# The Right to Water in National Legislations

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The examples of national legislation, given in the boxes, were chosen to give this report wide geographic coverage. They are only a selection of texts because all legislation contains pertinent provisions on the right to water.

The texts on the even-numbered pages serve to illustrate, through examples, the main text on the odd-numbered pages.



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# Abstract/Résumé


## THE RIGHT TO WATER IN NATIONAL LEGISLATIONS

The right to water has existed for some time and was reinforced in 2000 when States committed to reducing the number of people without access to water. This is taking form notably through legislative measures designed to give everyone, everywhere access to water. This report aims to show what the right to water means in States' laws and regulations, and the legal and financial measures adopted by States to make the right to water real.





## LE DROIT A L'EAU DANS LES LÉGISLATIONS NATIONALES

Le droit à l'eau est mis en œuvre de longue date et a été renforcé en 2000 par l'engagement des États de réduire la proportion des personnes sans accès à l'eau. Il se concrétise notamment par des mesures législatives destinées à faire en sorte que l'accès à l'eau soit partout et pour tous. Le rapport vise à montrer ce que le droit à l'eau signifie dans les lois et règlements des États et quelles mesures juridiques et financières ont été prises par les États pour rendre effectif le droit à l'eau.


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# Preface

When disasters strike, victims receive medical care, drinking water, food, and shelter in priority. Everyone agrees that medical care, food, and housing are economic and social rights that everyone should have yet many still question the nature of access to water. Can one doubt the existence of a right to water today? Can one reasonably exclude water from the list of essential goods and services?

The right to water reflects an undeniable reality: without water, there is no life. If the right to food exists, the right to water must also exist. Access to drinking water is as necessary to implementing the right to health as access to drugs.



According to the *Social Charter for Water* adopted by the Académie de l'eau in 2000, the right to water is an inalienable right, but one that comes with duties, even obligations:

- Water must be protected. Water, a precious natural resource, must be protected against waste and pollution, and preserved for future generations. It must be used in good hygiene conditions.
- Water must be shared. Water, a common good, must be shared by all and available to all.

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- Water must be paid for. The costs of water services must be covered sustainably and all must contribute to this effort, applying the principle that "water pays for water".

Solidarity is necessary. The cost of water services must not be an obstacle to access to water. Thus, these costs must be distributed fairly among the rich and the poor, thanks to solidarity between all.

The world community has committed to reducing the proportion of people without access to water. With this goal, and because the Johannesburg targets were adopted in the framework of collective action, the world community is mobilised to bring water everywhere that it is lacking and financial means are missing.

Those who have water faucets must think of those who have neither faucets nor clean water. To this end, could we not introduce innovative national or European financing schemes? Each water bill could include a small contribution to access to water for the disadvantaged (in the same way as each electricity bill in France now includes a contribution to the public electric utility). This contribution would guarantee our poorest fellow citizens access to water and would foster access to water for the poorest populations in poor countries.



To implement this solidarity measure, numerous legal provisions would have to be revised to make the right to water a reality in line with President Jacques Chirac's proposal that "access to water be acknowledged as a fundamental right".

This new report by Henri Smets aims to show the legal ramifications of acknowledging the right to water in domestic law through an examination of States' practices in this field. The Académie de l'eau hopes that this study will contribute to a better understanding of the scope of the right to water. It offers Henri Smets its sincere


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thanks for his analysis of measures that contribute to making water available to all in sufficient quality and quantity.

Making the right to water legally enforceable should eliminate deplorable situations that harm human dignity.

**Professor Marc Gentilini**

President of the Académie de l'eau



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# Summary

All States wish to improve access to water and sanitation to meet the policy goal of "water for all" and they have all taken numerous steps towards this by organising legal frameworks, creating institutions, and providing funding. They have done so whether or not they formally acknowledge the right to water as a fundamental right, since a large number of legal provisions to improve access to water and sanitation for all exist. In many States, the government authorities—usually local authorities—are responsible for ensuring access to drinking water and sanitation.



The right to water concerns drinking water and not water in general; it concerns the management of local public utilities and not of hydrological basins. In most States, the right to water does not give every individual the same rights because there are considerable differences between regions. The right to water is no more the right for everyone to receive their water for free than the right to food is the right to receive one's food for free. It does not authorise one to take a neighbour's water.

Water is life; it is not a "commodity like the others." Its pre-eminent place in every society means that water cannot be treated like just any commodity. Access to drinking

water and sanitation for all is a unique right that needs to be identified so it can be protected and developed. It is part of peoples' traditions and included in the most ancient legal texts.

This report aims to show the practical meaning of the right to water and how States have implemented this right. It is based on case studies and seeks to establish a catalogue of the most relevant legal provisions of domestic laws on the right to water. Alongside general provisions, there are numerous additional provisions that facilitate or limit the exercise of the right to water and that establish or prevent the implementation of the necessary solidarity. The principal difference between States in this area is the number and financial scope of the measures taken for populations without access to water.

Explicit acknowledgement that the right to water is a fundamental right is an important act with strong symbolic and legal value. It provides proof of the importance that government authorities give to water for health and of their consideration for the desires of users who do not have access to drinking water.



Attaining the Johannesburg targets for water is the primary goal adopted by all States in the field of water; this will require extensive expenditure, primarily in the poorest countries that lag furthest behind. This expenditure is not linked to the acknowledgement that the right to water is a fundamental right, which would generate much lower costs. Indeed, compared to the number of people who will receive access to water through programmes that aim to attain the Johannesburg targets, few people will acquire access to water based on the right to water.

Acknowledging the right to water does not generate heavy expenditure for government authorities because its primary effect is to correct deplorable situations and progressively put an end to intolerable discrimination in a limited number of cases. The


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primary beneficiaries of the right to water are disadvantaged people who need to have the law on their side if their rights are to be respected.

For access to water to become a priority field of public action, a domestic right to water, analogous to the right to food or the right to health, must officially be acknowledged. Without such official acknowledgement, it seems probable that the water sector will not receive the funds necessary for its development and that attaining the Johannesburg targets will remain a goal of little credibility.

States should implement the obligations in the field of access to drinking water written into the multiple international conventions they have ratified. They should also take into account the 1999 United Nations General Assembly Resolution according to which access to water is a fundamental right.

In most countries, it would seem necessary to improve domestic legislation in the water sector. Much remains to be done for everyone to truly have access to drinking water and sanitation in cities and in the countryside—even in developed countries. In the fight against exclusion, covering the cost of water for the poorest seems to be the minimum that each community must do for the good of its members. To succeed, laws that institute the necessary solidarity and foster mutual help among peoples must be adopted.



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# 1 General Considerations

*"Today, one person in six will drink unclean water.*
*One person in three will not have access to proper sanitation.*
*And around 10,000 people will die today as a result of this preventable situation.*
*That is unacceptable [...]".*

***Kofi Annan, 2004***

Everyone agrees that access to water and access to sanitation are "basic human needs and are essential to health and well-being" and that one must take particular account of the "basic needs of the poor and the vulnerable".[1] But does a basic, even crucial, need imply a right? And what is the extent of this right?

It goes without saying that the right to water, if it exists, is no more the right for everyone to receive their water for free than the right to food is the right to receive one's food for free. Nor is the right to water the right to take one's neighbour's water if one is thirsty or if one's field is suffering from drought.



Since the right to water is a source of misunderstandings, it is appropriate to start by clarifying the content of this concept based on States' and peoples' practices, rather than on doctrine or generous impulses.

Thus, the European Council on Environmental Law and the Académie de l'eau have attempted to define the meaning encompassed by the expression "the right to water"

1. *Ministerial Declaration of the Second World Water Forum*, The Hague, 2000.

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Box 1.
**Shared Values: Access to Water is an Ancestral Tradition**

Under the law of Solon, access to a public well is a right for people in the immediate vicinity, and inhabitants from further away are authorised to draw two jugs of water per day if they lack water. According to Plato, all those who lack water have the right to receive water from their neighbours in fixed quantity to cover their essential needs (*Laws*, Book VIII). In Sahalien regions, access to a well to quench thirst is not refused. In Genesis (24: 16-20), Rebecca hurried with her pitcher in hand, and gave him water to drink. When she had finished giving him a drink, she said, "I will draw water for thy camels also, until they have done drinking."

The right to water is a wealth-sharing obligation. In the Koran (51:19), "A portion of their money was set aside for the beggar and the needy." One must give others water that one does not use oneself, and water to quench thirst (*Hadith of Bukhari*, Vol. 3, Book 40, nos. 543-544).

**Shared Values: Christian Churches Defend the Right to Water**

In 2003, the Assembly of the European Christian Environmental Network (ECEN) expressed its belief that "water is one and connects us with all creation" and declared that "the right of access to water should be recognized and promoted as a fundamental human right that must be enforced by all possible legal means." This position was confirmed in 2005. According to the Holy See (2003), the right to water is an "inalienable right".



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where this right is seen as enforceable under domestic law. It would seem that this expression is a shortened form of "the right to access to drinking water and sanitation for all" and concerns, at minimum, access for all to drinking water and basic sanitary installations (Appendix 1). Even in the best of cases, this right does not give everyone the same rights and, in ten years, with or without a fundamental right to water, hundreds of millions of people will still not have access to drinking water because the means to provide them with access are lacking.

Access to water is specifically defined by the fact that it is a right to drinking water, not a right to water in general, and because it primarily concerns the management of local public utilities and not of hydrological basins.

This report aims to show the practical meaning of the right to drinking water and sanitation, and how States have implemented this right. It is based on case studies conducted in various countries, takes into account the numerous reports adopted internationally,[2] and the preparatory work for a possible agreement on the right to water.[3] It emphasises implementation modalities and obstacles to the right to water, rather than taking a more philosophical view of the extent of this fundamental right.



The principal difficulty is knowing what rights will be held by users who have a right to water and what the corresponding obligations attached to this right will be in order to foster access to water for all. An undoubtedly secondary difficulty is determining whether the right to water is a fundamental right or a human right.

2. *General Comment no. 15: The Right to Water*, United Nations Committee on ESCR, 2002; Guissé, 2004; Guissé, 2005.

3. See sites: watertreaty.org, i-s-w.org, greencrossinternational.net and almaeau.org (Framework Convention on the Right to Water), and alliancesud.ch (for an international water convention).

## 1.1. Water for Life

The right to water in regard to the right to drinking water and sanitation only concerns water for life, that is to say, water for humankind's essential domestic uses. It does not cover quantities of water beyond what is needed for these essential needs, nor does it cover water for non-domestic uses. This right aims to ensure that:

- everyone has a certain quantity of water of a certain quality so as to meet their essential needs.

It is inseparable from access to adequate sanitation because the resource would rapidly deteriorate without sanitation.

The concept of access to water for all is very old and has been formalised for roughly three decades under the heading of the "right to water" (Mar del Plata, 1977). More and more, this right is seen as an enforceable right; that is to say that each individual can assert his or her right to drinking water in certain situations. It is not limited to the right to buy water in bulk or bottled water, nor to the right to be connected to a sewer system.



The right to water primarily concerns individuals. It differs from water law (in the sense of environment law or water resource protection laws), which concerns groups. The right to water is consistent with the right to a healthy and balanced environment (a constitutional right); it assumes that environment law is respected and benefits from the implementation of integrated water resource management. It implies protecting the resource and, in particular, wet zones and groundwater that play a large role in the drinking water supply.

In general, there is enough drinking water to meet households' essential needs, but not necessarily enough for all uses. In the case of water shortages, some non-essential household uses will be forbidden, water abstractions by farmers for irrigation will be

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limited or even forbidden, and the guaranteed flow of rivers, although protected by law, will no longer be guaranteed. Drought strikes nature and nature-dependant economic activities first. Cutting off the supply of drinking water in villages is the last measure taken during shortages and, when this measure has to be taken, has to one must still provide drinking water, whether in bottles, by road tanker, or by boat.

Man has vital needs to be met and therefore holds a true "right" when it comes to drinking water. This right must be satisfied in priority, whereas rights to water for other uses are relative because they may not be satisfied during water shortages. Like the right to health, the right to water aims to protect human health much more than that of animals. Like the right to food, it aims to provide all humans with water before worrying about *all* species on the planet. The logic behind the right to water is anthropocentric and falls within the perspective of sustainable development. The priority given to protecting humans does not, however, exclude the requirement of protecting the environment in general.

## 1.2. A Limited Right to a Small Quantity of Drinking Water



To understand the real extent of the right to water, one needs to specify which uses are essential, what quantity of water must be provided in priority, and what quality of water must be available. While no specific minimum quantity has been adopted internationally, it is generally agreed that each individual should have more than 20 litres of drinking water per day and that the quantity of water normally needed in urban areas is roughly 50 litres per person per day, although this figure can be up to 100 litres.[4] The quality of water depends on the use but should be "good" for personal hygiene and

4. As a comparison, an African consumes 30 litres of water per day, a Palestinian, 70 litres, an Israeli, 260 litres, and an American, 700 litres, whereas in Europe the average is 200 litres per day for all household uses (Source: BRGM). The 20 litre per day figure applies to refugee camps. In Lorient (France), household consumption has been reduced to 50 litres per person per day.

Box 2.

**National Legislation: The Right to Water Is Acknowledged as a Fundamental Right in Africa and Latin America**

In Africa, the *African Charter on the Rights and Welfare of the Child* (Addis Ababa, 1990) (in force, ratified by 37 States) contains the obligation for States to take the measures necessary to "to ensure the provision of adequate nutrition and safe drinking water". This principle is reaffirmed in the Protocol to the *African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (Maputo, 2003), Article 15 of which stipulates that "States Parties shall […] take appropriate measures to […] provide women with access to clean drinking water […]" (signed by 38 and ratified by 12 countries).

The *African Convention on the Conservation of Nature and Natural Resources* (Maputo, July 2003), signed by 33 States, stipulates that "The contracting States […] shall endeavour to guarantee for their populations a sufficient and continuous supply of suitable water […]" (Article 5.1). The *Charte des eaux du fleuve Sénégal*, signed in May 2002 by Mali, Mauritania and Senegal, states that: "Les principes directeurs de toute répartition des eaux du Fleuve visent à assurer aux populations des États riverains, la pleine jouissance de la ressource, dans le respect de la sécurité des personnes et des ouvrages, ainsi que du Droit fondamental de l'homme à une eau salubre, dans la perspective d'un développement durable" (Article 4.3).*

Everything seems to indicate that the vast majority of African States have acknowledged the existence of a human right to water subject to implementation that reflects each States' own options and available financial resources.

In the Americas, the *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social And Cultural Rights* (the 1988 "Protocol of San Salvador", in force since November 1999 and ratified by 13 Latin American States) specifies in Article 11.1 that "Everyone shall have the right to live in a healthy environment and to have access to basic public services." This right to water services can be found in several Latin American constitutions in the form of an obligation placed on government authorities regarding drinking water and sanitation.

* * *

In Europe, the situation is not as clear-cut since the European Court of Human Rights has not yet taken a position on the right to water in general. However, the implementation of the *Protocol on Water and Health* (London, 1999) in force should improve the application of the principle of water for all. In Article 5, it states that "Equitable access to water, adequate in terms both of quantity and of quality, should be provided for all members of the population, especially those who suffer a disadvantage or social exclusion."

* The guiding principles for all distribution of water from the River aim to ensure the populations of riparian States full use of the resource, while respecting the safety of people and works, as well as the Fundamental Human Right to clean water, in the perspective of sustainable development.



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some of the water should be "potable", that is to say, not contain any substances dangerous to one's health.

Figure 1 shows that the right to water in France only applies to a small quantity (4.5%) of all the water collected for household, industrial and agricultural uses. A small part of this water for domestic use (approximately 15%) is used by people who only have access to water because of solidarity measures (rural areas and the poor).

The border between right-to-water uses and other uses is somewhat fuzzy because of a tendency to include in the right-to-water concept not only the household water supply, but also water for the animals that live with households and sometimes even households' small-scale staple food crops.[5] Social reality prevents us from too strictly limiting the drinking water uses that receive specific protection. However, these exceptions cannot serve to unduly increase the quantity of water to be provided in priority to households, for example, by including the water necessary for the households' professional activities or, for farmers, irrigation water.[6]

## 1.3. The Right to Water and the Corresponding Obligations

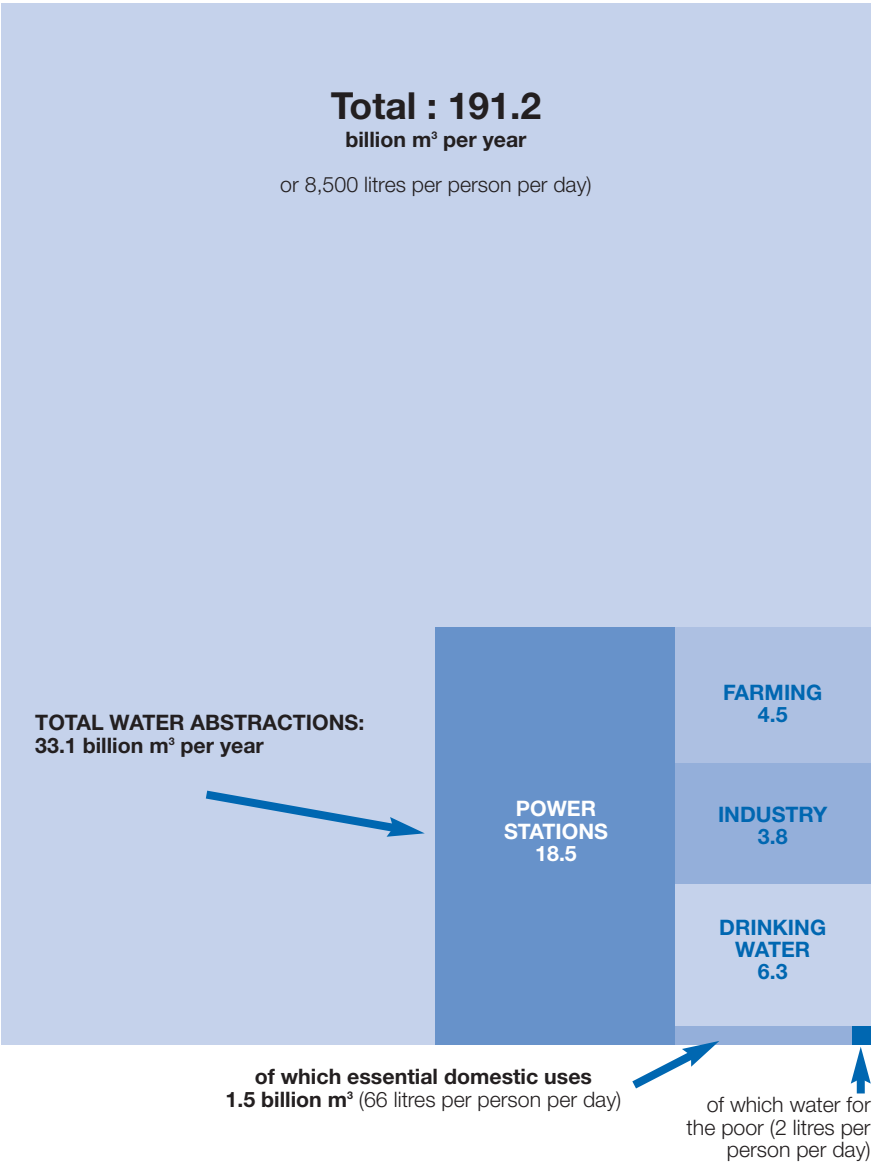


Those who hold the right to water are individual users or households, not businesses, activities or even the natural milieu to which rights over water resources are conferred but whose rights follow a different logic. The right to water is not water law, and the

5. See *The Right to Water*, Académie de l'eau, 2002.

6. In France, yearly water abstractions (excluding power stations) were, in 2002, 6.3 billion $m^3$ for drinking water, 4.5 billion $m^3$ for irrigation, and 3.8 billion $m^3$ for industry (IFEN no. 104, July 2005). The right to water in France concerns only approximately 1.5 billion $m^3$ of water abstractions out of a total of 14.6 billion $m^3$ (excluding power stations), or approximately 55 litres per person per day plus leaks. Real net water consumption (water taken and not returned to nature, approximately 6 billion $m^3$) breaks down as follows: agriculture: 68%, drinking water: 24%; industry: 5%; energy: 3%. 60% of domestic water use comes from groundwater. Sources: IFEN, BRGM.

