/C.12/MAR/CO/3, para 13, 54): little data on access to water; <u>Mexico</u> (E/C.12/MEX/CO/4, para 10, 28): should improve water conditions as stated in GC 15; Remaining states have not been mentioned in terms of water issues
<b>November 2005</b>	Slovenia, Austria, Uzbekistan, Bosnia and Herzegovina, Libyan Arab Jamahiriya	<u>Uzbekistan</u> (E/C.12/UZB/CO/1, not available online): water problems occur; <u>Libyan Arab Jamahiriya</u> (E/C.12/LYB/CO/2, para. 18, 35): 28% of the population do not have access to improved water source, access must be improved; Remaining countries have not been mentioned in terms water issues
<b>April/May 2005</b>	Zambia, China with Hong Kong Sar and Macau Sar, Serbia and Montenegro, Norway	Reports not available online
<b>November 2004</b>	Malta, Denmark, Italy, Azerbaijan, Chile	<u>Azerbaijan</u> (E/C.12/1/Add.104, para 52): should improve the realisation of the right to water; <u>Chile</u> (E/C.12/1/Add.105, para 7): the situation of indigenous peoples in terms of the right to water needs to be improved; Remaining states have not been mentioned in terms of water issues
<b>April/May 2004</b>	Lithuania, Greece, Kuwait, Spain, Ecuador	Reports not available online

