

THE RIGHT OF ACCESS TO DRINKING WATER AND SANITATION

(Report submitted by the International Council on Environmental Law, ICEL)

1. THE RIGHT TO WATER, A FUNDAMENTAL RIGHT

The right to drinking water is an economic and social right protected by the International Covenant on Economic, Social and Cultural Rights (1966). It was recognized in 2000 as a “fundamental right” by the General Assembly of the United Nations (A/RES/54/175) and was the topic of General Comment Nr 15 on the right to water adopted in 2002 by the Committee of Economic, Social and Cultural Rights. The close link between the right to water and the right to sanitation was recognized at the World Summit on Sustainable Development (Johannesburg, 2002) during which targets concerning these two issues were unanimously adopted. The right of access to drinking water and to sanitation was analyzed in many reports of the Sub-commission on the Promotion and Protection of Human Rights. It is also mentioned in many international conventions among which the Protocol on Water and Health (London, 1999) which just came into force. It is very regrettable that in some international meetings, highly pertinent intergovernmental agreements and decisions concerning the right to water are passed over in silence as if the issue of the mere existence of the right to water were still open.

In order to support activities towards further implementation of the right to water, the European Council of Environmental Law (CEDE) and the Water Academy (France) have attempted to determine what the right of access to drinking water and sanitation could include in the event it would be legally enforceable. Studies of the domestic law of many countries have shown that some elements of this right are already implemented from a legal standpoint and that this has facilitated better access to water and sanitation in a number of countries. Some countries have taken a regulatory approach (by defining public service obligations and public health requirements); other countries have chosen a socio-economic approach (by taking measures to enhance social and territorial cohesion in relation to access to drinking water for poorer persons, by enforcing tariffs adapted to the contributory capacity of users).

2. DEFINING THE RIGHT OF ACCESS TO DRINKING WATER AND SANITATION

The paper on “Basic principles on the right of access to drinking water and to sanitation” (see Annex) was prepared after extensive consultation among stakeholders aiming at reaching a consensus on a draft text in which would describe the right to water concisely and in simple terms. This paper provides an outline of some components of a legally enforceable right to water. It includes a description of

rights and duties of the individual and a list of obligations for public authorities concerning water and sanitation. The analysis was based on internationally adopted texts and on practice in force at national level. In this task, it was necessary to focus on issues which are strictly relevant to the right to water and to set aside important water policy issues which would have to be solved in a case by case basis.

The Basic Principles take account of the fact that water is an essential natural resource, a common property, which, under various forms, is part of a large natural cycle.. This wide cycle incorporates a series of smaller cycles, often interdependent, in which water is used by man before being returned to nature. The right of access to water, a resource indispensable for life, is related only to one of the water usage cycles which means its implementation needs to be integrated with other cycles.

The Basic Principles may be summarized as follows:

a) Everyone without discrimination has the right of access to drinking water and sanitation. Responsible political authorities ensure that the basic needs are met taking account of geographical and time constraints when they set up conditions under which this imprescriptible right should be exercised. They carry out their responsibilities as close as possible to users, in maximum openness and with the aim to implement solutions which are most appropriate to meeting existing problems. Protection of the right to access to water requires the use of all available means in order to adapt to wide-ranging circumstances. The variety of options to choose from should be very wide because such a right is a fundamental one.

b) Problems of access to water should be solved with the aim to satisfy immediate needs without sacrificing long term goals. Everyone should act in such a way as to protect the resource. The desired level of water quality should be determined in relation to objective indicators defined at national or international level. Management of available quantities should be done so as to best meet everyone's interests. Political authorities should specify public service obligations, implement them and, while meeting them, ensure that they are met by other stakeholders which should have, as need be, means of legal redress.

c) Political authorities decide which part of the cost of water should be charged directly to users bearing in mind that part supported by the public at large and possibly, by other economic actors. Operators of water and sanitation services should recover the price set up in this way while introducing, as need be, appropriate tariff adaptations. Competent local authorities should set up within their solidarity policy systems for allocating water cost in relation to certain categories of poor users when there is a risk to adversely affect human dignity or endanger human health.

3. USE OF THE BASIC PRINCIPLES

The Basic Principles (see Annex) should help to clarify the effect of implementing access to drinking water and sanitation, as an individual right and not merely a human need. They are based on the practice of countries which seek to enforce the right to water at their level, and are in line with the major reports on this topic adopted internationally. They can be used in the preparation of national laws and regulations or international instruments on access to drinking water and sanitation, or also when analyzing of national policies aiming to meet the Johannesburg targets.

Annex

BASIC PRINCIPLES ON THE RIGHT OF ACCESS TO DRINKING WATER AND SANITATION

(Paper prepared with the support of the European Council of Environmental Law (CEDE))

Loss of access to a good quality water resource or the lack of drinking water supply and sanitation services constitutes a serious attack on the human person, which ought to be remedied on the basis of the “**water for all**” principle. The global community has solemnly adopted targets on water and sanitation at the highest level in the context of the Millennium Declaration and the Johannesburg Programme of Implementation. In order to reach the set targets within the prescribed time limits, it would be useful to complete the initiatives already under way by adopting a **rights-based approach** in the context of decentralization and good governance.