Figure 1.
**Renewable Water Resources in France (overland flow and infiltration)**







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allocation of drinking water to humans for their fundamental needs is not the distribution of available water among all possible users.

The existence of the right to water implies duties and obligations because the distribution of drinking water is subject to rules that go well beyond those applicable to the sale of bottled drinks.

In order to meet the population's water needs, government authorities must take legal and financial measures in the fields of public health and the environment. They must intervene to protect users' rights, avoid discrimination, take into account the desires of human groups, and exercise their skills in the water sector. The role of the government authorities is to protect the rights of those who are thirsty for justice and social recognition, and not only to practice charity and compassion for inferiors who need water. The approach taken in most countries is a rights-based approach, and not a needs-based approach. Appendix 2 contains a description of the rights-based approach.

As access to water is essentially a local or regional matter, local or regional government authorities are generally in charge of implementing water services (subsidiarity principle). However, in some countries, difficulties can arise when the government authorities in charge do not have sufficient legal authority—notably financial and fiscal authority—at their level to act autonomously enough. The vesting of water services is not effective everywhere, even if it seems desirable.



## 1.4. Access to Drinking Water: A Policy Goal Acknowledged by All

All States admit that access to water and sanitation are essential needs that must be met and, accordingly, they implement appropriate policies nationally, regionally and locally. For some, it is an important policy goal and, for others, the government

Box 3.

**Declarations by States: States Have Solemnly Adopted the Johannesburg Targets**

In September 2002, representatives of States adopted the *Johannesburg Declaration on Sustainable Development* which says:

"We commit ourselves to the Plan of Implementation of the World Summit on Sustainable Development and to expediting the achievement of the time-bound, socio-economic and environmental targets contained therein."

This Plan of Implementation contains, among other things, the following commitment:

"The provision of clean drinking water and adequate sanitation is necessary to protect human health and the environment. In this respect, we agree to halve, by the year 2015, the proportion of people who are unable to reach or to afford safe drinking water (as outlined in the Millennium Declaration) and the proportion of people who do not have access to basic sanitation."

These objectives are relatively specific but were not drafted in a legally binding form. States are not formally obliged to respect the deadlines, nor to take the financial measures necessary for these objectives. In addition, these objectives will not be attained in a certain number of States.

Nevertheless, the combination of these political objectives with the commitments of two world conventions cited below and other governmental declarations in the same vein has created obligations that States will find difficult to avoid completely. It matters little whether the right to water is formally acknowledged or not: specific commitments in the water sector have been taken and the international community can insist that they be fulfilled.

### Switzerland Defends the Right to Water Internationally

"La Suisse s'est prononcée dans toutes les conférences internationales pour que l'eau soit inscrite comme un bien commun et pour que l'accès à l'eau soit considéré comme un droit de l'homme. Malheureusement, il n'a pas encore été possible de faire inscrire cela dans quelque déclaration ministérielle. La Suisse encourage également les pays qui se sont accordés sur un commentaire général sur l'eau comme droit de l'homme, par le biais du Comité des Nations unies pour les droits économiques, culturels et sociaux, à préparer rapidement les bases juridiques pour mettre en œuvre un tel engagement, obligatoire pour les 145 pays Parties au Pacte international sur les droits économiques, sociaux et culturels." (Extract from the Position of the Federal Council (28-05-2003) submitted to the Council of States).*

* *Switzerland has spoken, in all international conferences, in favour water being inscribed as a common good and access to water being seen as a human right. Unfortunately, it has not yet been possible to inscribe this in any ministerial declaration. Switzerland also encourages the countries that have agreed on a general comment on water as a human right through the United Nations Committee on Economic, Social and Cultural Rights to rapidly prepare the legal bases to implement such a commitment, which is mandatory for the 145 countries parties to the International Covenant on Economic, Social and Cultural Rights.*


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authorities, or even those to whom the provision of this public service has been delegated, can be held accountable for a failure to meet this need. The legal scope of the right to water varies from one country to the next, as do application measures. In some countries, right-to-water issues are the exclusive domain of regional or local authorities and thereby escape the control of federal authorities.

Access to water and sanitation is closely linked to the right to health and the right to housing. At the European Summit in Nice (2000), the Heads of State and Government adopted the objective of "facilitating access to resources, rights, goods and services for all".[7] This concerns "access for all to decent and sanitary housing, as well as the basic services necessary to live normally, having regard to local circumstances (electricity, water, heating, etc.) […]." Access to drinking water is one part of access to essential goods and services, but has not yet been the subject of a directive.

The political importance of access to water and sanitation can be seen in the fact that all States have committed to implementing the Millennium Goals (2000) and the Johannesburg targets (2002) for water and sanitation. These very specific commitments have considerable financial consequences because they set ambitious objectives to attain in a specific timeframe. They concern both those who do not have water (physical accessibility) and those that cannot afford water (financial accessibility).



## 1.5. Domestic Law Can Make the Right to Water Real

The right to water finds its basis in water, health and housing policies, and is implemented by the provisions of domestic law. It is made up of an ensemble of provisions that aim to ensure access to water and sanitation and that figure in various

7. *Objectives in the Fight Against Poverty and Social Exclusion*, OJEC, C 82/4 (13 March 2001).

codes (civil code, environment code, public health, social action, urbanism, consumption, local governments, etc.). This right is only real if who must implement it and who must finance it are specifically stated.

Making drinking water available for domestic uses implies worrying about the future of used water and avoiding generating damages for other users. Every person who has water has the duty to ensure that he or she does not alter the water resource (the "polluter pays" principle). Having the right to water thus generates obligations regarding sanitation.

The right to water has been growing in importance thanks to more and more frequent acknowledgement of the right to a healthy and balanced environment and the right to sustainable development. Yet much remains to be done to make access to water and sanitation an enforceable right that can be invoked by those who lack drinking water or appropriate sanitation.

## 1.6. The Right to Water: A Right Generally Recognised on International Level



The right to water is a "right to" like many others that exist, such as the right to health, food, housing, education, the environment. Some are accessible for free, others must be paid for. The right to water is one of the economic and social rights listed in the *International Covenant on Economic, Social and Cultural Rights* and concerns both access to drinking water and access to sanitation. It is necessary to realise the right to water in order to implement the right to an adequate standard of living and the right to dignity—two unanimously acknowledged human rights.[8] Everyone agrees that numerous fundamental

8. The *Universal Declaration of Human Rights* (1948) proclaims that (Article 25) "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family […]" and that (Article 22) "Everyone […] is entitled to realization […] of the economic, social and cultural rights indispensable for his dignity […]." It is difficult to imagine how health and well-being could be ensured without drinking water.


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rights cannot be realised if one does not have water. Improving access to water is an unavoidable legal obligation for all countries that have ratified the world conventions of 1979 and 1989 that deal with access to water. In 1999, the doubts as to the nature of access to water were cleared up because the United Nations General Assembly[9] solemnly declared that: ***the right to clean water is a fundamental human right.***

In 2002, the Committee on Economic, Social and Cultural Rights adopted General Comment no. 15 titled "The Right to Water", in which it is specified that this right is one of the rights protected by the *International Covenant on Economic, Social and Cultural Rights* ratified by 151 States.[10] This official interpretation ended a period of uncertainty as to the nature of the right to water—an existing fundamental right or a new fundamental right to be acknowledged.

In Europe, the States adopted in 2001 a Council of Europe Recommendation[11] that sets forth the right to water; the European Parliament made a similar pronouncement in 2003.[12] Implementing European directives on drinking water and urban wastewater contributes to the implementation of the right to water.

9. A/RES/54/175 (15 February 2000) "The right to development: […] Reaffirms that, in the full realization of the right to development, inter alia: (a) The rights to food and clean water are fundamental human rights and their promotion constitutes a moral imperative both for national Governments and for the international community." This text was adopted with the support of all developing countries. It follows Resolution 46/91 of 16 December 1991 and the *Declaration on the Right to Development* (Resolution 41/128 of 04 December 1986) under which States shall ensure notably the "equality of opportunity for all in their access to basic resources." Drinking water is obviously one of these basic resources.

10. The *International Covenant on Economic, Social and Cultural Rights* (1966) proclaims that the States "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing" (Article 11.1) and "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" (Article 12).

11. *Recommendation of the Committee of Ministers to member states on the European Charter on Water Resources*, Council of Europe, 17 October, Rec. (2001) 14.

12. *European Parliament resolution on the Commission communication on water management in developing countries and priorities for EU development cooperation*, COM (2002) 132, 4 September 2003. According to the European Parliament, "access to water for all without discrimination is a right" and "the 145 countries that have ratified the *International Covenant on Economic, Social and Cultural Rights* have an obligation to ensure that everyone has access to water, equitably and without discrimination."



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Box 4.

**National Legislation: Nearly All States Have Taken on Legal Obligations Regarding Access to Water**

Under two international conventions, nearly all States are obliged to take "appropriate" measures to supply their populations with water and sanitation. The texts in force are:

- "States Parties […] shall ensure to such women the right […] to enjoy adequate living conditions, particularly in relation to housing, sanitation, […] water supply, […]" (Article 14.2.h of the *Convention on the Elimination of All Forms of Discrimination against Women*, ratified by 170 countries, 1979).

- "States Parties […] shall take appropriate measures […] to combat disease and malnutrition […] through the provision of adequate […] clean drinking-water" (Article 24 of the *Convention on the Rights of the Child*, ratified by 191 countries, 1989).

These agreements oblige States not only to conduct policies to improve access to water and sanitation, but also to provide an "adequate" water and sanitation supply. They have considerable legal scope even if they concern only women and children; they also create obligations that most States respect. In principle, they can act as the basis for complaints if the policies conducted and/or measures taken are manifestly insufficient or discriminatory.

The existence of the right to water has been expressed on multiple occasions by all States since the United Nations Conference on Water (Mar del Plata, 1977). According to the declaration adopted: "all peoples, whatever their stage of development and social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs." During the International Conference on Population and Development, held under the auspices of the United Nations (Cairo, 1994), States subscribed to Principle 2 of the Programme of Action according to which individuals "have the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and sanitation."

In Resolution 2005/24 adopted in July 2005 and titled "The right of everyone to the enjoyment of the highest attainable standard of physical and mental health", ECOSOC "[a]ffirms that access to a sufficient amount of safe, clean water for personal and domestic use […] is fundamental to the realization of the right of everyone to the enjoyment of the highest attainable standard of health." This resolution was adopted by a 50-to-1 vote (the United States voting against), with no parties abstaining.




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The right to water is also regionally acknowledged in Latin America and Africa where numerous international agreements and domestic law provisions have enshrined the right to water as a fundamental right. In Europe, the *London Protocol on Water and Health* (1999) and European Court of Human Rights case law (the *Zander* case) should compensate for the lack of an agreement on the human right to water similar to those in force in Latin America and Africa.

The right to water has been evoked in all major international meetings on water since the United Nations Conference in Mar del Plata (1977). At the last World Water Forum (Kyoto, 2003), President Chirac proposed that: ***access to water be acknowledged as a fundamental right.***

Numerous European countries have officially come forth in favour of the right to water, such as Belgium, Spain, France, Luxembourg, Norway, Romania, Switzerland, etc. Outside Europe, one should note the pro–right to water positions of South Africa, Columbia, Morocco, Niger, New Zealand, Uruguay, etc. NGOs and organisations representing businesses have on very many occasions come forth in favour of the right to water. The Académie de l'eau and the European Council of Environmental Law (ECEL) have advocated the implementation of this right.



## 1.7. Objections to the International Acknowledgement of the Right to Water

Despite support among the vast majority, the right to water is still contested by a few countries opposed to the international acknowledgement or expansion of social and economic rights because of the international obligations that this could cause. This argument on principle has not prevented these same countries from acknowledging sufficient food as a fundamental right (FAO, 2002). Yet, it seems difficult to treat drinking

Box 5.

**Declarations by States: All Heads of State and Government Have Declared Themselves in Favour of the Right to Adequate Food**

Long acknowledged, the existence of the right to food has been affirmed by several Declarations signed by all States.

The *Rome Declaration on World Food Security* (1996) contains the affirmation that: "We, the Heads of State and Government […] reaffirm the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger."

According to the *Declaration of the World Food Summit: Five Years Later* (2002),

"We, the Heads of State and Government, […]

"Reaffirming the right of everyone to have access to safe and nutritious food; […]

"We agree to promote equal access for men and women to food, water, land, credit and technology […]."

In September 2004, the Committee on World Food Security (FAO) adopted guidelines on the right to food to "support the progressive realization of the right to adequate food in the context of national food security."

On 16 April 2004, the United States declared before the Commission on Human Rights that it "supported the progressive realization of the right to adequate food as a component of the right to an adequate standard of living. The attainment of that right was a goal to be realized progressively–it did not give rise to international obligations or domestic legal entitlements".

The United States' legal position is very interesting because it shows that it is possible to acknowledge the right to food in an international framework without accepting legal obligations because of this acknowledgement.

By analogy, it would be possible to reaffirm the right to access to water in an international declaration and allow States to draw the possible legal conclusions of this recognition for its domestic law. In many countries, the primary consequence will not be legal, but would rather be calling the unmet needs of the poorest to the attention of decision-makers without giving the poorest an enforceable right.




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water and food differently as both are essential goods that one can absolutely not do without. In addition, it is difficult to see how one could implement the right to food without drinking water. A few countries do not see the interest in acknowledging a "new" human right (which this is not) or fear that such acknowledgement would create heavy domestic obligations regarding drinking water and sanitation. They seem to believe that acknowledging the right to water would mean that the purely political objectives of the Millennium Goals and Johannesburg targets would then become legal obligations. Yet, it is perfectly possible to attain the Johannesburg targets without acknowledging the right to water and, inversely, to implement the right to water without attaining the Johannesburg targets. The right to water does not contain any element that would determine the rate at which a country would have to implement drinking water infrastructures. It does imply public expenditure in this sector but leaves it up to countries to determine the extent of such expenditures. When one compares neighbouring and similar countries, one does not see significant differences between them based on whether or not they have acknowledged the right to water. There are differences, but these differences can only be seen on the level of individuals or groups of individuals who have or do not have water.

Some countries have even claimed that international acknowledgement of a right to water could give neighbouring countries new rights. This assumption is unfounded because the right to water does not create a right to the water resources of a neighbouring country any more than the right to food creates a right to the food resources of another country. This does not, however, mean that a country can deprive a country downstream of water.



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Box 6.

**Declarations by States: France's Initiatives to Improve Access to Essential Goods and Services**

France presented a "Déclaration des droits d'accès aux services essentiels"[a] to the Johannesburg Summit and the European Union in which "Tout individu a droit d'accéder aux services essentiels en réseau pour la satisfaction de ses besoins vitaux."[b] This Declaration focuses notably on the sector of water, waste and transport; it specifies what is meant by a "quality service" (see the *Charte des services essentiels*[c], November 2003, www.fondation-igd.org). The Johannesburg Declaration on Sustainable Development (September 2002) contains the following commitment: "We […] are resolved […] to speedily increase access to such basic requirements as clean water, sanitation, adequate shelter, energy, health care, food security and the protection of biodiversity."

The French authorities and the Institut de la gestion déléguée are preparing a "Charte des services essentiels" so that the rights to access to essential services can be affirmed globally through a Universal Declaration adopted by ECOSOC and by the United Nations General Assembly, in which States will commit to enforcing these rights by implementing a Sustainable Management Code. In May 2004, President Chirac announced that "la France a proposé que les principes directeurs de l'accès aux services essentiels soient rassemblés dans un texte qu'adopteraient les Nations unies, dans l'esprit de Rio et du sommet d'Istanbul."[d] In April 2005, UN Habitat unanimously adopted Resolution 20/5 that notably demands the establishment of an inventory of principles regarding access to basic services. It was proposed by South Africa, Brazil, France and the Philippines, with the support of the Africa Group. The Group of 77 and China asked, during the plenary session, to be co-authors to the resolution. At the thirteenth meeting of the Sustainable Development Commission, Mr Serge Lepeltier, Minister of the Ecology and Sustainable Development, proposed that a policy declaration be prepared on the guiding principles for access to essential services.



a. Declaration on the Rights of Access to Essential Services
b. Every individual has the right to access to essential network services to meet his or her vital needs.
c. Essential Services Charter
d. France has proposed that the principles guiding the access to essential services be assembled in a text to be adopted by the United Nations, in the spirit of Rio and the Istanbul Summit.


