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**Implementing General Comment No. 15 on the Right to Water in  
National and International Law and Policy**  
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**Table of Contents**

- 1. Introduction to the General Comment on the Right to Water**
  - 1.1. Status of the General Comment**
  - 1.2. Summary of the General Comment**
  - 1.3. Benefits of mainstreaming the right to water into development policy**
- 2. How can the General Comment be implemented at the national level?**
  - 2.1. General Obligations**
  - 2.2. Obligations Related to Physical Accessibility to Water**
  - 2.3. Obligations Related to Affordability of Water**
- 3. What are the implications of the General Comment for International Development Assistance?**
- 4. How can implementation of the General Comment be promoted at the national and international level?**

## 1. Introduction to the General Comment on the Right to Water

In 2002, the UN Committee on Economic, Social and Cultural Rights released a General Comment on the Right to Water which stated that the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.<sup>1</sup> The General Comment provides a detailed blueprint by which States and international actions should apply this basic principle to their laws and policies

Since the release of the General Comment, a reference to the right to water and the General Comment has increasingly become common in the policy statements of international organisations, some States, virtually all civil society organisations and the private sector. Civil society is mobilising around the right to water. In Uruguay, a successful referendum in 2004 enacted the right to water into the Constitution. The Commission on Sustainable Development in 2004 devoted an official segment to considering rights based approaches to water, sanitation and human settlements, and this issue will be discussed in the 2005 session of the Commission. The Millennium Project Taskforce, an influential body established by the UN Secretary General, recommended that the international community explore ways to use the General Comment No. 15 on the Right to Water to influence national policy on water and sanitation.<sup>2</sup>

The recognition of the human right to water is only the first step towards its implementation.<sup>3</sup> In far too many situations, the right to water is being used primarily as a rhetorical device to highlight the importance of access to water. This technique is useful to an extent, but it barely taps into the full measure of what the rights-based approach adds to water governance, which is discussed below. Many States have a long way to go before their national legislation and policies are consistent with the range of obligations listed in the General Comment.

### 1.1. Status of the General Comment

The General Comment on the Right to Water is an official interpretation of Articles 11 (right to an adequate standard of living) and 12 (right to health) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), a human rights treaty ratified by 151 countries.<sup>4</sup> The General Comment also takes into account references to the right to water contained in a variety of international treaties and declaration, as well as substantive obligations that set out an entitlement to water in international environmental and humanitarian law treaties.<sup>5</sup>

The General Comment is not binding in itself. However, the treaty that it interprets is binding upon the 151 States that have ratified it. The UN Committee on Economic, Social and Cultural Rights (described below as 'the Committee') was established by the UN Economic and Social Council (ECOSOC) and is composed of independent experts elected by Member States of the

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<sup>1</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment 15 (The Right to Water)*, UN Doc. E/C.12/2002/11, available at: [www.ohchr.org/english/bodies/cescr/comments.htm](http://www.ohchr.org/english/bodies/cescr/comments.htm).

<sup>2</sup> UN Millennium Project 2005, *Health, Dignity and Development: What Will it Take?* Task Force on Water and Sanitation (New York: Earthscan, 2005), p.178.

<sup>3</sup> As in the General Comment No. 15, the term 'right to water' is used to describe 'the human right to water.'

<sup>4</sup> *International Covenant on Economic, Social and Cultural Rights* (ICESCR) (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

<sup>5</sup> General Comment No. 15, para. 4. For a compilation and analysis of these standards, as well as those from national legal systems and case-law, see M. Langford, A. Khalfan, C. Fairstein and H. Jones, *Legal Resources for the Right to Water: International and National Standards* (Geneva: Centre on Housing Rights and Evictions, 2004), available at: [www.cohre.org/water](http://www.cohre.org/water).

ICESCR.<sup>6</sup> The Committee has the responsibility to examine State reports of implementation of the ICESCR.

In 1987, the ECOSOC, endorsed by the General Assembly, invited the Committee to prepare General Comments.<sup>7</sup> In 1990, ECOSOC encouraged the Committee to “continue using that mechanism to develop a fuller appreciation of the obligations of State parties under the ICESCR,” and emphasised “the importance of the strictest compliance” by States that had ratified the Covenant with their obligations under the Covenants.<sup>8</sup> The Committee’s General Comments also have significant weight because the Committee is the only international institution with a mandate to interpret the ICESCR. The Committee uses the General Comments as the basis to examine the periodic reports of States under the ICESCR. The participation of States in the reporting process also has legal consequences.