For a very large number of States, the right to water is a human right. This paper aims to clarify the content of the right to water as an **enforceable right**; it outlines some of the components which could form part of national or international legal instruments while taking into account peculiarities in each instance.

Protection of the water resource

1. Water is the most important element of ecological cycles, an essential resource for life and sustainable development and a common property. Protection and conservation of this natural resource are indispensable in order to protect the various uses of water, in particular human consumption.
2. Each person has the duty to act so as to protect the sustainability of the water resource, to avoid its pollution and to keep it available and of such quality as to be appropriate for human consumption and other legitimate uses.
3. States should adopt and implement legal principles in order to promote integrated water resource management in the short and long term, to preserve water for future generations and to protect the social and cultural characteristics of water. They

should ensure that economic development does not lead to reducing access to drinking water for the people directly concerned.

International targets on drinking water supply and sanitation. International cooperation and follow up of activities under way

4. States should adopt appropriate legal measures to reach the Millennium and Johannesburg targets in the area of water supply and sanitation. They should report on measures taken for this purpose and on progress achieved. They should assess the effect of each investment in the water sector in connection with these targets and give priority to the most effective investments.

5. States should support international cooperation on water supply and sanitation, in particular between local authorities and give higher priority to projects in this area in those countries which otherwise would find it difficult to reach the Johannesburg targets by themselves. They should continue to strengthen their bilateral and multilateral aid in the water sector wherever it is necessary.

6. States should support the exchange of knowledge in the water area and the development and transfer of technologies appropriate for developing countries as well as the use of traditional and sustainable practices in water management.

General principles concerning the right of access to drinking water and sanitation

7. The right of access to drinking water and sanitation (hereafter “right to water”) is a *fundamental human right*. It aims to ensure that every person has access without discrimination to drinking water and sanitation, at an affordable cost, in an accessible location and in full safety. It entails to set up common installations for water supply and sanitation in urbanized areas and to protect sources of drinking water used in rural areas.

7.1. Each person has the right to use drinking water in quantity sufficient to meet his basic needs.

7.2. Each person has the duty to promote hygiene in relation to water and each member of the family group should contribute equitably towards its water supply.

7.3. Each person has the right to make use of sanitary facilities which are acceptable, accessible, safe and affordable and take into account the requirements of hygiene, dignity, public health and environmental protection.

7.4. No one can be deprived of the water necessary for his basic needs. The supply of drinking water to persons considered by public authorities to be in reduced financial circumstances may not be interrupted in case of non-payment if this would adversely affect human dignity or endanger human health.

7.5. Each person has the right to be fully *informed* of the quality and price of drinking water and of the basic features of the water service operation. *Participation* of users concerning their water service is strongly encouraged.

7.6. Each person must be able to initiate *administrative and judicial proceedings* to protect his right to water, in particular if health is at risk.

8. Each person should *contribute to the cost* of the water service within the limits of his financial means in order to ensure sustainability of the service. Public authorities should ensure that cost recovery in the water sector meets the objectives of social and territorial cohesion and, in particular, that the price of the water required to meet the basic needs of a household is considered to be compatible with its financial means.

Implementation of the right to water

9. Each State should integrate the right to water into its domestic legislation and seek to guarantee its protection; it should adopt necessary legal, institutional and financial measures to ensure that such a right can effectively be implemented and can be invoked before the courts. Each State should identify the respective responsibilities of all parties involved and support a transparent and participative management of water services. It should specify the sources for financing water services and should ensure that water costs are recovered from users and other sources. It should introduce the necessary reforms to improve *water governance*.

10. Each State should implement the right to water at domestic level and adopt a plan of priority actions and investment in the water sector taking into account available resources, the views of the people directly concerned and the requirements arising from implementing previous commitments. Each community without access to drinking water should speedily be provided with *at least one source for the supply of drinking water*; it should also facilitate access to drinking water for the most vulnerable persons and those living in informal settlements.

11. Each State should ensure that public service functions in the water sector are fulfilled and that the legitimate interests of users are protected. Competent public authorities should effectively *supervise* water services management; they should take steps to guarantee drinking water supply in cases of emergency or conflict.

12. Each State should ensure that water services are organized and managed for the benefit of all at the most appropriate *decentralized territorial level*. It should ensure that public authorities close to citizens are empowered to exercise their competence in this area and facilitate joint action by users in relation to the management of their own water resources in line with local traditions and usages. It should ensure sustainability of investment and seek to set up sustainable systems which ensure the quality and continuity of the service, especially as regards pricing, exchange of information, training of personnel, maintenance and repair of installations.