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Box 6.
**Declarations by States: France's Initiatives to Improve Access to Essential Goods and Services** *(cont.)*

The right to access essential goods and services is a promising theme that has already been written into the laws of various countries. In the Flemish Region (Belgium), a law states that "Chaque abonné a droit à une fourniture minimale et ininterrompue d'électricité, de gaz et d'eau à des fins d'utilisation ménagère afin de pouvoir mener une vie d'homme suivant le niveau de vie en vigueur"[e] (Decree of 20 December 1996, Article 3). In Russia, the law requires each municipal service (water, heat, electricity, waste removal) to be "affordable for users" and demands that the municipal regulator "use criteria based on local conditions to determine what is affordable" (Federal Law, 2004).



e. Each subscriber has the right to minimal and uninterrupted provision of electricity, gas and water for household use in order to live a human life according to the current standard of living.

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# The Scope of the Right to Water

2

Access to water deals with water from natural sources (drawn water) or water from distribution networks (tap water) to meet essential drinking water needs. This usage also implies worrying about the future of this water after consumption—in other words sanitation. The scope of the right to water varies according to the context in which it is exercised (urban or rural areas), the degree of economic development, and the level of priority given to water. It is set by States and includes both supply and sanitation.



Access to water can be paid for or free. The free provision of drinking water is a tradition that took material form with the creation of public fountains in Europe. Tap water, on the contrary, is generally paid for. Workers have the right to quench their thirst for free in the companies for which they work and water is offered to visitors in public places. Mankind's relationship to water is not only monetary, it contains a very large spiritual and humanist dimension.

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## 2.1. Give Priority to Essential Domestic Uses of Water

Since water is vital for life, it goes without saying that human uses must take priority over other uses when water becomes scarce. In many countries, the law formally establishes this priority,[13] which obliges countries to protect water resources from pollution and, during shortages, authorises them to reduce or forbid non-essential domestic uses such as watering lawns, and agricultural, industrial, hydro-electric or leisure uses (public gardens, golf courses, swimming pools).

The hierarchy of water uses is a very general principle that is all the more important when water is rare. Thus, the Bonn Conference on Freshwater (December 2001) specified that: "Water should be equitably and sustainably allocated, firstly to basic human needs and then to the functioning of ecosystems and different economic uses including food security." The United Nations *Convention on the Law of the Non-navigational Uses of International Watercourses* (New York, 1997) states that "special regard [be] given to the requirements of vital human needs" (Article 10), which means "providing sufficient water to sustain human life, including both drinking water and water required for production of food in order to prevent starvation."[14]



When there is a risk that excessive water may be drawn, the resource needs to be protected against exhaustion, and populations' habitual sources of drinking water must be prevented from drying up. The Walloon Region that "exports" water to other regions has limited water abstractions: "Les prélèvements d'eau et les rejets d'eaux usées qui sont

13. Humanitarian law deals with the protection of water resources in the case of conflict (Geneva Conventions of 1949 and Protocols of 1977).

14. A/51/869, 14 May 1997, UNGA Doc. A/51/869, 11 April 1997. The provision of water to prevent famine concerns raw water. The quantity of water to plan raises a problem of interpretation because it could be staple food crops for household self-consumption, or for agricultural production in general. The problem is distinct from that of drinking water because it deals with raw water in quantities much greater than approximately 50 litres per person per day.

* Water abstractions and wastewater discharges that are done to exercise this right (household needs) may not endanger natural functions or the sustainability of the resource.

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effectués pour l'exercice de ce droit (besoins des ménages) ne peuvent mettre en danger les fonctions naturelles et la pérennité de la ressource" (Water Code, Article 1.3). *

## 2.2. The Right to Draw Water For Free in Nature (Free Access)

The right to water includes the right to collect rainwater, draw water from springs, and take the water necessary for one's domestic uses from rivers and the groundwater supply. This natural right is sometimes written in laws that specify its scope; it is threatened when everyone's water becomes a resource that can be appropriated by a few people. It can be affected by overly generous water abstractions for non-domestic uses. Thus, it is often limited to a few cubic metres per day.

The right-to-water concept is often associated with the idea that access to water in nature is free (or freely accessible), that is to say that the user does not pay rent or "royalties" to an "owner" to have the right to draw "blue gold" for his or her personal use. Given the fact that water is a "common resource" or "the Nation's heritage", it indeed seems difficult to make households pay charges only because water—a valuable and collective good—has become a rare good (price-based regulation). However, contributions can be demanded to cover the cost of protecting catchment areas or other costs associated with the small water cycle, for example to "buy back" imprudently granted offtake licences (United Kingdom).



## 2.3. The Right of Access to Drinking Water and Sanitation

The right of access to drinking water and sanitation expresses itself in two ways:

- public authorities have an obligation to create essential public services, and/or
- everyone has the right to drinking water and sanitation.

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Box 7.
**National Legislation: Priority to Domestic and Essential Uses**

In Morocco, "en cas de pénurie d'eau due à la surexploitation ou à des événements exceptionnels tels que sécheresses, l'administration édicte les réglementations locales et temporaires ayant pour objet d'assurer en priorité l'alimentation en eau des populations et l'abreuvage des animaux" (Law no. 10-95 on water, Article 86)[a]. In Chad, "l'alimentation en eau potable des populations demeure l'élément prioritaire dans l'allocation des ressources en eau" (Law 016/PR of 18 August 1999 governing water)[b]. Similar provisions exist in Burkina Faso, Côte d'Ivoire, and Senegal. In Benin, "lorsqu'il aura pu être satisfait aux besoins humains en eau, seront comblés par ordre d'importance les besoins agricoles, les besoins industriels, les besoins municipaux, les besoins pour les loisirs" (Water Code, 1987, Article 54)[c]. In Niger, "en période de grande sécheresse, l'autorité locale peut interdire les activités grandes consommatrices d'eau et non directement destinées à la consommation humaine, notamment d'arrosage des jardins d'agrément, de remplissage et de vidange des piscines, de lavage des voitures" (Law no. 98-041 of 29 April 1998 governing water, Article 9)[d].

In South Africa, "if the water services provided by a water services institution are unable to meet the requirements of all its existing consumers, it must give preference to the provision of basic water supply and basic sanitation to them" (Water Services Act, 1997, Section 5).

In France, the Minister of Ecology has asked the Préfets to favour the production of drinking water over other uses "pour lesquels une interdiction totale de tout prélèvement non prioritaire doit être mise en œuvre le cas échéant" (Application Decree of 4 July 2005 on the management of water resources in periods of drought)[e]. The government has decided to modify the water bill by affirming "la priorité à l'eau potable par rapport aux autres usages" (Environment Code L 211.1)[f] and by "assurant une prise en compte prioritaire de l'alimentation en eau potable dans l'exploitation des retenues."[g]

**The Right to Draw Water**

In Spain, "all may use surface water for drinking, bathing and other domestic uses, as well as to water livestock" (Water Law no. 29/1985 of 08 August 1985, Article 48).

In Burkina Faso, "les prélèvements d'eau brute dans la nature (eau de surface et/ou eau souterraine) destinés exclusivement à la satisfaction des besoins des personnes, dans les limites des quantités nécessaires à l'alimentation humaine, aux soins d'hygiène et de santé, au lavage et aux productions végétales ou animales réservées à la consommation familiale de ces personnes sont gratuits. La limite a été fixée à 100 litres par jour et par personne" (Decree no. 2004-580 of 15 December 2004 governing the domestic uses of water).[h] Beyond this limit, fees are paid.

a. In the case of water shortages due to overuse or exceptional events such as droughts, the administration issues local and temporary regulations with the aim of ensuring in priority the water supply for populations and drinking water for animals
b. Populations' drinking water supply remains the priority in allocating water resources
c. When human water needs have been met, other needs will be met, in order of importance: agricultural needs, industrial needs, municipal needs, leisure needs
d. During severe drought, the local authorities may forbid activities that consume large amounts of water and are not directly destined for human consumption, notably watering pleasure gardens, filling and emptying swimming pools, washing cars
e. For which an absolute ban on all non-priority offtake must be implemented if needed
f. The primacy of drinking water in relation to other uses
g. ensuring drinking water supply is given priority when using all [water] withdrawals
h. Raw water abstractions in nature (surface water and/or groundwater) destined exclusively to meet peoples' needs, within the limit of the quantities needed for human food, hygiene and health, washing, and vegetable or animal production reserved for household consumption by these people are free. The limit is set at 100 litres per person per day.



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### *2.3.1. Public Services for All*

In almost all countries, water supply and collective sanitation are seen as basic public services, essential services, or general interest services created for the good of all. Accordingly, they are run under the responsibility of government authorities and generally take the form of public utilities. Some constitutions and laws oblige government authorities to create basic services and sometimes give them a monopoly (Finland, Sweden, South Africa, Catalonia, etc.). The Constitution of Panama assigns this authority to the State;[15] in Venezuela, this authority belongs to local authorities or communes. In France, communes have mandatory responsibility for collective sanitation but not for water distribution, a field in which they are authorised and encouraged to intervene.

A more flexible approach is to set a goal for State action. In Cameroon, the law says that the State must "facilitate access to water for all". In Niger, the law says that "l'objectif premier de l'État est de mettre à la disposition de chacun de l'eau en quantité suffisante et de bonne qualité" (Law no. 93-014 of 2 March 1993). Quantifiable goals to improve access to water are sometimes set in national strategies (Morocco, South Africa).*

### *2.3.2. Drinking Water and Sanitation for All*



Access to drinking water and access to sanitation are the main elements of the right to water; they fulfil a strong demand by users and require very large investments when networks must be built.

15. Constitution of Panama. Article 106: "En materia de salud, corresponde primordialmente al Estado el desarrollo de las siguientes actividades : ... Combatir las enfermedades transmisibles mediante el saneamiento ambiental, el desarrollo de la disponibilidad de agua potable." Article 114: "Es deber fundamental del Estado garantizar que la población viva en un ambiente sano y libre de contaminación, en donde el aire, el agua y los alimentos satisfagan los requerimientos del desarrollo adecuado de la vida humana." *Article 106: "In the area of health, it is the State's essential duty to carry out the following activities: […] Combat transmissible diseases by means of rehabilitating the environment, taking measures to make potable water available […]." Article 114: "The State has a fundamental duty to guarantee the population a healthy environment free from pollution, where the air, water and food satisfy the adequate development of human life."*

* The first objective of the State is to make good quality water in sufficient quantity available to all.

Box 8.
**National Legislation: The Right to Water Already Figures in Various Constitutions**

South Africa (1996), Section 27.1: "Everyone has the right to have access to […] sufficient food and water"; Section 27.2: "The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights."

Colombia (1991), Article 334: "El Estado, de manera especial, intervendrá para asegurar que todas las personas, en particular las de menores ingresos, tengan acceso efectivo a los bienes y servicios básicos." Article 366: "Será objetivo fundamental de su actividad la solución de las necesidades insatisfechas de […] saneamiento ambiental y de agua potable."*

Democratic Republic of Congo (draft, 2005), Article 48: "Le […] droit d'accès à l'eau potable […] sont garantis."**

Ecuador (1998), Article 23: "El Estado reconocerá y garantizará a las personas los siguientes: […] El derecho a una calidad de vida que asegure la salud, alimentación y nutrición, agua potable, saneamiento ambiental; educación, […]."***

Ethiopia (1998), Article 90: "Every Ethiopian is entitled, within the limits of the country's resources, to […] clean water."

Gambia (1996), Article 216(4): "The State shall endeavour to facilitate equal access to clean and safe water."

Kenya (draft, 2005), Article 65: "Every person has the right to water in adequate quantities and of satisfactory quality." Article 66: "Every person has a right to a reasonable standard of sanitation."

Uganda (1995), Article 14: "The State shall endeavour to fulfil the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that […] all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, decent shelter, adequate clothing, food, security and pension and retirements benefits."

Philippines (1987), Section 11: "The State shall adopt an integrated and comprehensive approach to health development which shall endeavour to make essential goods, health and other social services available to all the people at affordable cost."

Uruguay (2004), Article 47: "Access to drinking water and access to sanitation are fundamental human rights."

Zambia (1996), Article 112: "The State shall endeavour to provide clean and safe water for all persons, and take measures to constantly improve such facilities and amenities."



* Article 334: "The State will intervene to assure that all people, in particular those with the lowest incomes, have effective access to basic goods and services." Article 366: "A fundamental objective of its activity will be the resolution of the unmet needs of […] a healthy environment and potable water."

** The […] right of access to drinking water […] [is] guaranteed.

*** Article 23: The State shall recognise and guarantee to the people the following: […] The right to a quality of life that ensures health, food and nutrition, potable water, a clean environment, social education […]."


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*i) Definitions*

Several definitions of the right to water have been given, some of which concern only access to drinking water.

In Europe, the Council of Europe's Committee of Ministers (2001) defined the right to access to water as follows: "Everyone has the right to a sufficient quantity of water for his or her basic needs."

In 2002, the Committee on Economic, Social and Cultural Rights (United Nations) proposed the following definition:

"The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses" (General Comment no. 15).

For the Sub-Commission on the Promotion and Protection of Human Rights (2004), the right to sanitation consists of ensuring that "each person has access to safe, accessible, acceptable and affordable sanitation facilities in or near to their homes and public institutions (including educational institutions, hospitals and places of work)."



The right to access to sanitation is more difficult to define than the right to drinking water because some countries are considerably behind when it comes to equipment.[16] The right to have access to sanitation facilities makes it obligatory, for example, to create improved latrines so that everyone can preserve their dignity (including in schools and places of work). Users near existing sewer networks have the right to connect to them and, generally, they are obliged to do so even if they already have individual sanitation facilities.

16. The South African water bill gives the following definition: "The right of all citizens to have access to basic water services (the provision of potable water supply and the removal and disposal of human excreta and waste water) necessary to afford them a healthy environment on an equitable and economically and environmentally sustainable basis shall be supported." The right to water is also included in Costa Rica's and Guatemala's water bills under discussion.

Box 9.

**National Legislation: In India, the Right to Water Derives from the Right to Life**

The Supreme Court of India considers the right to drinking water to be a fundamental right: "The right to access to drinking water is fundamental to life and there is a duty on the State under Article 21 to provide clean drinking water to its citizens" (2000) SOL Case no.673). This opinion is founded on the right to life (Article 21 of the Indian Constitution) and applies particularly in the case of pollution, risk of groundwater pollution or absence of sanitation, or even due to overexploitation of water resources.

**Water Supply as a Legal Obligation**

In numerous countries, the government authorities have the obligation of creating water distribution and sanitation networks in urban zones. This obligation is implemented progressively.

The Constitution of Vaud Canton (Switzerland) (2003) states that "le Canton et les communes incitent à l'utilisation rationnelle et économe des ressources naturelles, et veillent à ce que l'approvisionnement en eau soit suffisant, diversifié, sûr, économiquement optimal et respectueux de l'environnement."*

In Finland, the Water Services Act (no. 119/2001) specifies: "When required due to the need of a relatively large number of inhabitants or health considerations or environmental protection, a municipality must make sure that appropriate measures are taken to establish a water supply plant to meet the need, to expand the area of operation or to otherwise secure the availability of sufficient water services" (Article 6.2). It also specifies that: "A municipality must develop the water supply and sewerage in its own territory in accordance with the development of communities so as to meet the objectives set out in this Act" (the objectives in the Act are "to ensure water services which provide a sufficient amount of impeccable household water with respect to health and otherwise as well as appropriate sewerage in terms of the protection of health and the environment") (Article 5.1).

Under Catalan Law (Spain) on municipalities and local governments, municipalities must at minimum provide the distribution of water to households and sewers and, if that is too difficult, the *comarques* (cantons) must provide them in the place of municipalities (Articles 64 and 65 of Law no. 08/1987).

In Algeria, "en zone agglomérée est obligatoire le branchement au réseau public d'assainissement de toute habitation ou établissement" (Law of 4 August 2005 on water, Article 118).**



* The Canton and communes shall encourage the rational and economic use of natural resource, and ensure that the water supply is sufficiently diversified, safe, economically optimal, and respectful of the environment.

** In agglomerate zones it is mandatory to connect all dwellings and establishments to the public sanitation


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In developed countries, the right to access to collective sanitation is linked to the government authorities' obligation to create collective sanitation in certain high population density zones (wastewater collection and treatment). Other users, often in rural zones where population density is low, are obliged to create their own sanitation facilities (septic tanks) to protect water resources and the government authorities are sometimes obliged to supervise these individual sanitation installations.

Appendix 1 contains a proposal to define the right to water elaborated by the European Council on Environmental Law and the Académie de l'eau to cover, notably, countries with few water sector infrastructures.

*ii) The Right to Water in Domestic Law*

The right to water for all can derive from a fundamental right constitutionally acknowledged as the right to life (India), the right to a healthy environment (Belgium and many other countries), the right to the enjoyment of economic, social and cultural rights (Senegal, Romania), or the right to a satisfactory standard of living (Benin, Togo), or it can result from a law that refers to access to water as a "fundamental right". Several States have already explicitly written the right to water into their Constitutions. Belgium has just decided to do the same, even though this right is already included in its laws.



The right to water is included in numerous laws. In the Walloon Region, "toute personne a le droit de disposer d'une eau potable de qualité et en quantité suffisantes pour son alimentation, ses besoins domestiques et sa santé" (Decree of 15 April 1999 on the water cycle and creating a public water management company)*. Similar texts exist in Flanders and Brussels. In Burkina Faso, "la loi reconnaît à chacun le droit de disposer de l'eau correspondant à ses besoins et aux exigences élémentaires de sa vie et de sa dignité" **(Law

* Every person has the right to have drinking water of sufficient quality and quantity for his or her food, household needs and health

** The law acknowledges that everyone has the right to water corresponding to his or her needs and the elementary requirements of life and dignity

Box 10.

**National Legislation: Possible Enforceability of Economic and Social Rights**

Nearly every State has ratified at least one convention containing important provisions on the access to water for all.