## 1.2. Summary of the General Comment

The General Comment sets out the following components of the right to water.<sup>9</sup> Each person must have access to water that is:

*Sufficient:* An adequate quantity must be available in accordance with international guidelines.<sup>10</sup> This normally means 50-100 litres, and an absolute minimum of 20 litres.

*Safe:* Water used for personal and domestic uses must be safe.<sup>11</sup>

*Physically accessible:* Water must be within safe physical reach, in or near the house, school or health facility.<sup>12</sup>

*Affordable:* Water should be affordable, not reducing a person’s capacity to buy other essential goods. This means that essential amounts of water must sometimes be provided free.<sup>13</sup>

### Duties

Governments that have ratified the ICESCR must take the necessary steps to ensure that everyone has access to water as soon as possible. Some things can be done immediately, such as putting in place a concrete plan of action with timelines for achievement and to eliminate discrimination. Other steps are to be realised progressively, that is, over time. Governments are obliged to use available resources effectively in a concrete and targeted manner in programmes to ensure that all have access to water.<sup>14</sup> Where there is deliberate movement backwards on achieving the rights, a government must prove that this occurred after all alternatives were considered and that it had used the its available resources to the maximum extent.<sup>15</sup>

The Committee on Economic, Social and Cultural Rights has identified three categories for governments, which must:

*Respect:* Not unfairly interfere with people’s access to water; for example, by disconnecting their water supply even when one is genuinely unable to pay.

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<sup>6</sup> The UN Economic and Social Council is a body established under the UN Charter. It is made up of 53 States elected by the General Assembly.

<sup>7</sup> Economic and Social Council Resolution 1987/5, para. 9.

<sup>8</sup> Economic and Social Council Resolution 1990/45, paras. 6 & 10.

<sup>9</sup> For a detailed legal commentary on the General Comment, see S. Salman and S. McInerney-Lankford, *The Human Right to Water: Legal and Policy Dimensions* (Washington D.C.: World Bank, 2004).

<sup>10</sup> General Comment No. 15, para. 12 (a).

<sup>11</sup> General Comment No. 15, para. 12 (b).

<sup>12</sup> General Comment No. 15, para. 12 (c) (i).

<sup>13</sup> General Comment No. 15, para. 12 (c) (ii).

<sup>14</sup> General Comment No. 15, para. 17-18.

<sup>15</sup> General Comment No. 15, para. 19.

*Protect*: Safeguard people from interference by others; for example, by stopping pollution or unaffordable price-increases by corporations.

*Fulfil*: Take all steps with available resources to realise the right to water; for example, through legislation, effective pricing policies, programmes to expand access to water and monitoring of programmes.<sup>16</sup>

Governments also have a minimum *core obligation* to ensure the minimum essential level of the right to water, such as to ensure access to the minimum essential amount of water that is sufficient and safe for personal and domestic uses to prevent disease.<sup>17</sup> A government may only attribute failure to meet these obligations due to resource constraints if it can demonstrate that every effort has been made to use all available resources (including domestic and international resources) to satisfy these obligations as a matter of priority.<sup>18</sup> The core obligation is therefore useful in guiding the allocation of resources and setting priorities for domestic and international action.<sup>19</sup>

Governments also have *international obligations* to help respect, protect and fulfil the right to water of persons in other countries. For example, by providing sufficient and appropriately directed international aid or not cutting off vital access to international rivers.<sup>20</sup>

While human rights are principally concerned with obligations of governments, actors in all parts of society should assist in making the right to water a reality. These include:

- Individuals and communities
- Civil society and NGOs
- Private sector
- International organisations

These actors should be mobilised to assist in implementation. The General Comment calls on States to ensure that such non-State actors are aware of, and consider the importance of, the right to water in pursuing their activities.<sup>21</sup> States also have a responsibility to regulate non-State actors to ensure they do not have any negative impacts on the right to water.<sup>22</sup> States, as members of international organisations, should also ensure that the international organisations apply human rights in all aspects of their work.<sup>23</sup> International organisations also have direct obligations to take into account the right to water.<sup>24</sup>

### **1.3. Benefits of mainstreaming the right to water into development policy**

These right to water can help generate the political will required to make the necessary reforms to policies, to raise resources, to utilise such resources them in a manner that focuses on the needs and aspirations of the poor and to monitor performance. The case for a rights-based approach is particularly compelling since the technical solutions for expanding access through cost-effective measures exist and are generally known, but are not being consistently

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<sup>16</sup> General Comment No. 15, para. 20-29.

<sup>17</sup> General Comment No. 15, para. 37.

<sup>18</sup> Committee on Economic, Social and Cultural Rights, *General Comment No.3: The Nature of State Parties Obligations*, UN ESCOR, 1990, UN Doc. E /1991/23, para. 10.