Some of them acknowledge the direct enforceability of these conventions domestically and are obliged to implement the provisions of these conventions. This is notably the case of Argentina where ratified treaties are part of the Constitutional Order. In India, the Supreme Court decided in 1997 that all instruments to which India is a party are directly applicable, at least as concerns any provision not in contradiction with the Constitution. In Germany, "The general rules of public international law form part of the Federal law. They take precedence over the laws and directly create rights and duties for the inhabitants of the Federal territory" (Article 25, Constitution of 1949). But this does not, however, mean that these texts create individual rights.

Some States, such as France or Switzerland, do not recognise direct effects except in cases where the content of the standard is sufficiently specific and does not require application measures. As the most relevant provisions of international agreements (*International Covenant on Economic, Social and Cultural Rights*; *Convention on the Rights of the Child*; *Convention on the Elimination of All Forms of Discrimination against Women*) are programmatic in nature, they risk being seen as too vague to be directly applicable. However, the *Protocol on Water and Health* could contain directly applicable provisions.

Recourse before the European Court of Human Rights and the European Court of Justice (Community law) provide alternatives to national courts that are little inclined to address human rights on contractual bases. These courts will not fail to take into account the relevant texts of the international agreements in force when judging, for example, the failure of government authorities to implement access to water and sanitation. But what "a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure" (ECJ, *Demirel* decision) is remains to be determined.



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of 8 February 2001 on water management, Article 2). In Ukraine, "each citizen has the right to access to safe and clean drinking water" (law on sanitary safety, 1994). In Algeria, the Water Code (2005) acknowledges "le droit d'accès à l'eau et à l'assainissement pour satisfaire les besoins fondamentaux de la population."*

*iii) Non-Dissuasive Connection Costs*

If the right to access to networks is not to be an illusion, one must not oblige users to pay prohibitive prices. For this purpose, the law or contract sometimes allows access costs to be spread out over time (Colombia, 3 years) or shares these costs among all users if necessary (Buenos Aires). In many countries, the costs of expanding and connecting to the network are largely covered by government authorities or by all users, which allows new users to pay much less than the real cost for their connections (water infrastructures in France are estimated at 3,300 euros per person, and in El Alto (Bolivia) a new connection costs 455 dollars). In the Walloon Region (Belgium), the distributor covers the cost of extending the network up to 50 metres, and the cost of any excess is borne by the requesting party (Water Code, 2004). In some developing countries, the water provider is obliged under the terms of the delegation contract to provide a certain number of connections at a reduced "social" rate or to supply certain new, unprofitable neighbourhoods in order to apply the water-for-all principle.



*iv) A Solidarity-Based Approach*

The right to water is not limited to creating drinking water distribution infrastructures. It is not merely affirming the right to be able to buy drinking water or the right to receive drinking water in exchange for payment in the way that this right exists for other fluids such as gas or gasoline. This is because drinking water is not "a commercial product like any other" (preamble of the *Water Framework Directive*). In certain cases, drinking water must be given for free so that the beneficiaries can have water and bring water to where there is none, even if this is relatively costly to organise.

* The right of access to water and sanitation to meet the population's fundamental needs

Box 11.

**National Legislation: Acquiring Water for Human Consumption**

In Mexico, "[c]enters of population which at present either have no lands or water or which do not possess them in sufficient quantities for the needs of their inhabitants, shall be entitled to grants thereof, which shall be taken from adjacent properties […]" (Constitution, 1999, Article 27). In Iceland, local authorities can acquire, in exchange for compensation, the water rights of individuals so as to guarantee households access to water (1923 Water Law, Chapter III, Paragraph 17-35). In Switzerland, "le propriétaire qui ne peut se procurer qu'au prix de travaux et de frais excessifs l'eau nécessaire à sa maison et à son fonds, a le droit d'exiger d'un voisin qu'il lui cède, contre pleine indemnité, l'eau dont celui-ci n'a pas besoin" (Article 710.1).*

**Sovereign Rights Over Water Resources**

Principle 21 of the *Stockholm Declaration* says that "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."



This principle of sovereign right is a general principle in environmental law. It was incorporated indirectly in the draft Constitution of the European Union that took care to make any "measures affecting […] quantitative management of water resources" subject to unanimous vote (Article III-234). Canada sought to forbid the export of raw water from its territory: "no person shall use or divert boundary waters by removing water from the boundary waters and taking it outside the water basin […]", Article 13 (1) of the law modifying the International Boundary Waters Treaty Act (18 December 2001).

* Owners who cannot obtain, except through excessive works and at excessive cost, the water necessary for their houses and their holdings have the right to demand that a neighbour grant, in exchange for full payment, them the water that they need


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Users who have access to drinking water are sometimes called on to make a financial effort for other potential users (see section 3.3). For the right to water to be real, who must fulfil and finance the various public service obligations that make up this right must be specified. Without this, certain users run the risk of not being treated any better than the poor clients that banks sometimes shun (the difficulty with the "right" to a bank account).

## 2.4. Conflicts Between the Right to Water and Other Rights

The right to water, which aims for universality ("water for all"), sometimes conflicts with individual property rights.

### *2.4.1. The Right to Water, Water Ownership, and National Sovereignty*

*In Domestic Law*

Access to sources of water on someone else's property is sometimes allowed for inhabitants of the nearby area who truly need it. For example, the French Civil Code (Article 642, paragraph 3) specifies that the owner of a source of drinking water cannot use the source "de manière à enlever aux habitants d'une commune, village ou hameau, l'eau qui leur est nécessaire."* Case law says that this water must be for the inhabitants' personal needs or those of their animals, but excludes needs related to the irrigation of land and the use of motive power.



To implement the right to water-one must have drinking water and transport it over sometimes great distances (large Roman aqueducts, transferring water from Lake Constance several hundreds of kilometres). To acquire drinking water, expropriations are sometimes necessary in the name of public usefulness. Water transfers for domestic uses are socially accepted in the name of national solidarity (for example, between

* So as to take from the inhabitants of a commune, village or hamlet the water that they need

regions in Belgium or in Germany) whereas inter-basin transfers for agricultural uses sometimes cause difficulties within a country (former National Hydrological Plan in Spain, transfers outside the Great Lakes region in the United States, etc.).

*In International Law*

Exporting water from one country to a neighbouring country to meet the country's domestic users' essential needs can raise difficult problems. Even if this exportation is desirable, it remains subject to the exporting country's national sovereignty over its natural resources (Principle 21 of the *Stockholm Declaration*). No country can claim the right to the water of another (neighbouring) country without causing serious harm to the national sovereignty of this neighbouring country. For example, a country with insufficient water resources does not have the right to the water of a neighbouring country that has abundant water, just as a country in danger does not have the right to the emergency or medical services of a neighbouring country. It goes without saying that countries are free to grant water-related rights in the framework of good neighbour, common water management, or trade agreements. When the European Union sent water to Louisiana, hit by a cyclone, it did so for humanitarian reasons and not because the United States had a right to the water sent. When drinking water supplies a neighbouring country,[17] the water transfer takes place in the framework of a bilateral agreement, and not to fulfil someone else's right to water. Also, are the countries receiving these exports seeking greater water independence (desalination plants)?



### *2.4.2. The Right to Water and Household Water Cut-Offs*

Water services are often interrupted (cut off) in response to unpaid water bills to encourage users to pay their debts immediately. There is more and more hesitation

17. Singapore's water comes from Malaysia. There are multiple local water supply agreements for villages across the border.


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to "condemn" families in reduced financial circumstances to living without water in their homes, and the humanitarian principle that "no one can be deprived of sufficient water to meet his or her essential needs" is tending to win out over economic or commercial considerations, even when the contract and/or service by-laws allow cut-offs. In France, a large company, the Lyonnaise des Eaux, has asked its departments to no longer cut off the water of families in difficulty and the Syndicat professionnel des distributeurs d'eau français (SPDE) has recommended that its members no longer cut off water in these cases. To make this recommendation reality, the law would have to specify who would cover the cost of the water not paid for by poor users (municipality, social aid centre, solidarity fund, the *département*, water service, other users, etc.). In addition, for abusive situations (water leaks not repaired, manifestly excessive consumption, voluntary degradation of the network, blatant contradiction between the style of living and declaration of poverty, etc.), the water service would have to have the means to pressure non-payers but still avoid penalising the poor users who are acting in good faith for the behaviour of a few people acting in poor faith.

Cutting off the household water supply is forbidden by law or case law in numerous countries (Argentina, Brazil, Mexico, Australia, New Zealand, Austria, Belgium, Spain, Ireland, Luxembourg, Norway, the United Kingdom, Sweden, Switzerland, Ukraine, etc.). In countries where cut-offs do happen, they now only happen on very small scale. In France, cutting off the water of households with young children or dependent elderly members is forbidden. Because of this, only approximately 2,000 poor households see their water cut off every year (out of a total of 20,000 cut-offs).



To reduce the frequency of water cut-offs, the government authorities can demand that the water service consult social services beforehand and, if appropriate, obtain their agreement or even obtain a prior court ruling. This approach is taken in Brussels and Wallonia (Belgium) to avoid cutting off poor people's water.

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Box 12.

**National Legislation: In Many States, the Law Limits Water Cut-Offs for Poor Households**

In the United Kingdom, the law forbids cutting off for non-payment the water of all types of dwellings and also of residential accommodations for the elderly, nursing homes, hospitals, ambulance services, premises used for the provision of medical or dental services, schools, police forces, and fire brigades. Water distributors no longer have the right to use limiting devices (trickle valves) (Water Industry Act, 1999). This measure applied without restrictions to all encouraged some users (poor payers) to systematically delay the payment of their bills.

In Australia, it is forbidden to cut off drinking water "if the withdrawal would cause substantial hardship for a consumer" (Australian Utilities Act, 2000, no. 65 (2002), Sect. 207). In New Zealand, the law only authorises limiting the amount of water in ways that do not create "unsanitary" conditions (N.Z. Local Govt. Act, 2002, no. 84 (2002), Article 193.2). In South Africa, the discontinuation of water services must "not result in a person being denied access to basic water services for non-payment [if] he or she is unable to pay for basic services" (Water Services Act, 1997).

In Mexico, the it is forbidden to discontinue water services to households in the following states: Chiapas, Chihuahua, Durango, Jalisco, Michoacan, Sinaloa, Tabasco, Tamaulipas, Veracruz, and Yucatan. In Baja California, the Law of 30 April 1969 on drinking water (Article 98) specifies that only commercial or industrial connections can be discontinued by water services for non-payment. Article 104 of Aguascalientes state's Water Law (31 July 2000, Article 104) forbids the discontinuation of water services for the poor receiving welfare.

In France, the bill governing the national commitment regarding housing (October 2005) no longer authorises the discontinuation of water or electricity to households in difficulty during the "winter truce": "personnes de bonne foi éprouvant des difficultés particulières et susceptibles de bénéficier d'une aide"* for water, only if "les services sociaux compétents, informés au préalable par le distributeur, ne se sont pas opposés à la mesure."**

In Finland, the law authorises the discontinuation of water services for non-payment by the user after no less than five weeks from notification, and this delay is extended to ten weeks in the case of financial difficulties (Water Services Act, 119/2001, section 26).

* Persons of good faith facing particular difficulties and likely to receive aid

** The competent social services, informed in advance by the distributor, are not opposed to the measure


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Rather than applying a general ban, one can limit the cases where cut-offs are not authorised (for example, vulnerable users or users in poor health, primary residences, large ensembles, hospitals, retirement homes, schools, etc.) and define when they are authorised (for example, secondary homes, uninhabited housing, industrial or commercial premises, administration offices, sporting and cultural facilities, etc.) based on the criteria of not endangering health and adversely affecting dignity. Identifying people in reduced financial circumstances is a matter for the government authorities (and not water distributors), as is already the case for social electricity rates and other allowances with resource requirements in France.

Instead of cutting off water for non-payment, access to water can be reduced to a low but sufficient level so as to not seriously harm the health and well-being of the user family. In Soweto, pre-paid metres are used after the free water allocation. The difficulty is setting up effective and inexpensive systems that are socially acceptable. In some countries, there are enough street fountains for everyone to obtain water if needed and additional spouts are installed in streets according to need (Armenia, Russia, Ukraine, Central Asia).

In addition, government authorities and social organisations or charities can provide financial help to cover the water debts of the poor and avoid cut-offs (see section 3.3.2, Social Cohesion)—provided, of course, that these organisations are aware of the situation.



### *2.4.3. The Right to Water and Urbanism*

The right to water means that users have the right to be connected to nearby water distribution and collective sanitation networks. Not everyone can exercise this right and it may be limited to only landowners (Hesse) or home owners, renters (Wallonia, Belgium), or housing built on urbanisable land (France). In Romania, connections to the network are denied if there is no sewer network.

Box 13.

**National Legislation: In France, the Government Authorities Will Henceforth Be Alerted to Possible Water Cut-Offs**

Users that can no longer pay for their water or electricity risk having their supply cut off if the public authorities do not intervene and provide them with aid. Experience has shown that indebted users do not always take the necessary steps with social services to receive the aid they are entitled to under the law to allow them to pay for electricity or water, even when distributors energetically suggest they do so. In addition, distributors do not have the right to "signal" "poor payers" to social services because that would go against the protection of personal data (CNIL, Loi informatique et libertés). This obstacle was lifted for electricity by a decree (no. 2005-971 of 10 August 2005) that allows social services and, in particular the Fonds de solidarité logement (FSL) to be alerted (information sent to the mayor and chair of the General Council) unless the user objects in writing to such notification. This decree served as the model for cases of water service discontinuation (Article 11 of the bill governing the national commitment regarding housing, adopted by the Senate in November 2005).

When there is a risk that water will be cut off, the municipal services' reactions vary from one case to another in function of available social funds, the status of the petitioner, and the opinion of social services on the validity of the request. In Aix-les-Bains, a municipal social fund for water was created and financed by a fee of 1 euro cent per cubic metre. In Saint-Denis, a municipal by-law was issued to forbid cutting off water services to the poor. Many mayors are opposed to discontinuing water services to the poor but have not produced written rules. Despite all the local or departmental services (FSL) in place, 2,000 poor households per year see their water cut off (approximately one out of 10,000 subscribers cut off in France). This very low number does not constitute an economic problem.



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Urban planning law sometimes acts as an obstacle to serving housing. In France, the ban on water connections serves to dissuade users from moving onto non residential land near networks (Urban Code, Article L.111.6). Among other things, before granting a construction permit, the town halls of rural communes ensure that the fire services have a fire hydrant with sufficient flow within a maximum of 100 metres from the building. This safety requirement obliges town halls to build water supply points or withhold construction permits.

In numerous countries, no construction permit will be delivered if the petitioner cannot prove that he or she has access to healthy water. A case brought before the European Court of Justice by the European Commission against the United Kingdom (Northern Ireland) may lead to a ban on new housing construction programmes in areas lacking sufficient sanitation.

Access to water is sometimes refused if users occupy land without legal deeds (shantytowns, camping in the wild, etc.). Specific provisions, however, can be made to provide camp grounds, caravan or mobile home sites, or “traveller” rest areas with water. Installing street fountains or tolerating access at fire hydrants makes it possible to meet essential needs without obliging users to go sometimes considerable distances for their water.



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# The Rights and Responsibilities of the Various Parties

3



The government authorities that pursue water access improvement and sanitation for all policies all have large investments to make in light of existing public health and environment protection obligations and, in particular, the commitments made regarding the Millennium Goals and Johannesburg targets. In comparison, implementing the right to water creates only much smaller obligations. The table below shows that the additional water-related expenditures in France are mainly linked to respecting Community law. Expenses to implement the poorest's right to water represent only 3% of planned additional expenditures.

Box 14.

**National Legislation: The Water and Sanitation Supply Must Now Be Ensured in Europe**

Under the terms of the *Protocol on Water and Health* (London, 1999), "the Parties shall pursue the aims of: (a) Access to drinking water for everyone; (b) Provision of sanitation for everyone" (Article 6.1).

This Protocol entered into force in August 2005 (ratified by 16 countries). According to Article 4.2, "The Parties shall […] take all appropriate measures for the purpose of ensuring:

"(a) Adequate supplies of wholesome drinking water which is free from any micro-organisms, parasites and substances which, owing to their numbers or concentration, constitute a potential danger to human health. This shall include the protection of water resources which are used as sources of drinking water, treatment of water and the establishment, improvement and maintenance of collective systems;

"(b) Adequate sanitation of a standard which sufficiently protects human health and the environment. This shall in particular be done through the establishment, improvement and maintenance of collective systems […]."

This Protocol places obligations on States because they must implement "all appropriate measures". It is not enough for them to elaborate ambitious plans to develop water and sanitation supply networks and then wait for these plans to be financed. A State that allows its existing collective systems to deteriorate when it has the means to maintain them in proper working condition would be held accountable. This situation is frequent in dwindling villages but government authorities who prefer to close their eyes do not always react efficiently.



In many European countries, the London Protocol will become fully effective only once it has been completely transcribed in domestic law. While sanitation obligations are already in effect through Community law, the same is not true of water supply obligations. The specific scope of Article 4.2 very much needs to be made more explicit because many people in Europe only receive water unfit for human consumption.

**OECD Countries Are for Access to Drinking Water for All**

During the 2001 OECD Ministerial Council Meeting, the member countries' Ministers of the Environment agreed to conduct national policies to "ensure access for all to safe drinking water and adequate sanitation" by 2010 (*OECD Environmental Strategy for the First Decade of the 21st Century*). This commitment shows that the Johannesburg targets concern all States and that the developed countries have set themselves more ambitious objectives.


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Table 1.
**Additional Expenditure for Water and Sanitation in France**

| Legal Basis | Drinking Water Supply | Sanitation | Yearly Costs |
|---|---|---|---|
| Community Law | Water Quality (pesticides, nitrates, lead, etc.) | Collective Sanitation (secondary treatment) | more than 3,000 million euros |
| Johannesburg targets (rural zones) and London Protocol | serve 1% of the population in ten years | serve 5% of the population in ten years | more than 500 million euros |
| Right to Water (additional measures to apply) | International Aid for Water | - | 200 million euros for poor countries |
| | Make drinking water more affordable in France | - | 100 million euros for the poor in France |

***Note :*** The estimate of 3,000 million euros in yearly costs is based on the Cour des comptes' report (2003).
The amounts pertaining to the right to water are based on the analysis of the Académie de l'eau (*Water for All*, 2004).