<sup>19</sup> See for a fuller account, A. Chapman & S. Russell eds., *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* (Antwerp: Intersentia, 2002).

<sup>20</sup> General Comment No. 15, paras. 30-36.

<sup>21</sup> General Comment No. 15, para. 49.

<sup>22</sup> General Comment No. 15, para. 23-24.

<sup>23</sup> General Comment No. 15, para. 36.

<sup>24</sup> General Comment No. 15, para. 60.

implemented. In addition, the urgency required to implement the right to water is not being demonstrated by States. The human rights based approach provides a policy framework, supported by legal authority, which can help implementation.

The human right to water, as set out in the General Comment, has five primary features which make a significant contribution to current developmental efforts to improve access to water:

- **Priority for people without basic access to water**

The right to water means that governments must prioritise access of to basic water services to all, using available resources in a pro-poor manner. This is in contrast to the current practise where significant new infrastructure constructed with public resources does not benefit the poor.

- **Access to water as a legal entitlement, rather than mere charity or a commodity**

The right to water provides a strong basis for individuals and groups to hold States and other actors to account. Communities can use the right in lobbying the State for water services, or to be allowed permission to manage their own water programmes without arbitrary interference from the State or demands for bribes. Having a legal entitlement to water gives a real mandate to sympathetic government officials to ensure access to water. It also can increase the political profile of access to water. The right to water also provides legal and political support to the moral obligation of wealthier States to contribute international assistance necessary to complement national efforts in developing countries to ensure the right to water.

- **Preventing discrimination and neglect of vulnerable and marginalised communities**

Denial of access to water is often a deliberate choice of governments, or local authorities, to exclude communities seen as undesirable. Informal settlements the world over are often denied water services as a matter of policy. This point tends to be under-stated or ignored in the development field.

- **Empowering communities living in poverty to fully take part in decision-making processes**

The human right to water requires genuine consultation and participation of communities affected in water service delivery and conservation of water resources. Although participation is widely acknowledged as a development best practise, governments continue to prefer centrally planned projects and to neglect the input of users.

- **National Governments, international community and the private sector held accountable to ensure access to water.**

One of the most significant obstacles to access to water is lack of political will and corruption. National institutions, such as courts and human rights commissions, as well as human rights NGOs can monitor government programmes, so as to ensure accountability. At the international level, UN human rights institutions, such as the Committee on Economic, Social and Cultural Rights, monitor whether States have implemented their human rights commitments and publicly point out when they have failed to do so. In some cases, these statements have carried significant political weight and led to positive action, such as suspension of forced evictions.

## 2. How can the General Comment be implemented at the national level?

This section lists some of the key obligations that should guide national and regional governments and local authorities in implementing the right to water. They should also guide international actors to the extent that they are involved at the national level. This section focuses on a number of key aspects relating to affordability and physical accessibility components of the right to water. The General Comment also has implications for issues of water quality, sanitation<sup>25</sup> and hygiene and to water allocation, which are not dealt with here for reasons of space.<sup>26</sup>

The term 'Government' is used in this document to refer to national, regional and local governments. National governments are responsible for complying with international human rights law. They should therefore ensure that regional governments and local authorities have sufficient resources to ensure the right to water and do not engage in discrimination.<sup>27</sup>

### 2.1. General Obligations

The following are a number of cross-cutting general obligations drawn from the General Comment that apply to all components of the right to water:

- **Develop a concrete plan to expand access to water for all, with concrete targets and timelines and identify available resources and any specific assistance required from donors**

Most national water policies do not set concrete targets, but set out general policy objectives and approaches. However, the right to water requires that States clearly indicate how they intend to realise the right to water for all. This process helps ensure accountability and monitoring, and also indicates what the international community needs to contribute. The strategy should also establish institutional responsibility for the process, allocate resources and establish accountability mechanisms to ensure the implementation of the strategy.<sup>28</sup>

- **Ensure that communities have access to information and participate in decisions on water that affect them, such as on the type of services that they receive**

Access to information and public participation is a right in itself, as well as having important developmental benefits. There are a number of good examples in which this is being applied. In the municipality of Porto Alegre, Brazil, the public water company's operations undergo a participatory budgeting process. In public meetings, every citizen can have a say on which new investments should be made first. This model has contributed to dramatic increases in access to water by poor communities in Porto Alegre.<sup>29</sup> The South African *Water Services Act* provides for

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<sup>25</sup> The General Comment notes that sanitation is linked to human dignity and privacy, as well as being necessary in order to ensure the protection of water supplies. Governments therefore are obliged to progressively extend safe sanitation services.

<sup>26</sup> The means by which governments can implement the right to water will be dealt with in detail in a forthcoming publication; *Manual on the Right to Water*, currently under development by the Centre on Housing Rights and Evictions, the American Association for the Advancement of Science, together with the World Health Organization (WHO) and the UN Human Settlements Programme ((UN-Habitat).

<sup>27</sup> General Comment No. 15, para. 51.

<sup>28</sup> See also General Comment No. 15, para. 47.

<sup>29</sup> H. Maltz, "Porto Alegre's Water: Public and For All," in B. Brennan, B. Hack et. al, *Reclaiming Public Water* (Transnational Institute & Corporate Europe Observatory, 2005).

public consultations on water development plans and requires the Minister to establish a national information system on water services that provides information in an accessible format.<sup>30</sup>

- **Establish complaints mechanisms for users and clear regulations for water service providers, with penalties for non-compliance**

The General Comment states that persons or groups denied their right to water should have access to effective judicial or other appropriate remedies (such as national ombudsmen or human rights commissions).<sup>31</sup> In many situations, lack of access to water is caused by corruption or bureaucratic inertia, rather than a lack of resources. Several countries have empowered their courts to deal with complaints relating to social and economic rights. In Argentina, communities suffering from polluted groundwater obtained a court order requiring the government to provide an emergency water supply and take steps to decontaminate water supplies. Courts in India, Argentina, Brazil, and South Africa, among others, have reversed disconnections of water supply affecting people unable to pay.<sup>32</sup>

- **Prevent discrimination and ensure that vulnerable and marginalised groups are not neglected in water programmes and policies**

Lack of access to safe water can be caused by explicit discrimination. In several European countries, Roma communities have been denied water supply and sanitation, causing transmission of diseases. Discrimination in the water can be prevented through legislation and regulations and monitoring of government action. Many countries have established human rights commissions to monitor discrimination in a widespread manner, rather than relying solely on complaints brought to the courts.

Governments must also make special provision for the water needs of vulnerable and marginalized communities such as women and indigenous peoples. Women have particular concerns with regard to physical security when accessing water and sanitation facilities. Indigenous peoples normally require that their customary arrangements for managing water are respected.

## **2.2. Obligations Related to Physical Accessibility to Water**

The following are some of the key obligations that government should implement in order to ensure that all people can physically access safe water.

- **Focus public resources on those without basic access to water**

Priority on the core obligations implies that governments must focus the majority of its resources (financial and human) on those without basic access, rather than those who already have some form of acceptable access. According to the World Health Organisation, people who have to take more 30 minutes a day to collect water normally collect significantly less than their daily requirements.<sup>33</sup> About 1.1 billion people are in a situation where they take longer than 30 minutes to collect water from a safe water source (or do not have access to a safe water source).<sup>34</sup>

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<sup>30</sup> Water Services Act, Act 108 of 1997, ss. 14-15 & 67.

<sup>31</sup> General Comment No. 15, para. 55.

<sup>32</sup> See *Legal Resources for the Right to Water*, note 4 above, Section 7 for a summary of these cases.

<sup>33</sup> G. Howard & J. Bartram, *Domestic Water Quantity, Service Level and Health* (Geneva, WHO, 2003), p. 22-26.

<sup>34</sup> *Meeting the MDG Drinking Water and Sanitation Target: A Mid-Term Assessment of Progress*, WHO and UNICEF, 2004, available at [http://www.who.int/water\\_sanitation\\_health/monitoring/en/jmp04.pdf](http://www.who.int/water_sanitation_health/monitoring/en/jmp04.pdf).

- **Invest in low-cost services that can be upgraded**

A government's choice of the type of service provided to the poor has important human rights consequences. In far too many situations, governments construct expensive services that serve a small privileged fraction of the population rather than low-cost alternatives that would provide water for a greater number of people.<sup>35</sup> Such services should be built in a manner that allows progressive improvement. They should also be provision for sustainability of the service – in particular provision for maintaining the service and repairs. The South African *Water Services Act* of 1997, which explicitly refers to the right of access to basic water supply, contains innovative features to implement the accessibility element of the right to water. For example, the Act states that if a water services authority is unable to provide access to water for all potential customers in its area, it must prioritise the provision of basic water and sanitation.<sup>36</sup>

- **Support the establishment of water services in informal settlements or alternative sites that allow people to meet their basic needs**

Many informal settlements are denied water simply due to their land tenure status. Even communities that are able to pay for the construction of water services are prohibited from doing so, or are discouraged due to the fear of eviction. Public and private water providers often refuse to provide water services in these areas. In some cases this is due to the difficulty in billing such areas, the assumption that the persons inhabiting these areas are unable or unwilling to pay and/or the lack of registration of buildings.<sup>37</sup> In other situations, this occurs as part of general policy to refuse to provide services to informal settlement due to a perception that such settlements are illegal and should not be supported. However, the General Comment clearly states that no household should be denied the right to water on grounds of housing or land status.<sup>38</sup> Governments should therefore either confer secure tenure on such settlements or develop alternatives in consultation with the communities. Although the process of providing title is time-consuming and expensive, all that is normally needed in the short-term is a public announcement from a government that it will not evict a particular settlement.