## 3.1. The Government Authorities' Duties. Setting Up and Controlling a General Interest Service in Charge of Fulfilling Public Service Missions

Government authorities, especially regional or local governments, have always had considerable responsibilities in the water sector. At the least, they must create the conditions that allow water supply and sanitation services to exist and operate properly and supervise these services to ensure that they fulfil their missions correctly even though they are natural monopolies. They must also set up control bodies (verification of water quality and prices, citizen information and participation when it comes to water services).

Box 15.

**Community Legislation: Public Service Obligations**

Water and sanitation are general interest services subject to obligations to provide public service and protect consumers/users that vary from one country to another. These obligations are described in Community law for the gas sector as follows:

"Member States may impose on undertakings operating in the gas sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies, and environmental protection, including energy efficiency and climate protection. Such obligations shall be clearly defined, transparent, non-discriminatory, verifiable and shall guarantee equality of access for EU gas companies to national consumers."

As regards social and territorial cohesion, "Member States shall take appropriate measures to protect final customers and to ensure high levels of consumer protection, and shall, in particular, ensure that there are adequate safeguards to protect vulnerable customers, including appropriate measures to help them avoid disconnection. In this context, they may take appropriate measures to protect customers in remote areas who are connected to the gas system. Member States may appoint a supplier of last resort for customers connected to the gas network. They shall ensure high levels of consumer protection, particularly with respect to transparency regarding general contractual terms and conditions, general information and dispute settlement mechanisms" (Article 3 of Directive 2003/55/CE of 26 June 2003 concerning common rules for the internal market in natural gas).



The methods to protect "vulnerable customers" are described in another directive:

"Member States may, in the light of national conditions, require that designated undertakings provide tariff options or packages to consumers which depart from those provided under normal commercial conditions, in particular to ensure that those on low incomes or with special social needs are not prevented from accessing or using the publicly available telephone service. Member States may, besides any provision for designated undertakings to provide special tariff options or to comply with price caps or geographical averaging or other similar schemes, ensure that support is provided to consumers identified as having low incomes or special social needs" (Articles 9.2 and 9.3 of Directive 2002/22/CE of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services).


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The concrete scope of government authorities' obligations in regard to the right to water should be specified because it is not necessarily a question of supplying every home with running water (the right to a faucet). The general principle is that everyone must have access to public water services even though they may only be available in certain locations. Government authorities' network extension obligations must be defined prudently because it would be difficult and costly to serve all housing in rural areas. When housing is very scattered, exceptions to or adaptations of access for all[18] must be planned and substitutes must be set up—for example, installing drinking water supply points for populations far from networks and, if necessary, creating sanitary facilities for these populations. No one should be left out, but the service provided can vary from place to place.

Around the world, all States—and in particular developing countries—have committed to implementing the Millennium Goals. Among other things, they committed, in September 2005, to adopting, by 2006, national strategies to implement the Millennium Development Goals, especially in the water sector.[19] It is important that this not legally binding commitment be implemented by all countries because all serious action in this field depends on the commitment being met. A country that does not adopt a strategy would leave room for one to doubt its determination to fulfil its international obligations and would not be able to complain if it did not receive aid to attain the water-related goals.



18. The European Court of Human Rights has ruled that "the scope of [a positive] obligation will inevitably vary, in the light of the diversity of situations obtaining in Contracting States and the choices which must be made in terms of priorities and resources. Nor must such an obligation be interpreted in such a way as to impose an impossible or disproportionate burden on the authorities." *Özgür Gündem v. Turkey* of 16 March 2000, no. 23144/93, paragraph 43; *Novoseletskiy v. Ukraine* of 22 February 2005, no. 47148/99, paragraph 70. This ruling clearly shows the right to water does not need to be realised immediately for everyone, as the opponents of the right to water wish to believe.

19. The States have committed to adopting national strategies: "We resolve to adopt, by 2006, and implement comprehensive national development strategies to achieve the internationally agreed development goals and objectives, including the Millennium Development Goals" (*2005 World Summit Outcome*: 15 September 2005).

Box 16.

**National Legislation: The Water Distributed Must Be Fit for Human Consumption**

Under Community law, "Member States shall ensure that any supply of water intended for human consumption which constitutes a potential danger to human health is prohibited or its use restricted or such other action is taken as is necessary to protect human health. […] In the event of non-compliance with the parametric values or with the specifications set out in Annex I, Part C, Member States shall consider whether that non-compliance poses any risk to human health. They shall take remedial action to restore the quality of the water where that is necessary to protect human health" (Council Directive 98/83/CE of 3 November 1998 on the quality of water intended for human consumption). In France, the public health code punishes: "Quiconque, par négligence ou incurie, dégradera des ouvrages publics ou communaux destinés à recevoir ou à conduire des eaux d'alimentation ; quiconque, par négligence ou incurie, laissera introduire des matières excrémentielles ou toute autre matière susceptible de nuire à la salubrité, dans l'eau de source, des fontaines, des puits, des citernes, conduites aqueducs, réservoirs d'eau servant à l'alimentation publique" (Article L.47).*

**Drinking Water Must Be Provided in Emergencies**

In France, the government authorities have placed providers in charge of emergency drinking water supply measures: "Les exploitants d'un service, destiné au public, d'assainissement, de production ou de distribution d'eau pour la consommation humaine prévoient les mesures nécessaires au maintien de la satisfaction des besoins prioritaires de la population lors des situations de crise."** This provision covers only crises in existing systems, not the absence of services due to a lack of investments nor cut-offs by the provider because of deterioration of the network or non-payment of bills (Law no. 2004-811 of 13 August 2004 on the modernisation of civil security, Article 6.1).



* Whoever, by negligence or carelessness, shall deteriorate public or commercial constructions destined to receive or transmit water for consumption; whoever, by negligence or carelessness, shall allow excrement or any other mater likely to harm cleanliness to enter the water of springs, fountains, wells, cisterns, aqueduct conduits, reservoirs of water providing the public supply

** Those who operate a service providing sanitation or the production or distribution of water for human consumption destined for the public shall provide the measures necessary to ensure that the population's priority needs are met during crisis situations.


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In most European Union countries, water supply and sanitation are the responsibility of local governments. The territorial authorities are obliged to provide satisfactory sanitation and, in some countries, create urban distribution networks. The EC drinking water and wastewater obligations impose heavy investment in addition to the work already under way. The secondary treatment of wastewater from municipalities with a population equivalent of more than 2,000 will become mandatory in 2006.

### *3.1.1. Universal Service: Water for All without Discrimination*

Water services must be available to all without discrimination. A first criterion to meet is physical accessibility. In other words, water supply points must be sufficiently numerous so that users do not have to spend too much time collecting water. Then, discrimination must be avoided: equip suburbs and not only city centres, and take care of those who do not have sanitation before improving the service to those who already have sanitation. Water supply discriminations can involve continuity of service, water pressure, water quality, payment locations (far from poor users), payment conditions, and/or guarantees. When there are shortages, water supply reductions must not be limited to poor areas. Equality for all before the law implies the absence of unjustified discriminations, but does authorise preferential treatment for certain users such as hospitals, etc.



### *3.1.2. A Right to Quality: Truly Drinkable Water*

The law generally sets forth an obligation to distribute only water the quality of which meets public health standards, and obliges government authorities to make the necessary verifications. Insufficient quality is generally justiceable. Under Community law, collectivities are obliged to control the quality of the water distributed, forbid the consumption of dirty water, and even take corrective measures to re-establish water quality. Unfortunately, the quality of the water distributed is not always adequate,

especially in small, rural communities (nitrates, pesticides, pathogenic micro-organisms).[20] In too many cases, catchment areas are not protected, even though this is a legal obligation.[21] Too many municipalities do not take all the necessary corrective measures when the network is polluted and do not inform the population that the water is not up to standards. Courts have ordered distributors to provide bottled water or tankers of water to effected populations. Progress needs to be made in all countries, even the most developed. Thus, French law now contains the following objective:

"Diminuer par deux, d'ici 2008, le pourcentage de la population alimentée par une eau de distribution publique dont les limites de qualité ne sont pas respectées pour les paramètres microbiologiques et les pesticides".[22]*

For people who depend on natural sources (wells, springs, etc.) for their water supply, it is the government authorities' responsibility to ensure that these sources are not polluted. If these sources are polluted, the authorities will have to bring an immediate end to the pollution and ensure that users have drinking water at all times. The European Court of Human Rights has already ruled against a State for failing to respect the right to drinking water of an owner of an individual well.



20. In 2002, 5.8% of the population of France received water whose microbiological quality was not constantly bacteria-free. In September 2005, 180 communes in the Seine-et-Marne department received sub-standard water and in 72 of the communes the Préfecture recommended that children and pregnant women not drink it.

21. In France, 30,000 water catchment areas provide 17.9 million $m^3$ per day, 15,000 water treatment facilities provide 16,000 $m^3$, and 27,000 water distribution units supply 60 million inhabitants. Only 40% of the catchment areas are protected (Article L. 1321-2 of the Public Health Code) although this has been mandatory since the Law of 1992. 66% of the water comes from underground sources. The water quality is generally good but there are variations. 96% of samples meet bacteriological quality standards (99.8% for units serving more than 50,000 inhabitants, but only 90% of units serving less than 500 inhabitants). 97.3% of controls are under the limit of 50 mg/l for nitrates. 4.3% of controls regarding pesticides (13% of flow) do not meet standards. The quality of water in small mountain communities is a problem. Taken from "L'eau potable en France 2002-2004", Ministry of Health, September 2005.

22. Objective no. 22 of the public health policy. Law no. 2004-806 of 9 August 2004 on the public health policy.

* Halve, by 2008, the percentage of the population supplied by publicly distributed water for which the quality guidelines are not respected in regards to microbiologic parameters and pesticides.

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### *3.1.3. Continuity of Service: Water at All Times*

Users' demands are for water distribution services that operate constantly or, failing that, at least every day in all seasons. The quality of the service and that of the reception that customers receive are concerns that public or private distributors under control of the public authorities must satisfy. Water services' deficiencies (lack of pressure, insufficient quality, cut-offs, etc.) are generally the result of insufficient investment, inadequate network maintenance, or inadequate staff. They are sometimes caused by insufficient pricing or a lack of technical services to maintain equipment (broken pumps for example).

### *3.1.4. A Supply Even in Emergencies: Water Always*

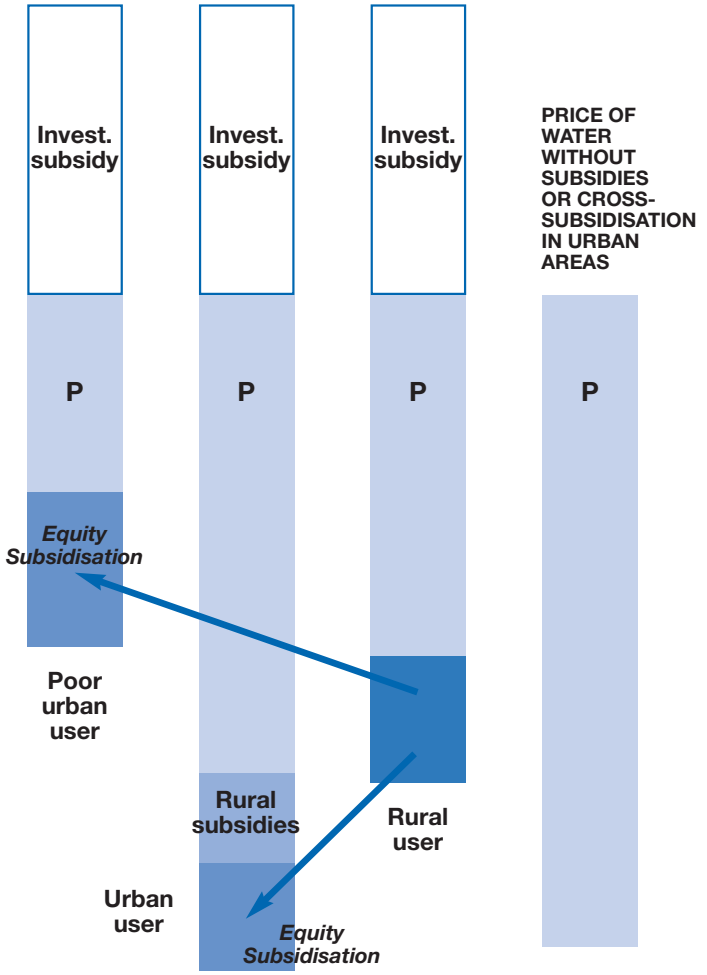
When a distribution network is out of service or dry, the municipality must organise water delivery by bottle, jug, or cistern lorry. An emergency supply (installation of street faucets) must also be set up in case the drinking water supply in buildings is cut off; street fountains may even need to be installed to ensure that no one will lack drinking water in a neighbourhood. Since these emergency operations are expensive, one must explicitly state who will cover the cost.



### *3.1.5. Affordable Water for All*

In Europe, the government authorities are progressively abandoning the subsidy systems that enabled most distribution networks to be built. The cuts in these subsidies—written into national laws and the *Water Framework Directive* (Article 9, applicable in 2009)—will cause a very noticeable rise in the price of water in countries that have subsidised drinking water until now. Figure 2 shows how the price of water would evolve if there were neither subsidies nor cross-subsidisation. One can see that the price of water will increase in cities and rural areas and that the poorest will be subject to a strong price

Figure 2.
**Breakdown of the Price of Water**




**Invest. subsidy : investment subsidy**
**P : price paid by the user**
**Rural subsidy : additional subsidy for investment in rural areas**




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hike. In developing countries, international donors sometimes forbid subsidies and impose a corresponding water price as conditions to obtain loans. A minimal requirement would be that the price paid for water by all users cover operating and other yearly costs. This principle of water cost recovery is starting to be written into laws (Madagascar) but this does not mean that everyone should pay the same price for water.

Exceptions are possible for social reasons. To finance these exceptions, municipalities must be authorised to take pricing measures that do not apply the principle of equality of costs for public services (section 3.3.2. Social Cohesion) and, if needed, the government authorities must plan to make up costs generated by social tariffs (India, Chile). Often, government authorities consider raising the price of water without determining if it will still be affordable and without setting up social systems to prevent it from becoming unaffordable.

### *3.1.6. Effectively Controlled Water Services*

*Regulation Authorities and Financial Audits*

Independently managed water services (public corporations, delegations, etc.) are generally subject to control by regulatory authorities and/or financial audits by accounting firms or external auditors. These controls serve to verify that laws are followed, defend the interests of government authorities and users in the presence of a natural monopoly, avoid unjustified expenditure, and improve the quality of dialogue between the water service provider and the public. They help guarantee the sustainability of the resource and the service and have proven to be very useful in countries that have set up independent and reliable control systems.



*A Water Services Observatory (Monitoring)*

Collecting and publishing indicators on the actions of water services and government authorities in the field of water has taken on great importance to verify water policies

Box 17.
**National Legislation: Drinking Water Cost Recovery**

The principle of cost recovery/recuperation was adopted within the European Union (Directive 2000/60/CE of the European Parliament and of the Council of 23 October 2000). In French law, this means that: "Les coûts liés à l'utilisation de l'eau, y compris les coûts pour l'environnement et les ressources elles-mêmes, sont supportés par les utilisateurs en tenant compte des conséquences sociales, environnementales et économiques ainsi que des conditions géographiques et climatiques."[a] In Finland, "the charges for water services must be such that they cover the investments and costs of the water supply plant in the long term. The charges may include only a minimum return on the capital" (Water Services Act, 119, 2001). In Burkina Faso, "l'utilisation de l'eau exige de chacun qu'il participe à l'effort de la nation pour en assurer la gestion" (Water Code, Article 47).[b] In Mali, "l'accès au service public doit toujours être payant" (Water Code, Article 53).[c]

**Monitoring Water Services**

In South Africa, the law obliges government authorities to monitor water services and these services are obliged to provide transparency: "The Minister and any relevant Province must monitor the performance of every water services institution in order to ensure – (a) compliance with all applicable national standards prescribed under this Act; (b) compliance with all norms and standards for tariffs prescribed under this Act; and (c) compliance with every applicable development plan, policy statement or business plan adopted in terms of this Act. (2) Every water services institution must – (a) furnish such information as may be required by the Minister; and (b) allow the Minister access to its books, records and physical assets to the extent necessary for the Minister to carry out the monitoring functions" (Water Services Act, 1997, Article 62.1).

In Algeria, "l'autorité de régulation est chargée de veiller au bon fonctionnement des services publics de l'eau, en prenant en compte, notamment, les intérêts des usagers. Dans le cadre de sa mission, l'autorité de régulation : – contribue à la mise en œuvre du dispositif de gestion des services publics de l'eau et à l'établissement des normes et règlements y afférents ; – veille au respect des principes régissant les systèmes tarifaires et contrôle les coûts et les tarifs des services publics de l'eau ; – effectue toutes enquêtes, expertises, études et publications portant sur l'évaluation de la qualité du service aux usagers" (Law no. 05-12 of 4 August 2005 on water, Article 65).[d]

a. The costs linked to the use of water, including the costs to the environment and resources themselves, are supported by users, with consideration of social, environmental and economic consequences and geographic and climactic conditions.
b. Water use demands that everyone participate in the nation's effort to ensure its management
c. Access to the public service must always be paid
d. The regulatory authority is in charge of ensuring the proper operation of public water services, taking into account, notably, users' interests. In the framework of its mission, the regulatory authority: – contributes to implementing the public water service management system and establishing the corresponding standards and regulations; – ensuring that the principles governing the tariff systems are respected and controlling public water services' costs and tariffs; and – conducting all surveys, expertise, studies and publications related to assessing the quality of the service for users.



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(quality, continuity, price, availability, etc.). Among these indicators, one can cite, for example, the number of new connections, new street fountains and latrines, the proportion of people without access to water or sanitation, the number of water supply points per inhabitant, the rate of continuous operation of water supply points, the amount of public funds for access to water and sanitation, the percentage of these funds used, the proportion of public expenditure in this field, the existence of a specific budget for sanitation, the evolution of expenditure made, and the results obtained in urban or rural areas to meet the Johannesburg targets. A first international observatory is slated to open in Africa (NEPAD).

### *3.1.7. Management Delegation: The Private Sector Ensuring Public Service Missions*

Users generally have a particular interest in having "their" water service managed according to modalities of their choice (public corporation or delegated management) in fulfilment of public service missions. Faced with trends towards the liberalisation of public services, some Parliaments have created obstacles to any form of water sector privatisation (the Netherlands, Uruguay, Belgium). However, some international donors demand the establishment of public-private partnerships to improve the effectiveness of water service management. To avoid sterile debates, national law should specify the scope of public service missions imposed on water service providers, the important elements in delegation contracts, and the conditions to move from the public to the private spheres, and inversely.



### *3.1.8. A Pro-Investment Legal Environment*

The water sector is characterised by the relative weight of investments in the cost of water and the long length of time to amortise them. Thus, investors often favour other, more rapidly "profitable" economic sectors. Some countries that seek to draw outside

Box 18.

**National Legislation:**
**In Uruguay, Water Services Are Part of the Public Sector**

Uruguay decided to include in its Constitution: "El servicio público de saneamiento y el servicio público de abastecimiento de agua para el consumo humano serán prestados exclusiva y directamente por personas jurídicas estatales" (constitutional reform of 31 October 2004, Article 47).[a] Other modes of managing water services exist such as privatisation (England), concession, service delegation (France), or public corporations (Netherlands, Sweden, etc.). In Côte d'Ivoire, Benin and Senegal, the public service is managed via concessions. In Mali, direct public corporations are forbidden. In Burkina Faso, on the contrary, water management is public.

### The Safety of Investments

In Guatemala's water bill, the legal safety of investments is mentioned: "El agua es un recurso estratégico para el desarrollo económico nacional y el Estado garantiza las condiciones que otorgan seguridad jurídica a la inversión privada en su aprovechamiento, así como las que permitan financiar su gestión integrada y sostenible" (bill under discussion, 2005).[b]

### The Balance of Delegation Contracts

The new Water Code in Mauritania (2005) takes into account the risks taken by delegatees. It specifies that "Toute modification de la délégation ou du cahier des charges qui affecte les obligations de son titulaire devra prendre en compte l'équilibre économique et financier de la délégation" (Article 54)[c] and that "Les principes de la tarification de l'eau devront prendre en compte les exigences de l'équilibre économique et financier des délégataires. Les délégataires ont l'obligation de tenir une comptabilité analytique" (Article 66).[d]



a. "The public sanitation service and the public service responsible for supplying water for human consumption shall be provided exclusively and directly by State legal entities."
b. "Water is a strategic resource for national economic development and the State shall guarantee the conditions which ensure the legal safeguards for private investment in its exploitation, as well as those conditions that enable its integrated and sustainable management"
c. Any modification of the delegation or its terms and conditions which affects the obligations of its holder must take into account the economic and financial balance of the delegation.
d. The water tariff principles must take into account the economic and financial balance requirements of delegatees. The delegatees are obliged to keep cost accounting.


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investments have taken measures to protect or make more secure these investments and resolve disputes that may arise with investors.[23] The difficulties encountered recently by large water sector companies in developing countries illustrate the need to create and maintain a pro-investment legal environment and ensure that the terms of public-private partnerships are respected in good faith by all parties (no unilateral changes, respecting the balance of contracts, etc.).

***Note: No Duties without Rights. Implementing Subsidiarity.***

Given the government authorities' considerable responsibilities in the water sector, it seems necessary to ensure that they have the skills and means they need to fulfil these responsibilities. Old water laws deserve to be updated to take into account economic progress and new technologies. Government authorities should notably live up to their specific responsibilities to protect groundwater that is in danger of being depleted or polluted.

When the water service is handed over to local governments, one needs to ensure that they can effectively perform their new functions, chose suitable technical solutions, finance and maintain installations, collect fees, etc. Specific laws and new institutions may be needed as decentralised authorities sometimes lack fiscal autonomy.



## 3.2. Users' Rights and Duties

The corollary to acknowledging an individual right to water is the existence of individual duties to preserve the water resource and contribute to its sustainability. In

23. The International Centre for Settlement of Investment Disputes (ICSID), an arbitration institution created by the Washington Convention of 18 March 1965 to facilitate the settlement of investment disputes between governments and foreign investors, ratified by 136 States. This institution has been seized in eight cases regarding water services in Argentina, Bolivia and Tanzania (Suez, Vivendi, Saur, Bechtel, Azurix, Biwater, etc.).

Box 19.

**National Legislation (14): User Information**

In Finland, the law specifies that water supply plants "must provide sufficient information concerning the quality of household water supplied by the plant and level of wastewater purification and the composition of the charges collected for water services" (Water Services Act 119/2001, section 16). Similar provisions exist in the Netherlands.

## User Participation

The forms of participation and the place and role of users varies greatly across countries. Consulting users is sometimes a legal obligation. In the United Kingdom, one central and ten regional Consumer Councils for Water work with OFWAT, who consults them on questions pertaining to service standards, prices and tariffs. Argentina's Constitution provides for water user information and the creation of users' committees within water control bodies: "La legislación establecerá los marcos regulatorios de los servicios públicos de competencia nacional, previendo la necesaria participación de las asociaciones de consumidores y usuarios y de las provincias interesadas, en los organismos de control" (Article 42.3).*

In New Zealand, the public consultation procedure is mandatory on important questions for the drinking water sector (N.Z. Local Govt. Act 2002, Section 83-84). A similar procedure exists in Australia for the capital territory (Australian Utilities Act, 2000, no. 65, 2002, Section 36).



In France, public service users are represented on the local public services' consultative committees that are notably in charge of examining the report on the quality and price of water and management delegations (Law no. 2002-276 of 27 February 2002 on local democracy).

In Morocco, an administration-user joint commission participates in the preparation of commune plans and actions (Article 101 of the Law no. 10-95 on water). In Burkina Faso, users' associations manage rural infrastructures at village level through exploitation licences. In Kyrgyzstan, rural water services are established and managed by local drinking water users' associations (Law no. 81 of 29 September 2000 amending the law on drinking water).

* "Legislation shall establish […] regulatory frameworks for national public utilities. Such legislation shall take into account the necessary participation of consumer and user associations and of the interested provinces in the control entities."


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particular, each individual must reduce water waste, and sometimes even collect rainwater, avoid polluting, set up sanitation systems and contribute to paying for the service received and solidarity actions. The ensemble of users' rights and duties regarding a common resource leads one to acknowledge individuals' right to be more involved in water services (procedural rights).

### *3.2.1. Users' Procedural Rights: Information, Participation and Remedy*

While water services have long operated as public utilities under the sole control of elected officials and administrations, it would seem useful to shore up supervision of these services. The current trend is to apply to water services the environment and public health principles of the *Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* and then extend the application of these principles to other elements such as good management of water services (governance), network extension plans, efficient and fair water pricing, protecting users from water cut-offs, the choice of management modes, etc. Some countries offer training to allow users to participate effectively.



*Information. More Transparent Management*

Users have a strong desire to be kept informed of water quality, prices, and management mode choices, yet they face a certain opacity of information, especially regarding prices or delegation contract renewals. In most countries, the law obliges the government authorities to publish data on water quality and obliges water service managers to publish annual reports. The law sometimes dictates the content of these reports, which are made available to the public (which also receives information directly via the post or billboards) (France, Decree no. 2005236 of 14/03/2005, the US Safe Drinking Water Act, etc.).

*Participation in the Decision Process. Greater Citizen Involvement*

The participation of users, women in particular, is a growing requirement. In Europe, it is linked to the exercise of participatory democracy (European Constitution, Article I.46, paragraph 3, and Article I.47) and, in other countries, to citizen participation in government authorities' decisions (for example, Porto Alegre in Brazil). It has become mandatory in water strategies and basin management plans (*Water Framework Directive*, Article 14). Laws sometimes create consultative public service users' committees within the organisations that provide these services or municipal authorities. Users also participate in discussions on water services through associations or representative professional bodies that are consulted directly by the government authorities. In a few countries, local authorities invite users to express themselves (public surveys) on important questions regarding drinking water and sanitation (in Honduras, a referendum must be held before any privatisation). Among other things, public hearings are sometimes held on important questions (United States, Chile, New Zealand, Armenia, Kazakhstan, Ukraine, etc.).

*Access to Justice. Administrative and Judicial Relief*

Users can normally turn to the courts if their right to water as consumers, users, or citizens is not respected. This is the case, for example, when the water distributed is polluted (nitrates, pesticides), when wastewater is not collected (bacteriologic pollution), when street fountains or latrines are lacking (near shantytowns), when the municipality has not extended or repaired the network, when excessive pumping of groundwater deprives users of water, when the distributor disconnects a user for non-payment, and when the town hall has not authorised service to certain users. When they are seized, civil courts tend more and more to enforce the right to water over other rights and take international agreements into account. Given the small financial stakes of individual actions regarding drinking water, court actions can only be envisaged in the context of collective actions or serious health dangers. Associations have a large role to play



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but are not always authorised to bring court actions in this type of litigation because they cannot defend collective interests.

### *3.2.2. Users' Financial Obligations: Water Is Not a Free Service*

Water services can only function sustainably if users cover all the supply and sanitation costs and taxes remaining after subsidies have been deducted. The general principle is that "everyone must contribute to covering the costs of water and sanitation supply", with the understanding that these contributions can be adjusted to the users' individual capacity to pay. The poorest will pay a reduced price for their water, or, failing this, measures with equivalent effect will be taken so that price is not an obstacle to exercising one's right to water.

The right to a minimal quantity of water for free for everyone is practised in very few countries—Ireland (unlimited), South Africa (200 litres per day per household), Turkmenistan (250 litres per person per day)—because the vast majority of countries charge for the water distributed starting with the first litre. Among other things, many countries require the payment of a subscription fee, which makes water expensive for those who can only pay for a minimum amount. When there are no water metres, flat-rate tariffs can be used based on the size of the house, its location, its property value, or the number of faucets, windows, or surface area. In many countries, the price paid for water depends only on consumption (potential and real). One can distinguish between proportional tariffs (subscription and a flat rate per cubic metre) and progressive tariffs in which the price per cubic metre increases with consumption. Installing individual metres is then mandatory, even in collective housing.



Water prices depend on decisions made by government authorities. They can be designed to simultaneously pursue economic objectives (cost recovery), ecological objectives (metres) and social objectives such as social and territorial cohesion, if one

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Box 20.

**National Case Law: Courts Protect Users' Rights**

In the United Kingdom, the High Court decided, in *The Queen v. Director General of Water Services ex parte Oldham MBC and others* (judgement of 30 January 1998), that the 15,000 prepaid water metres installed since 1995 with the explicit agreement of each user that automatically cut off water if it is not pre-paid are illegal because they bypass the legal procedures and delays set forth in the Water Industry Act (1991) to resolve the difficulties for users caused by cut-offs.

In Brazil, the Supreme Court ruled that it was illegal to interrupt the supply of a basic service, even in the case of non-payment. The Parana state Court of Appeals has obliged the distributor to re-establish the distribution of water cut off for non-payment. Similar rulings have been handed down in Argentina, South Africa, France and India.

In Sweden, the Public Water and Wastewater Plant Act (1970, 244) obliges municipalities to organise the water and sanitation supply "to protect the health of their urban population." If the installations are inadequate for the health needs of a municipality's residents, the county's administrative court can order the municipality to fulfil its obligations or be fined. The Supreme Administrative Court has already obliged one municipality to install equipment because the existing infrastructures were inadequate (R 1968, 76). A similar decision (R 1975, 12) targeted insufficient infrastructures in an urban area. In France, courts have ordered a distributor to supply bottled water to inhabitants whose water supply did not meet standards.

In South Africa, the Constitutional Court examined the case of a shantytown without water. Based on the Constitution, it declared: "The Constitution obliges the state to act positively to ameliorate these conditions. The obligation is to provide access to housing, health-care, sufficient food and water, and social security to those unable to support themselves and their dependants" (*Government of RSA and others v. Grootboom and others*). This decision insisted on the need to treat, in priority, the most needy, such as shantytown inhabitants; it ordered the installation, within three months, of 20 taps and 20 permanent toilets at the municipality's expense with the financial support of the provincial government.

In Colombia, the Constitutional Court has found that the lack of drinking water is a breach of the fundamental right to life and that access to water and sanitation is a fundamental constitutional right that must be protected (T-578 (1992), T-140 (1994), T-207 (1995)). In decision T-410 (2003), the Court specified that the water provided must be fit for consumption.



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includes other considerations in addition to water consumption (potential and real) in billing systems.

Given the principle of equal access to public services, laws are sometimes needed to set up progressive tariffs (price increasing with consumption) and, above all, social tariffs (reduced rates for certain categories of people). Similarly, the application of different rates in function of drinking water uses (households, industry, farms, etc.) must sometimes be authorised. The price paid can also depend on the method of distribution: the same water could be inexpensive from street fountains and more expensive when distributed directly in houses or businesses.

## 3.3. Domestic Solidarity Duties

Solidarity primarily consists of users who have access to water and sanitation helping other users so that they too can have such access at more affordable prices. The primary beneficiaries of this solidarity are the inhabitants of rural areas (because it is expensive to equip these areas) and the poor who cannot pay for water. The percentage of beneficiaries in the populations of industrialised countries is relatively low (in France, 14% of inhabitants are in rural areas and 3% of users are the poor living primarily in urban areas). Water solidarity can be organised in the more general framework of social action or in more specific contexts such as housing or essential services. Water solidarity can be financed with public funds (taxpayers), cross-subsidisation among domestic users, cross-subsidisation between domestic users and industrial and commercial users (equity subsidisation), and by donations from charities. Decentralised, private, and/or public development aid contributes to access to water in the poorest countries. A schema of financing is given in Figure 3.



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Box 21.

## National Legislation: Madagascar Organises Cost Recovery

In Madagascar, the law defines the applicable water tariff principles:

"La politique tarifaire et de recouvrement des coûts des services d'eau potable et d'assainissement doit respecter les principes suivants :

- l'accès au service public de l'eau, que ce soit aux points d'eau collectifs ou aux branchements individuels, est payant ;
- pour chaque système d'eau et d'assainissement, les tarifs applicables doivent permettre l'équilibre financier des gestionnaires de systèmes et tendre vers le recouvrement complet des coûts ;
- les coûts d'investissement et d'exploitation, d'une part, et la capacité de paiement des usagers, d'autre part, sont pris en compte dans les principes de tarification de l'eau et de fixation des redevances pour l'assainissement ;
- les produits encaissés par les maîtres d'ouvrages et gestionnaires au titre des services d'eau potable et d'assainissement sont des recettes affectées à ces seuls services ;
- les systèmes tarifaires doivent comprendre des dispositions permettant l'accès au service universel de l'eau potable des consommateurs domestiques ayant les plus faibles revenus" (Law 98-029 of 20 January 1999 governing water, Article 54).*

## Mali Uses Progressive Tariffs

In Mali, "les tarifs des volumes d'eau consommés par les consommateurs domestiques doivent obligatoirement comprendre une tranche sociale à tarif préférentiel dont le niveau en $m^3$ ne peut être supérieur à un seuil fixé par directive de la Commission de régulation. Les consommations, au-delà de cette tranche sociale, peuvent être facturées selon des tarifs progressifs par tranches, compatibles avec la capacité de paiement des usagers, la structure des consommations et la viabilité financière de l'exploitation.

"Les fournitures aux gestionnaires des bornes-fontaines sont des fournitures en gros et leur tarif doit être celui applicable à la tranche sociale des consommations domestiques. Les fournitures aux bornes-fontaines et à la première tranche sociale domestique sont exemptes de toutes taxes et surtaxes locales" (Article 54, Law no. 02-006 of 31 January 2002 governing water).**



* The tariff and cost recovery policies of drinking water and sanitation services must respect the following principles:
  - access to the public water service, whether at collective water supply points or individual connections, is paid;
  - for each water and sanitation system, the applicable tariffs must make it possible for the system managers to attain financial balance and lean towards full cost recovery;
  - investment and exploitation costs, on the one hand, and users' capacity to pay, on the other hand, are taken into account in water tariff principles and setting sanitation fees;
  - the revenue received by contracting authorities and managers for drinking water and sanitation services is income allocated to only these services;
  - tariff systems must include provisions allowing domestic consumers with the lowest incomes access to the universal drinking water service.

** The tariffs for water volumes consumed by domestic consumers must necessarily include a social allocation at preferential rates for which the level in cubic metres cannot be higher than a threshold set by a Regulation Commission directive. Consumption above this social allocation can be billed at progressive tariffs by allocation units that are compatible with users' ability to pay, the structure of consumption, and the financial viability of the farm. Supply to street fountain managers is wholesale supply and the tariff applied must be that applicable to the social allocation for domestic consumption. The supply to street fountains and the first social domestic allocation is exempt from all taxes and supplementary local taxation.


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Water fees and taxes make it possible to organise solidarity in this area outside budgetary frameworks. This type of financing is not always accepted by the financial authorities, who prefer budgetary unity. Without legal texts authorising cross-subsidisation, only budgetary resources and charity can finance the water of users without access to water. Taxes on water abstraction have been used to subsidise the expansion of networks (Buenos Aires, Morocco), build rural water supply systems (France), contribute to social cohesion among users (Belgium), and provide aid for water for poor Third World populations (France).

### *3.3.1. Territorial Cohesion: Water Everywhere*

Water for everyone often means that access to water in often poorly supplied rural areas and remote urban areas must be improved. Territorial solidarity actions are taken in many countries, notably France, Senegal and Burkina Faso. In Morocco, city inhabitants pay a fee on water to finance the equipment of rural areas.