### **2.3. Obligations Related to Affordability of Water**

The right to water requires that water must be affordable for all, taking into account the ability to pay. Payment for water, including indirect costs, should not infringe upon a person's ability to buy other essential goods. Investing in low-cost services, as discussed in the previous section, should make services more affordable for the poor. In addition, governments should carry out the following:

- **Provide subsidies to those who cannot afford a basic amount of water for domestic consumption.**

Where people are unable to afford water, or pay an unreasonably high amount for it, governments should ensure that a subsidy is provided. This can normally be financed by higher prices for water supplied to large-scale industry and agriculture and to upper income groups. Many countries under-charge for water provided through a network, which subsidises those users connected to a network, including upper-income groups. This approach is normally inequitable, as it costs the government money that should be used to provide water services to the poorest and to subsidise their costs.

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<sup>35</sup> General Comment No. 15, para. 14.

<sup>36</sup> *Water Services Act*, Act 108 of 1997, ss. 3, 5.

<sup>37</sup> Almansi, *Everyday water struggles in Buenos Aires* (Water Aid, 2003).

<sup>38</sup> General Comment No. 15, para. 16 (c).



Identifying the poor often involves practical difficulties and administrative costs, and thus government should use a subsidy mechanism best suited to their particular circumstances. Some mechanisms include:

- ⇒ Providing all users with essentials amount of water free (South Africa)
- ⇒ Setting increasing block tariffs: i.e. charging lower tariffs for all domestic users for the first block of water (e.g. 100 litres per day), but increasing the cost per litre after this amount
- ⇒ Providing targeted subsidies to low-income households or to households in low-income areas

Where subsidies are targeted at those of low-income, it may be suggested that they should be provided both to those who are recognised by the government as being of low-income individuals as well as to poorer areas on an automatic basis. Even sophisticated social security systems, such as in Chile have excluded significant amounts of the poorest. It has been shown that 60% of Chileans who were in the lowest income 20% of the population did not benefit from these subsidies. However, a significant range of persons in middle-income groups successfully applied for subsidies. In contrast, subsidies provided automatically based to poorer regions in Colombia provided subsidies to a greater proportion of the poorest 20% of the population.<sup>39</sup> It can be assumed that many low-income persons do not apply for subsidies because they may not have the necessary documents, the knowledge of the system or are unwilling to be singled out as poor.

- **Ensure prices and payment options charged by service providers are consistent with the right to water**

Water suppliers should be required to offer a range of levels of service and technologies, with the potential for progressive upgrading, in order to ensure that low-income and irregularly employed persons can purchase at least basic access. Such arrangements could include cheaper technology options, or financing arrangements that take into account low or seasonal income. The latter could include a phase-in of the connection charge over time, acceptance of late payment, and allowing prepayment. Where there is a fixed charge for water use, users should have the option to pay according to volume of use.

- **Implement procedural and substantive protections against exclusion from a water source**

Many people with low or unstable incomes face exclusion from access to water, such as through disconnection from a network. The General Comment specifies that governments must always ensure that no person is deprived of the minimum essential amount of water.<sup>40</sup> The General Comment also requires that the following be instituted before a State or a third party excludes any person from water:

- ⇒ opportunity for genuine consultation with those affected
- ⇒ timely and full disclosure of information on the proposed measures
- ⇒ reasonable notice of the proposed actions
- ⇒ legal recourse and remedies for those affected
- ⇒ legal assistance for obtaining legal remedies<sup>41</sup>

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<sup>39</sup> The source for the information above is Andrés Gómez-Lobo and Dante Contreras, *Subsidy Policies for the Utility Industries: A Comparison of the Chilean and Colombian Schemes*, University of Chile, November 2000.

<sup>40</sup> General Comment No. 15, para. 56.

<sup>41</sup> General Comment No. 15, para. 56.

The above criteria will also apply where access is restricted by a pre-paid meter. Governments should also provide incentives for community-managed schemes to make provision for members of the community who cannot contribute to the upkeep of facilities.