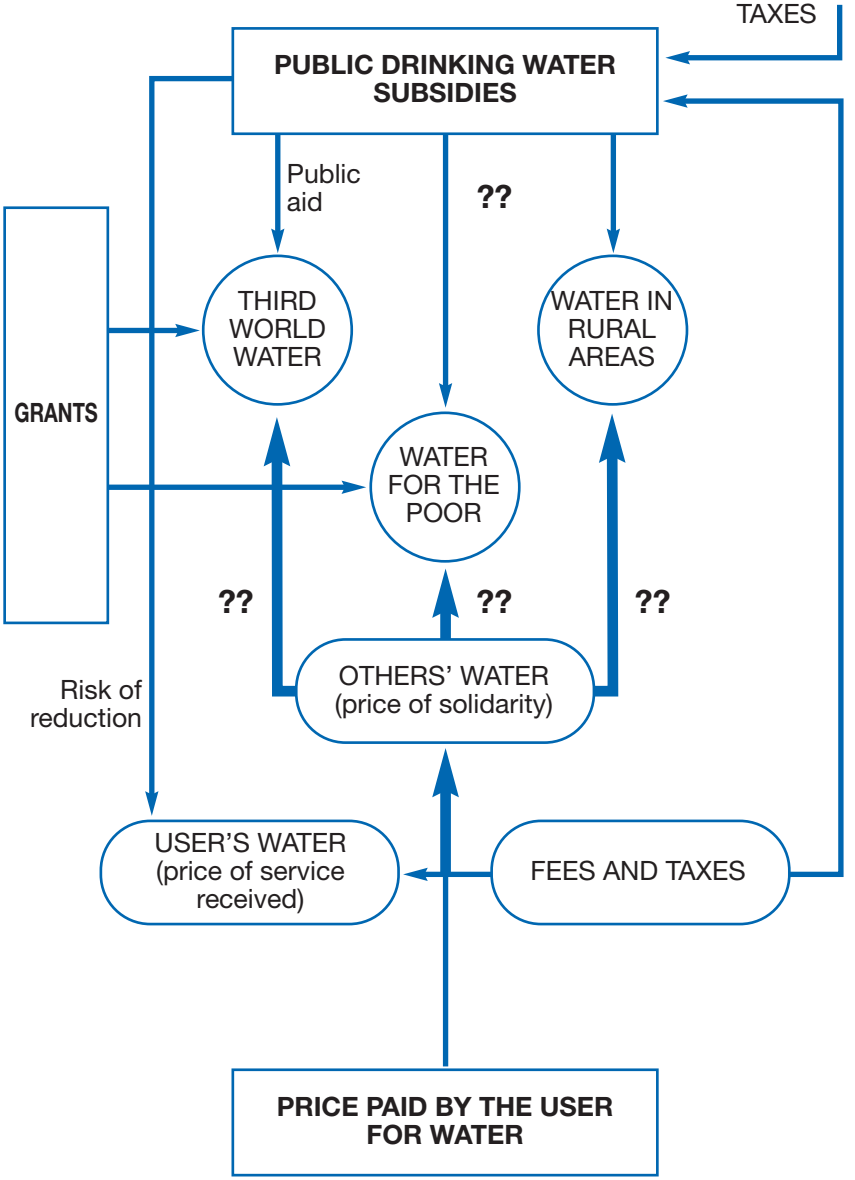
French basin agencies collect fees on wastewater discharges in order to finance wastewater treatment plants where there are none. Similarly, fees on water abstractions can finance new water supply systems in rural areas. Setting a single price within a water service coverage zone makes it possible to reduce the price of water for user areas that are more expensive to serve (cross or equity subsidisation). The State sometimes intervenes to harmonise or ensure the uniformity of the price of drinking water in the country (Slovakia, Czech Republic, Tunisia).



### *3.3.2. Social Cohesion: Water for All*

Traditionally, everyone had free access to water (spring water, wells, public fountains, etc.) but paid for distributed water. The rising price of distributed water creates economic difficulties among the poorest that must be overcome to guarantee access to water

Figure 3.
**Implementation of Solidarity**
(??: financing to possibly set up)







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for all. This is not a problem when water is inexpensive and its price does not cover sanitation but can become an acute problem in regions where drinking water is expensive (more than 4 euros per cubic metre in Europe). Falling subsidies result in higher connection costs for new subscribers.

*3.3.2.1. Water at an Affordable Price*

Even though inexpensive per weight unit, the water distributed by networks has become a non-negligible item in the budgets of the poorest households and is in danger of becoming unaffordable in regions or municipalities where water has become expensive. The percentage of people for whom water is expensive ranges from a few percent in developed countries[24] to more than 50% in the least developed countries. Although the affordable price concept is a legally recognised principle, notably in Community law, it needs concrete expression to become real. In the case of drinking water, the threshold after which water seems unaffordable for a household ranges from 3% to 6% of the household budget, although this threshold varies with the level of economic development. In the poorest countries, users must sometimes devote such a large share of their budgets to water that they choose to consume unhealthy water in addition to the water they purchase at high prices from sellers. Thus, in El Alto (Bolivia), a poor family connected to the network pays $1.55 per month for 7 cubic metres but, if it is not connected, the price of water rises to $4.78 per month for 2 cubic metres from a seller.



The "right to water for all" means that one must take specific measures so that everyone can have water, even households with very few resources. A first solution is to ensure that everyone has sufficient income, for example by providing jobs, social

24. In France, 2.6 million people receive food aid (147.5 million euros per year) and receive 25 kilograms per person. More than 66 million meals are distributed every year by the "Restos du Cœur" and other organisations active in parallel.

benefits, housing aid, and/or emergency aid. This solution is implemented in the developed countries that have large social programmes[25] but runs up against budgetary constraints. A second solution is to provide specific aid that can only be used to acquire water, for example aid for water financed by the municipality's social budget or a user-financed price reduction for the purchase of a limited quantity of water. In these conditions, water is again affordable for aid recipients.

In principle, progressive tariff systems—that is, tariff scales in which a first quota of consumption comes at a reduced price for everyone—make it possible to overcome the price obstacle for small consumers. This system is used in a very large number of countries, notably Argentina, Algeria, Belgium, Burkina Faso, Bolivia, Brazil, Colombia, Costa Rica, Côte d'Ivoire, Croatia, France, Greece, Guinea, India, Indonesia, Italy, Japan, Morocco, Mali, Mauritania, Nepal, Nicaragua, Panama, Paraguay, Peru, the Philippines, Portugal, Senegal, South Africa, Spain, Sri Lanka, Turkey, Tunisia, the United States, and Uruguay. It is also used in France, but on a small scale. It has the inconvenience of being disadvantageous for large families. In some cases, the first quota is free (South Africa, Colombia). The first-quota tariff is often applied to street fountains.



A more elaborate solution (called "social tariffs") consists in taking into account, in the rate, the composition of the users' families (Belgium, Brazil, Greece, Iran, Luxembourg, Malta, Spain, Tunisia, the United Kingdom, Vietnam) or income in addition to water consumption. The poorest are charged a reduced rate in the following countries: Argentina, Australia, Brazil, Chile, Colombia, Flanders (Belgium), Gabon, Guatemala, Japan, Mexico, the Netherlands, Nicaragua, Panama, Paraguay, Peru, Portugal, South Africa, Spain, the United Kingdom, the United States, Venezuela. In some countries, status (pensioners in Australia), martial status (widows in Mexico), and

25. In the European Union, social budgets vary from 58.7% of the GDP in Sweden to 34.2% in Lithuania. France's social budget is 53.6%, and the United Kingdom's, 43.5%. Social budgets are much smaller in developing countries.


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health (illnesses requiring lots of water in England and Australia) are taken into account. In numerous countries, domestic users pay lower rates than other users (cross-subsidisation), notably in the new independent States, Bolivia, Brazil, Costa Rica, Nicaragua, and Peru.

Progressive or social tariff measures must often be authorised by law because they introduce differences of treatment among users. For example, in Colombia, the price of water increases with income (the population is divided into six classes in function of type of housing). In Chile, water price reductions are allocated to people with low socio-economic status so that water represents no more than approximately 5% of household budgets. In Aguascalientes (Mexico), a tax on water consumption feeds a fund that finances a discount on the price of water for the poorest (15% of users). Aid can also cover connection costs (Morocco) or even subscription fees[26] that heavily penalise poor users who consume little water.

Finally, aid can take the form of a reduction of water debts at the time debts are paid (Wallonia and Brussels (Belgium), France, Budapest, the United Kingdom). In fact, this type of aid does not always reach a large number of potential beneficiaries because many people hesitate to request aid even if they feel they would have the right to a reduction or reduced rate.



The current tendency, promoted notably by the United Nations Commission on Sustainable Development, is to target aid for water on the populations that have the greatest need (inhabitants of disadvantaged neighbourhoods, pensioners, the poor, etc.) and stop subsidising drinking water for all. The effectiveness of this policy is measured by the number of real beneficiaries out of potential beneficiaries.

26. There is no subscription (set fee) in Estonia, Hungary, Poland, the Czech Republic, and part of Korea. In Tunisia and Turkey (Istanbul), the social tariff does not apply to heavy users.

Box 22.
**National Legislation: Flanders Implements Social Tariffs**

In Flanders (Belgium), a social tariff was introduced to take into account both the water consumption and the household composition and income of users. The price of water is based on a progressive tariff that depends on the consumption, measured in cubic metres, per person in the household. This solution encourages water conservation and avoids penalising large families because of the use of progressive tariffs. Each household receives 15 cubic metres per person and per year for which only sanitation is paid. Among other things, the poorest (2.5% of the population) are exempt from this payment, which results in their receiving 41 litres of water per person per day for free (targeted and limited gratuitousness).

**Venezuela and Columbia Organise Cross-Subsidisation Tariffs**

In Venezuela, the water tariff can be increased "para contribuir al financiamiento de las tarifas de los consumos básicos de los suscriptores de demostrada baja capacidad de pago establecidos dentro de la misma Unidad de Gestión" (Ley Orgánica para la Prestación de los Servicios de Agua Potable y de Saneamiento, 2001, Article 102).* In Colombia, the law breaks the population down into six strata and organises a cross-subsidisation system for the water provided to the lowest three strata of the population, financed by a maximum additional charge of 20% paid by the top two strata and by non-domestic users with the exception of hospital, education and social services (Laws no. 142 and no. 143 of 1994).

**The Right to Aid to Pay for Water**

In Belgium, the Walloon and Brussels-Capital Regions have each created a social water fund financed by a fee on water distributed (1.25 euro cents per cubic metre in the Walloon Region, and 1 euro cent per cubic metre in Brussels). These funds are used by the social action centres to cover the unpaid water bills of the poorest. Part of the funds are used to cover these centres' operational expenses. The aid for water for the poorest costs approximately 0.60 euros per inhabitant per year.

A similar mechanism exists in France where "toute personne ou famille éprouvant des difficultés particulières, en raison notamment de l'inadaptation de ses ressources ou de ses conditions d'existence, a droit à une aide de la collectivité, dans les conditions fixées par la présente loi, pour accéder à un logement décent et indépendant ou s'y maintenir et pour y disposer de la fourniture d'eau, d'énergie et de services téléphoniques" (Law no. 2004-809 of 13 August 2004 on local freedoms and responsibilities, Article 65).** A solidarity fund grants financial aid to people who find it impossible to fulfil their obligations regarding the payment of water, energy and telephone bills. This fund, now managed at department level, is financed mainly by departmental budgets. The territorial authorities and the water and energy distributors must in principle provide aid.



* "In order to contribute to the funding of tariffs for the basic consumption of subscribers who have a demonstrably poor ability to pay established within the same Management Unit" (Organic Law on the Provision of Potable Water and Sanitation Services, 2001, Article 102).

** Any person or family facing particular difficulties, notably due to an inadequacy of resources or living conditions, has the right to aid from the collectivity, under the conditions set by the present law, to obtain or remain in decent and independent housing, and have a water supply, electricity, and telephone services


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To cover the most extreme situations, the free distribution of water to the poorest must be planned so as to not deprive anyone of drinking or bathing water. For a long time, street fountains were used for this but if they disappear other solutions must be found.

Taking measures for poor people's access to water is a public service mission and a financial weight for the collectivity. Financing these measures can be the responsibility of the government authorities (Chile, Australia), other water service users (Belgium), or both (South Africa). In many countries, no tariff measures are taken and aid for water is financed by social budgets (social aid). In order to finance off-budget social measures, legislative provisions that authorise the decentralised (local, departmental, basin) collection of fees on water abstractions, that introduce different rates for existing fees (higher rates for certain categories of users or uses), or even that subsidise the price of water for certain categories of households through the electricity bill (Morocco, Gabon) must often be adopted.

*3.3.2.2. Water for Vulnerable Groups*

Access to water also concerns people who live on the edges of society such as travellers (gypsies and others), minorities (indigenous peoples, first peoples, etc.), illegal immigrants, and the homeless. Specific measures in the water sector are taken in their favour in many countries (France, Switzerland, the United Kingdom, Ireland, Canada, the United States, Mexico, etc.) and funds are allocated to improve their living conditions. Much remains to be done however, especially when discrimination is involved.[27]



27. In Canada, the 2004 Speech from the Throne notably decried "unacceptable gaps in […] basics like housing and clean water" between aboriginal Canadians and other inhabitants of Canada. A 1.6 billion dollar programme was launched to rectify the situation. In Europe, the access to water of Roma is sometimes problematic.

Box 23.

**National Legislation:**

**A Comparison of Practices Regarding Water for the Poor**

| | Belgium | Luxembourg | France | Spain | United Kingdom |
|---|---|---|---|---|---|
| Social aid | Yes | Yes | Yes | Yes | Yes |
| Water debt aid | Yes | - | Yes | Yes | Yes |
| Family rates | Yes | Yes | NO | Yes | Yes |
| Poor rates | Yes | Yes | NO | Yes | Yes |
| No cut-offs | Yes | Yes | NO | NO | Yes |

### Water for "Travellers"

Since 1990 in France, communes of more than 5,000 inhabitants must make equipped areas available to "travellers": "Chaque place de caravane est dotée d'un accès aisé aux équipements sanitaires ainsi qu'à l'alimentation en eau potable et à l'électricité".* A use fee is applied (for example, 10 euros per week for water and electricity). The commune is held accountable if this obligation is not met, notably if water distribution is lacking.

### Water for the Poorest

In Paris, access to drinking water and sanitation not longer poses any particular problem. However, slum housing without water still needs to be eradicated, and the specific needs of the homeless need to be taken into account. Water flows freely in Wallace fountains and numerous other street fountains. The city hall makes 18 free public baths and 36 free public toilets available (the population concerned is approximately 20,000 people). The *Fonds solidarité logement* (FSL) intervenes to cover water debts included in rental costs. The poor very rarely have their water cut off because there are very few individual water metres. Some co-owner associations "in difficulty" lose their water supply, notably those that are poorly managed or occupied by squatters. Approximately a hundred spouts are available in the streets to supply disconnected buildings with water. Individual agreements have been reached between water service providers and NGOs to guarantee the provision of water to squats and payment of the water provided.



* Each caravan site shall be provided with easy access to sanitary equipment and a drinking water and electricity supply.


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The obligation to cover the poorest is sometimes written into law. In Switzerland, the Constitution has declared since 1999 that "quiconque est dans une situation de détresse et n'est pas en mesure de subvenir à son entretien a le droit d'être aidé et assisté et de recevoir les moyens indispensables pour mener une existence conforme à la dignité humaine" (Article 12).* They have the right to receive elementary means to maintain an "existence décente prévenant ainsi un état de mendicité indigne de la condition humaine" (Federal Court, 1995 and 1998).** This notably concerns giving drinking water to illegal immigrants.

## 3.4. International Solidarity Duties: ` Water for Developing and Emerging Countries

Developing countries do not have water supply rights at the expense of developed countries but poor populations within a country can sometimes assert rights to a water supply from the government authorities as part of national solidarity and the protection of their constitutional rights. Internationally, the approach habitually taken calls on developed countries' duties to developing countries. These duties concern technical assistance, technology transfer under favourable conditions, and financial assistance.



States have on multiple occasions committed to providing aid to developing countries and increasing this aid to attain the Millennium Goals and Johannesburg targets. This aid is given to developing countries (North-South aid) and to emerging countries (East-West aid), especially in the framework of regional aid in Europe. Nevertheless, no State has yet taken on any legal obligation in regard to the amount of international aid it must provide; certain developed countries are even seeking to lower their contributions in this area. Other industrialised countries, however, have decided

* Whoever is in a situation of distress and not able to support him or herself has the right to be aided and assisted and to receive the indispensable means to live a life of human dignity
** Decent existence thus preventing a state of vagrancy unworthy of the human condition

Box 24.

**National Legislation: Financing Decentralised Aid for Water in the Third World**

The most rational way to collect small contributions from each user to further access to water in developing countries is collecting a tax on water bills or authorising the decentralised bodies that collect these taxes or fees to use part of the funds collected to promote access to water. In many countries, this method must be authorised by law. In France, the Oudin Law provides such authorisation: "Les communes […] peuvent, dans la limite de 1 % des ressources qui sont affectées aux budgets de ces services, mener des actions de coopération avec les collectivités territoriales étrangères, des actions d'aide d'urgence au bénéfice de ces collectivités" (Law no. 2005-95 of 9 February 2005 on international cooperation by territorial authorities and water agencies in the fields of water supply and sanitation).*

**The English Water Sector Provides Aid for Third World Water**

In the United Kingdom, private companies in the water sector officially support WaterAid's actions for Third World water. They make volunteers available, donate to charities, and report charity actions in their promotional communications. Among other things, they distribute, simultaneously with water bills, 24 million brochures prepared by WaterAid to solicit donations. WaterAid receives £16 million in donations per year.



**Tax Breaks for Donations to Third World Water**

In France, donations to NGOs active in the field of Third World water are given equal treatment with national humanitarian actions and the State covers up to 66% of these donations in the form of tax reductions.

* The communes […] can, using up to 1% of the resources allocated to the budgets of their services, conduct cooperation activities with foreign territorial authorities [and] emergency aid actions for these collectivities.


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to increase their development aid to the desired level[28] of 0.7% of their GNP by a specific deadline and an increase in aid after a period of falling aid levels[29] can effectively be seen.

International aid is particularly necessary in the water sector because the poorest countries are unable to finance the heavy investments that would be needed to provide water to the poorest. Despite speeches on the urgency of taking action for water, only a small share of public development aid is devoted to the water sector and only a small share of public funds in developing countries is devoted to water. Donor countries tend to favour water investments in emerging countries rather than in the poor countries that need them the most.

Countries such as France have committed to doubling the amount of aid devoted to water (Evian, 2003). This very important political commitment was not taken up by most donor countries. The proposal to finance health protection in Africa through innovative mechanisms (United Kingdom, France) shows the interest in not relying on budgetary donations alone to provide aid and all the hesitations that this can generate even among the richest States.



To compensate for insufficient public initiatives and rapidly help the poorest populations, initiatives are taken to provide decentralised aid for water. They come from regional and local authorities, municipalities and water agencies, and NGOs

28. This level of aid was accepted by the OECD's Development Assistance Committee and written into the United Nations General Assembly Resolution no. 2 626 (XXV) of 24 October 1970.

29. At the 2002 Monterrey Summit, the representatives of all States agreed: "We urge developed countries that have not done so to make concrete efforts towards the target of 0.7 percent of gross national product (GNP) as ODA to developing countries." At the Johannesburg Summit, the States agreed: "to contribute to the achievement of our development goals and targets, we urge developed countries that have not done so to make concrete efforts to reach the internationally agreed levels of official development assistance." In the Millennium Declaration, States are also encouraged to increase their aid. During the September 2005 Summit, the States committed to increasing aid: "We resolve to support developing countries by providing a substantial increase in aid of sufficient quality and arriving in a timely manner to assist them in achieving the internationally agreed development goals, including the Millennium Development Goals" (World Summit Outcome, September 2005).

Box 25.

**Domestic Law:**
**A Developing Country, South Africa, Implemented the Right to Water**

South Africa, a developing country, has made the right to water concrete by implementing an effective access to water policy (10 million additional people with access to water in ten years). The objective announced is for every individual to have an adequate water supply by 2008. For sanitation, the objective is for each individual to have adequate sanitation by 2010.

The following elements deserve to be cited in particular:

a) the Constitution of 1996 proclaims that "[e]veryone has the right to have access to […] sufficient food and water" and specifies that "[t]he State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights."

b) the Water Services Act (1997) states that "[e]veryone has a right of access to basic water supply and basic sanitation", that "[e]very water services institution must take reasonable measures to realise these rights", and that "[p]rocedures for the limitation or discontinuation of water services must […] not result in a person being denied access to basic water services for non-payment […]."

c) Water tariffs are progressive. The National Water Act (1998) authorises different tariffs based on the users' economic situations. Social equity is one of the criteria for setting different tariffs.

d) The Government endeavours to provide 200 litres of free drinking water per day to each poor household (6,000 litres per month, Free Basic Water Programme). In February 2005, 22 out of 29 million (76%) poor people received water for free. Consumers that do not pay their water bills are disconnected. However, water disconnection decisions for non-payment have been cancelled by the courts.

e) The Constitutional Court ruled against a local government for failing to fulfil its constitutional obligation regarding water (*Government of Republic of South Africa v. Grootboom*, 2000). The municipality was obliged to install street fountains and latrines for the inhabitants of a shantytown, and the provincial government was obliged to provide the municipality with a subsidy for this purpose.

In 2005, in a population of 46 million, there were still 5 million people without access to water and 16 million people without access to adequate sanitary installations.



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(development, charity, and immigrants associations). These initiatives could be financed by the already roughly handled public budgets and also by fees on water abstractions, which could increase aid to developing countries without calling on public budgets. Laws to authorise this type of financing (for example, France's Oudin Law) would of course need to be adopted to do so because fees on any one municipality's drinking water are not usually destined to finance water in other countries or regions. The proposal to tax plane tickets in developed countries is an example of financing outside the developing country aid budget. In the same way, a tax on bottled drinks could be created ("le centime de la soif", the cent for thirst).



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# 4 Conclusions

Government authorities' acknowledgement of the right to drinking water and sanitation is proof of the importance they accord to water for health and the consideration they have for the wishes of users who do not have access to drinking water. A political and symbolic act, acknowledgement does not generate considerable expenses because its primary affect is to put a progressive end to intolerable discrimination in a very limited number of cases.



Reciprocally, opposition to the right to water by governments that have acknowledged it on multiple occasions and that have taken on significant legal obligations in this area could lead one to assume that there has been a change of policy and, accordingly, public debate would be in order.

*a) All States Are in Favour of Access to Water for All*

All States wish to improve access to water and sanitation in order to achieve the policy objective of "water for all" and they have all taken numerous steps towards this by organising legal frameworks, creating institutions, and providing funding. They have done so whether or not they formally acknowledge the right to water as a fundamental right.

Box 26.

**Domestic Law:**

**Brussels-Capital Changes its Laws to Implement the Right to Water**

The Brussels-Capital Region in Belgium has a good drinking water distribution and wastewater collection system. Sanitation still needs considerable improvement. In January 2005, this region implemented new drinking water tariffs for both social and ecological reasons.

Under Brussels law:

a) The right to water is included in an edict that "garantit à toute personne le droit à la distribution d'eau potable pour sa consommation domestique" (1994). The right to sanitation is covered notably by Community law (urban wastewater).

b) Everyone receives a quantity of water at a reduced rate. The rate reduction is calculated per person and not per household (N.B.: the rate for the first 15 cubic metres per person per year is 3.8 times less than the standard rate).

c) Water tariffs are progressive; that is to say, the price per cubic metre increases with household consumption.

d) A solidarity tax on water (1 euro cent per cubic metre) feeds a social fund for water for the poorest (total cost: approximately 0.60 euros per inhabitant, 91% of which was used in 2004). 30% of this fund covers the administrative expenses and social work of social action centres in the water sector and 70% pays the water bills of the poorest.

e) Schools receive 1 litre of water per student per day for free.

f) The social action centre is notified of impending water cut-offs for non-payment, and a judge must rule in favour of the cut-off. While it has become more frequent, non-payment of water bills has not grown to alarming proportions.

g) The VAT rate applicable to the water distributed is the reduced rate for essential goods: 7%. There is no VAT on sanitation.



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The principal difference among States is the number and financial scope of the measures taken for populations without access to water. Certain States have shored up their drinking water access policies by introducing specific numerical objectives in their action plans and even laws: for example, the number of people to provide with water during the year or the number of villages to connect to a drinking water network. In many States, the government authorities are responsible for ensuring access to drinking water and sanitation. Solidarity for water is organised under public law or left to the care of charities.

Explicit acknowledgement of the right to water as a fundamental, human or protected constitutional right quite obviously has high symbolic and legal value, but is not the only way to promote the right to water because, at the end of the day, the most important thing is the number of people who have access to water and sanitation or the number of people who do not yet have access to water and sanitation. The questionnaire in Appendix 3 can guide reflections on the degree to which the right to water is implemented domestically and on the measures that could be taken to make the right to water a stronger reality for all. In the questionnaire, one can see that the fundamental right aspect is only one element.



The legislative and regulatory provisions taken by countries to facilitate access to drinking water and sanitation for all have had the primary effect of correcting deplorable situations. The primary beneficiaries of the right to water are disadvantaged people who need the law on their side for their rights to be respected.

*b) Acknowledging the Right to Water: A Political Act at Low Cost*

Attaining the Millennium Goals and Johannesburg targets for water is the primary objective adopted by all States for the water sector; it will require extensive expenditures, primarily in the poorest countries who have the furthest to go to catch up. Most people who will acquire access to water will do so through programmes that aim to attain the

Johannesburg targets. In comparison, few people will acquire access to water based on the right to water. Thus, the expenses generated by implementing the right to water will be marginal in relation to those generated by the Johannesburg targets.

*c) A Pro-Poorest Approach*

Attaining the Johannesburg targets will not become a credible goal until States acknowledge that water is a priority for public action in conformity with the desires of those who lack most the water. To back and support their actions in the field of water sustainably, States would have an interest in acknowledging the right to water as a fundamental right under domestic law, which in reality would only generate weak legal and financial constraints but would indicate a determination to act in a very sensitive field. Hesitation on this subject could indicate that decision-makers give priority to other economic or social objectives and thus neglect meeting the most fundamental needs of the poorest.

For access to water to become an important political priority, a domestic right to water, analogous to the right to food or the right to health, must officially be acknowledged. Without such official acknowledgement, it seems probable that the water sector will not receive the funds necessary for its development and that access to water will be another factor in inequality. Yet, the lack of drinking water leads to waterborne diseases and the death of 10,000 people every day.



*d) A Perfectly Coherent Approach Internationally*

The International Community is not being invited to create or acknowledge a new human right but to act in a way that is consistent with the multiple international agreements that States have already ratified and that introduce important elements of the right to water, and with the 1999 United Nations General Assembly Resolution in which access to water is a fundamental right. The question of acknowledging the right to water as a fundamental right internationally has therefore already been answered;


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however, it could be useful that the General Assembly explicitly clarify the scope of this right in a new Resolution on the subject.

If all the Heads of State believe that the right to food exists, it would be highly inconsistent to not speak of rights in relation to access to water, since it is known that it is impossible to feed oneself without water. Similarly, it would be inconsistent to acknowledge the right to health and refuse the sick the medications necessary to guarantee health care under the pretext that neither the *Universal Declaration* nor the *International Covenant* mention medication.

Given all the existing international declarations and resolutions, it would seem normal that Ministers in charge of water agree to admit that the right to water has already been acknowledged as being a fundamental right on several occasions within the United Nations. The right to water is an economic and social right like the others; it implies neither that water must be free nor the creation of rights for other States. Access to water is vital to implement the right to well-being and the right to dignity—two universally accepted human rights.



Refusing to speak of rights in relation to access to water after adopting the Johannesburg targets would cast serious doubts as to the coherency and credibility of international commitments. That is, unless we admit that the poor deserve only our indulgence or our compassion but do not have assertable rights in this field.

*e) A National Moral Obligation*

Domestically, it appears necessary to acknowledge the right to water so that those who still lack water can also obtain this essential good in all situations where it would be appropriate. Ensuring the provision of health care for all is an excellent step, but one that should be completed by preventing waterborne diseases and avoiding the associated epidemics. This public health measure requires supplying everyone with

Box 27.

**The Probable Effects of Implementing the Right to Water in Europe**

Positive Effects:

a) Strengthening the implementation of national and EC health and environment policies. Better protection of groundwater. Better maintenance of distribution, collection and sanitation networks. Installation and maintenance of street fountains. Better protection of the quality of water distributed. Increase in investments to implement European directives on water. Improvement of water sector governance.

b) Better legal protection of public health. Better application of national and Community laws on sanitation and the prevention of water pollution. Creation of the right to a connection to existing drinking water and sanitation networks. Elimination of discrimination in distribution. Creation of an individual right of access to a source of drinking water for villages without a source of drinking water. Development of sanitation networks. Supervision of individual sanitation systems. Distribution of drinking water in emergencies. Reduction of waterborne diseases.

c) Better social and territorial cohesion: “water for all.” Creation of a social water tariff (first instalment and subscription at a reduced rate) and/or targeted aid to make water more affordable for the poorest (in addition to social aid). Connections at reduced rates. Fewer unpaid bills by the poor. Fight against the rural exodus (improvement of water services in rural areas).

d) Better protection of human dignity. Restrictions on water supply discontinuations for non-payment. Less housing made uninhabitable.

d) Better participation by citizens in discussions on water. Better citizen information and participation regarding water services (quality, price, management).

Negative Effects:

- slight increase in the price of water (less than 1% to improve social cohesion); and
- possible increase in the cost of bill collections.




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drinking water and better sanitation. It requires improving national legislation in the water sector, bringing water to those suffering from unacceptable situations when it comes to public health, and financing the corresponding poverty alleviation measures so that water can be affordable for the poorest.

We must feed the hungry—and we do—but at the same time, we must not cut off their water. We must help Third World peoples obtain access to water—and we do—but at the same time, we must not forget that some of our fellow citizens still do not have access to drinking water.

Implementing the right to water—like the right to health—is linked to obligations of solidarity that are incumbent on everyone, both domestically and internationally. In the fight against exclusion, covering the cost of water for the poorest seems to be the minimum that each community must undertake for the good of its most vulnerable members.

Everyone must know that his or her access to water will be respected as a right and not as charity. To acknowledge the right to water is to promote human dignity. To succeed, one must adopt laws that institute the necessary solidarity after having restated the objectives to attain regarding access to water and sanitation.



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# Appendices

## Appendix 1. The Basic Principles of the Right of Access to Drinking Water and Sanitation



*Paper prepared by the* Académie de l'eau *in collaboration with the European Council on Environmental Law (ECEL)*

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 decentralisation 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 quantity 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

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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 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 setting up common installations for water supply and sanitation in urbanised areas and protecting 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 or her 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 or her basic needs. The supply of drinking water to persons considered by public authorities to be in reduced financial circumstances may not be interrupted for 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 or her 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 or her 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 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 in its domestic legislation and seek to guarantee its protection; it should adopt necessary legal, institutional, and financial measures to ensure such a right can effectively be implemented and can

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be invoked before the courts. Each State should identify the respective responsibilities of all parties involved and support transparent and participatory 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* the management of water services; they should take steps to guarantee drinking water supply in cases of emergency or conflict.



12. Each State should ensure that water services are organised and managed for the benefit of all at the most appropriate *decentralised 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 usage. 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.

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## Appendix 2. The Rights-Based Approach

(Taken from "Access to basic services for all, towards an international declaration on partnerships", a UN-Habitat and UNITAR joint working document, 2004).

A rights-based approach includes the following elements:

***a) Identifying claims and claim holders***

A rights-based approach reconsiders the human needs of individuals and groups of individuals as human rights, which mean they have a claim to certain goods and services. Thus, in the development process, individuals and groups are no longer passive recipients of aid but rather empowered holders of rights.

***b) Identifying duty bearers***

Under international human rights law, the duty bearers of human rights are national governments—however, in practice, duty bearers are much more specific—for example, particular ministries, and even individuals who have responsibility for ensuring acceptable, accessible, adaptable and available basic services. Similarly, in practice, non-state actors (such as corporations or NGOs working in basic service provision) have responsibilities to claim holders, which might be enforced through the state or directly depending on national laws and circumstances.



***c) Identifying remedies***

Everyone holds the human right to a remedy. Guaranteeing this right is as important in the context of a rights-based approach to service provision as it is in other areas (e.g. fair trial). Indeed, the right to a remedy is closely linked to accountability, one of the basic

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elements of a rights-based approach to development that transforms human needs into human rights. Without legal enforceability (justiciability) then rights are only wishes or promises.

Remedies might be sought through the court system but given the nature of claim holders in the context of basic services (i.e. people who are poor or who suffer social injustice), then it is important to consider other means of accountability and redress, e.g. easily and cheaply accessible administrative tribunals, inspection units and so on.

***d) Securing participation***

Participation is another element of a rights-based approach to development. Participatory human rights include:

- Right to take part in the conduct of political affairs
- Freedom to seek, receive and impart information
- Freedom of association
- Freedom of movement
- Right to a remedy.



It is important to ensure that decisions on essential services are taken through a consultative process so that the rights of the people concerned are taken into account.

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# Appendix 3. Assessing the Implementation of the Right to Water in Domestic Law

The short questionnaire below was written to shed light on the primary legal aspects covered by the notion of the right to water in domestic law, whether or not this right is formally recognised as a fundamental right. France's responses give an idea of the level of implementation of this right in an industrialised nation:

1. Is the right to water explicitly acknowledged to be a fundamental right under domestic law? (France's answer: no). Does a national strategy/plan of action to improve access to water and sanitation exist? (France's answer: yes). Must the public authorities respect quantified objectives for access to water? (France's answer: yes).
2. Are public authorities obliged to guarantee access to drinking water (France's answer: no) and collective sanitation (France's answer: yes, in urban areas) and control the quality of water (France's answer: yes) and individual sanitation systems? (France's answer: yes).
3. Must water service operators serve all users (universality)? (France's answer: yes). Must users that are not connected to collective sanitation systems set up individual sanitation systems? (France's answer: yes). Is it mandatory to warn users when the water does not meet standards? (France's answer: yes). Is it forbidden to distribute water that does not meet quality standards? (France's answer: yes).
4. Can access to a water distribution or sanitation network be refused if the requesting party pays the connection cost? (France's answer: yes). Are there limits to the expansion of networks outside urban zones?
5. In the case of emergencies, does the population have the right to an emergency water supply? (France's answer: yes). Does domestic law explicitly make it a priority to allocate, in the case of shortages, water to essential household uses



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first? (France's answer: yes). Are users obliged to take specific measures to reduce their drinking water consumption?

6. Is it mandatory to protect water catchment areas? (France's answer: yes). To maintain networks? (France's answer: yes).
7. Are measures to distribute water through street fountains taken? To create public latrines? To give a quota of water for free? To provide disadvantaged people with access to water (travellers, indigenous peoples, etc.)? (France's answer: yes).
8. Do mandatory provisions exist regarding informing users on water and sanitation (quality, price, management, etc.)? (France's answer: yes). Regarding collecting and publishing information on water services' performance (Water Observatory)? Regarding users' participation in consultative bodies in charge of water services nationally or locally? (France's answer: yes). Do women effectively participate in these bodies? (France's answer: yes). Do organisations in charge of controlling and reporting on the operation of water services exist?
9. Can poor households' water be cut off for non-payment? (France's answer: yes). In the case of disconnection, must a back-up supply be installed? (France's answer: no). Does a specific procedure exist to delay disconnection of poor users? (France's answer: yes). Does a specific financial aid mechanism exist to cover part of unpaid water bills and/or avoid cutting off the water of poor households? (France's answer: yes).
10. Does an obligation to ensure cost recovery through appropriate pricing exist? (France's answer: yes). Is drinking water sold to domestic users at a price close to its real cost (little or no subsidies)? (France's answer: yes).
11. Is a progressive tariff scale (first instalment at a reduced price) generally applied to drinking water? (France's answer: no). Does the price of water take into account the composition of the users' families or their incomes (social tariff)? (France's answer: no).



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12. Do specific mechanisms to subsidise access to water and sanitation in rural areas exist? (France's answer: yes). Do specific mechanisms to subsidise the access to water for disadvantaged and vulnerable groups (the poorest)? (France's answer: no).
13. Do cross-subsidisation mechanisms (fees, etc.) exist to finance water services and thus contribute to:
    - territorial cohesion (aid for rural and periurban populations)? (France's answer: yes);
    - social cohesion (aid for the poorest)? (France's answer: no); and
    - aid for developing countries? (France's answer: yes).
14. Have courts intervened in disputes dealing with the rights relating to access to water and sanitation (refusal of service, insufficient quality, etc.)? (France's answer: yes).

Note: The positive answers show that France implements the right to water to a very large extent even though this right is not officially recognised in a legal text. The lack of social pricing for water and cross-subsidisation for the poorest is partially compensated by a social policy generally seen as generous.



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Tel.: 33 (1) 53 44 31 31 - Fax: 33 (1) 44 53 99 39 - www.afd.fr

Created and produced by Vif Argent Communication - 92200 - Neuilly-sur-Seine

Printed in France by Ferréol (Lyon) – April 2006
© 1st quarter 2006