### **3. What are the implications of the General Comment for International Development Assistance?**

The General Comment indicates that under the *ICESCR*, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States and it is particularly incumbent upon States which are in a position to assist others in this regard.<sup>42</sup> The obligations in the *ICESCR* bind States individually and collectively. The Covenant does not oblige any State to provide assistance to any particular country, but it does require that a government make good faith efforts to contribute to development to recipient countries of its choice. In its review of reports by developed countries, The Committee on Economic, Social and Cultural Rights has called on them to reach the 0.7% target of GNP as official development assistance as quickly as possible.<sup>43</sup>

States are required to ensure that economic, social and cultural rights are given due attention in international agreements and consider developing further legal instruments. In addition, States should ensure that their actions as members of international organizations, including international financial institutions, take due account of economic, social and cultural rights.<sup>44</sup>

This section sets out the obligations of States as donors and as members of international organizations, as well as the obligations of international organizations themselves, in regard to the right to water.

- **Provide international assistance to countries that have insufficient resources to realise the core obligations of the right to water for those in their jurisdiction**

This obligation can be inferred from the interpretative statements of the Committee, which indicate that the core obligations of the *ICESCR* establish an 'international minimum threshold' that all developmental policies should be designed to respect. It is particularly incumbent on all those who can assist, to help developing countries respect this international minimum threshold. A national or international anti-poverty strategy that does not reflect this minimum threshold is inconsistent with the legally binding obligations of the State.<sup>45</sup> The international community should provide debt relief where necessary to realise the right to water.<sup>46</sup> Conversely, reducing aid for water and sanitation to countries that have not met their core obligations for water and sanitation would be seen as retrogression in realising the right to water.

There may be a question as to whether the obligation to provide assistance continues even where a recipient government engages in widespread corruption, mis-use of aid or fails to raise a reasonable amount of domestic resources. The response to this concern is that obligation of international cooperation is owed to peoples rather than to governments. As such, the

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<sup>42</sup> General Comment No. 3, above note 18, para. 14.

<sup>43</sup> For example, in its Concluding Observations for Germany, France, Sweden and Japan in 2001. See R.Künneman, *The Extraterritorial Scope of the International Covenant on Economic, Social and Cultural Rights*, available at [www.fian.org](http://www.fian.org).

<sup>44</sup> General Comment No. 15, paras. 31 & 33-36.

<sup>45</sup> Committee on Economic, Social and Cultural Rights, *Poverty and the International Covenant on Economic, Social and Cultural Rights*, UN ESCOR, 2001, UN Doc. E/C.12/2001/10, at para. 17.

<sup>46</sup> The Committee notes the possible need for debt relief schemes to realise economic, social and cultural rights, see Committee on Economic, Social and Cultural Rights, *General Comment No.2*, UN ESCOR, 1990, UN Doc. E/1990/23, CESCR.

international community cannot simply ignore such countries, but should seek reasonable means to ensure that its international assistance contributes to the realisation of core contents of the right to water and other economic, social and cultural rights. This might include support to individual government departments with the ability to use resources effectively or direct support to civil society. The human rights approach therefore is clearly inconsistent with some views held in the development community that international assistance should be concentrated only on 'good performers.'<sup>47</sup>

- **Ensure that international assistance to the water sector avoids discrimination and is targeted towards the most vulnerable and marginalized populations**

International donors should focus assistance on projects and programmes that will address the needs of the poor, rather than to prestige projects which benefit privileged sections of the population.<sup>48</sup> However, ensuring that international assistance benefits the poor is normally an administrative challenge. Most international donors and international institutions are not able to provide funds to small community-run projects, but are only able to provide large grants which can only be used for projects that do not necessary benefit the poor. It is therefore necessary to invest in building capacity, and the links with local NGOs and local authorities, so as to reach the poorest. The rights-based approach helps justify the extra efforts, and potentially greater costs, of administering programmes in such a manner.

- **Assist developing states ensure the right to water in times of emergency**

According to the General Comment, in disaster relief and emergency relief, including to refugees and displaced persons, priority should be given to rights in the ICESCR, such as the provision of adequate water.<sup>49</sup> Emergency assistance would also address the right to water by protecting water sources from pollution in times of disaster.

- **Ensure that international assistance does not support water development projects that violate human rights**

Water development projects can be carried out in a manner that leads to violation of other human rights. One of the most prominent example is the construction of hydro-electric dams that have led to evictions that do not comply with international standards on relocation, such as the UN Committee on Economic, Social and Cultural Rights General Comment No. 7 on Forced Evictions.

- **Refrain from imposing conditions that undermine the realisation of the right to water**

International donors, in particular the international financial institutions, have often put pressure on developing country governments to increase tariffs for water in order to repay their national debts or to ensure cost recovery for new investments in water services. Where this is done without provision to ensure affordability, or where governments are asked to lift subsidies to the poor, this infringes the right to water.

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<sup>47</sup> For a detailed discussion of this point, see A. Khalfan, "International Human Rights Law and Levels of Financing for Development" in M.C. Segger and Justice C.G. Weeramantry, eds. *Sustainable Justice: Reconciling Economic, Social and Environmental Law* (Leiden: Martinus Nijhoff, 2004). See generally, International Council on Human Rights Policy, *Duties sans Frontieres: Human Rights and Global Social Justice* (ICHRP Geneva 2003).

<sup>48</sup> This point was first made by the Committee on Economic, Social and Cultural Rights in *General Comment No. 4: The Right to Adequate Shelter*, E/1992/23-E/C.12/1991/4.annex III at para. 19.

<sup>49</sup> General Comment No. 15, para. 34.

Donors have often required that the country benefiting from assistance privatise the management of its water services. It is questionable whether demanding this is consistent with the right of a people to self-determination.<sup>50</sup> In addition, requiring privatisation will in certain circumstances undermine key components of the right to water. For example, requiring the participation of a foreign private provider often leads to a situation in which tariffs are fixed to a foreign currency and the risk of devaluation is borne by users. Many privatisations have been preceded by tariff increases in order to make water services attractive for investment.

Privatisation of the management of municipal water services has an inherent disadvantage as it generally reduces the ability of users to participate in decision-making concerning water and to exercise democratic control over water services. Privately managed water services are often governed by a long-term contract between the corporation and the government, rather than by a public authority accountable to the people. The concession contract stipulates the extent to which the government has the ability to regulate the private corporation, with the effect that users in some cases do not have any means to hold the provider accountable. In a number of cases, such as in Argentina and Bolivia, governments have over-ridden concession contracts in order to address popular demands. However, this option may not be open in the future. The affected corporations are exercising their recourse under international investor-State tribunals such as the International Centre for the Settlement of Investment Disputes (ICSID). If such tribunals award substantial compensation to the investors, government will probably be more deferential to concession contracts in the future.

International development assistance forms only one aspect of the international obligations set out in the General Comment. Other obligations include:

- States and international organisations should refrain from embargoes that prevent the supply of water, as well as restrictions on goods and services essential for securing the right to water.<sup>51</sup>
- States and international organisations should ensure that trade regulations do not undermine the right to water.<sup>52</sup> For example, the WTO General Agreement on Trade in Services (GATS) should not be applied in a manner that would deny any government the ability to institute affirmative action for disadvantaged minorities or the ability to require water service providers to institute cross-subsidies between richer and poorer communities.
- States should not interfere with the right to water in other countries and should prevent their own citizens and companies from violating the right in other countries.
- States should refrain from polluting water sources shared with other countries.
- States sharing transboundary waters with other States should ensure that sufficient water is allocated for all populations to realise their right to water.

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<sup>50</sup> This right is contained in identical terms in Article 1.1 of both the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

<sup>51</sup> General Comment No. 15, para. 32. See also the Committee's *General Comment No. 8: The relationship between economic sanctions and respect for economic, social and cultural rights*, in particular paras. 12-13.

<sup>52</sup> General Comment No. 15, para. 35. The UN High Commissioner for Human Rights has produced a number of reports on this issue, for example, *Economic, Social and Cultural Rights: Liberalisation of Trade in Services and Human Rights: Report of the High Commissioner*, 25 June 2002, E/CN.4/Sub.2/2002/9 and *Economic, Social and Cultural Rights: Human Rights, Trade and Investment: Report of the High Commissioner*, 2 July 2003, E/CN.4/Sub.2/2003/9.

#### **4. How can implementation of the General Comment be promoted at the national and international level?**

The previous sections of this paper have discussed the substantive obligations that States and other actors should implement. This section addresses the processes to promote implementation of the General Comment.

- **Legislation and policy review**

At the national level, the contents of the General Comment should be brought to the attention of government policy makers and Parliamentarians. A multi-stakeholder review should be organised, bringing together relevant government departments, members of the relevant parliamentary committees, civil society and user representatives. Such reviews should evaluate the extent to which legislation and policy needs reform in order to better implement the right to water. Such a review should address domestic implementation of the Covenant as well as the policies of States as they affect the right to water outside their borders.

- **Development of international guidelines for policy makers and model legislation**

The 2004 Sub-Commission on the Protection and Promotion of Human Rights Report on the Right to Drinking Water and Sanitation recommended the development of operational guidelines and model legislation for the right to water. Guidelines and model legislation should be developed on the basis of the General Comment as well as the experiences of countries that have attempted to implement a rights-based approach to water.

It is expected that draft guidelines will be prepared by the Sub-Commission in 2005. It would be useful for the Commission on Human Rights to give a mandate the Office of the High Commissioner for Human Rights and the United Nations specialised agencies dealing with water issues to convene an expert seminar to further develop the guidelines and ensure that they are technically and legally sound.

Model legislation would not normally be developed by a United Nations body, but could be developed by a partnership of civil society organisations together with representatives of governments in their capacity as experts. Model legislation on the right to water would not be binding upon any country, but would be of assistance to States and civil society organisations in formulating or advocating for reforms to national laws.

- **Integration of right to water into international development programming**

State and international organisations should review their operational policies and guidelines and develop processes to ensure that all their activities are consistent with the right to water. For example, they should develop checklists to guide programme design, ensuring attention to each key component of the right to water. Techniques drawn from the experience of gender mainstreaming in development policy can be applied.

- **Advocacy for implementation of the right to water by non-governmental organisations and communities of users**

National civil society can effectively lobby for the right to water in their countries. Many civil society organisations, particularly those that have primarily a development rather than human rights orientation, will require training on the implications of the General Comment and how it applies to the challenges facing their country. Communities that have concrete information on the right to water and what their rights are within their own locality are in a better position to

negotiate with local authorities.<sup>53</sup> Civil society organisations can take advantages of any opportunities within a country to raise complaints of infringements of the right to water before courts, or other complaints bodies. They can participate in the state reporting process to the human rights treaty bodies and raise specific complaints before the treaty bodies in some circumstances. Such civil society organisations may need training and support to participate in the UN Committee on Economic, Social and Cultural Rights periodic reporting process and in effectively using the decisions of the Committee to effect change in their own countries.

- **Independent monitoring of international actors by NGOs**

Civil society organisations should carry out independent monitoring of the acts of international organisations as well as States acting outside their borders. There are few formal mechanisms to effectively regulate international actors, thus developing and strengthening such monitoring can play a crucial role in the protection of the right to water. Civil society organisations can raise public awareness about violations and lobby effectively for their resolution.

- **Development of concrete indicators for the right to water**

The General Comment calls for right to water indicators to be identified so as to assist the monitoring process.<sup>54</sup> Indicators assist in determining whether targets related to the right to water are being met. An initiative to develop indicators was recently commenced by the Centre on Housing Rights and Evictions, Heinrich Boll Foundation and Bread for the World. A consultation meeting was organised in 2004 with experts, civil society, governments and representatives of various UN bodies, including the Committee on Economic, Social and Cultural Rights, WHO, UNICEF and UN-Habitat. A detailed policy paper has been developed based on the meeting.<sup>55</sup> Further research and expert meetings will be carried out so as to develop indicators that can be used by a wide variety of actors, including governments, international human rights treaty bodies, UN specialised agencies and civil society for monitoring the right to water.

- **Developing and Promoting a Convention on the Right to Water**

A Convention on the Right to Water would have important advantages. It would end the still continuing debate on whether the right to water is legally binding. The right to water would be more clearly enforceable, without appealing to interpretations of other treaties, in those countries where international law is directly implemented in national courts. In countries where international law is only binding in courts when the State includes it in a law, having a Convention will add pressure to domesticate the right to water. Advocacy for a Convention would also increase awareness and the political profile of the right to water. The above are only some of the potential benefits. However, it is necessary to proceed carefully on the idea of a Convention. Due to the difficulty of securing a Convention that fully embraces the contents of the General Comment on the Right to Water, a strong coalition of civil society and States is a precondition before bringing a Convention to an inter-governmental process.

A movement calling for the creation of a treaty on the right to water is now emerging, promoted by a number of civil society organisations including Bread for the World, Heinrich Boell Foundation and the Centre on Housing Rights and Evictions. The coalition aims to reach out to civil society organisations and social movements around the world in order to consult on the

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<sup>53</sup> COHRE and the Centro de Estudios Legales y Sociales are carrying out a pilot project working with residents of informal settlements in Buenos Aires to build their capacity to lobby for the right to water. Similar efforts are being carried out in Nepal by Water Aid.

<sup>54</sup> General Comment No. 15, para. 53.

<sup>55</sup> V. Roaf, A. Khalfan & M. Langford, *Monitoring Implementation of the Right to Water: A Framework for Developing Indicators* (Berlin: Heinrich Boell Foundation, 2005).

need for an international convention and its contents. At the 2005 World Social Forum in Porto Alegre, the coalition held a consultation event on the proposal for a Convention. Draft principles for a Convention will be disseminated for consultation at a variety of international meetings and through networks.

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