



THE HUMAN RIGHT TO WATER AND SANITATION IN EMERGENCY SITUATIONS

THE LEGAL FRAMEWORK AND A GUIDE TO ADVOCACY

Produced by ACF-France on behalf of the Global WASH Cluster

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FOREWORD

Access to safe drinking water and sanitation is fundamental for survival. And yet vast portions of the global population do not have such access, and suffer incredibly as a result. The statistics are staggering. Every year, more than 5 million people die as a result of lack of access to safe drinking water; 84% are children under the age of 14. The majority of illnesses in the world are caused by faecal matter. At any given moment, half of the people in hospitals are suffering from diseases caused by lack of access to clean water or adequate sanitation. The poorest and most vulnerable segments of society are the most affected by these realities. The risk of disease and death caused by dirty water and unhygienic environments is considerably heightened in emergency situations.

The international community increasingly recognizes the desperate situation of much of the world with regard to lack of access to safe drinking water and sanitation. The Millennium Development Goals set a target to halve, by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation. Despite this commitment, assessments of progress in achieving the MDGs indicate that more efforts will be required to meet the targets on water and sanitation. Particularly alarming is the news from the UNICEF and WHO Joint Monitoring Programme that if current trends on sanitation continue, the world will miss the MDG sanitation target by half a billion people.

In March 2008, the UN Human Rights Council adopted a resolution expressing deep concern about the fact that “over one billion people lack access to safe drinking water and that 2.6 billion lack access to basic sanitation.” This was the resolution that created my mandate as Independent Expert on the issue of human rights obligations attached to access to safe drinking water and sanitation. The resolution calls on the Independent Expert to carry out further conceptual work to clarify the right to water and sanitation. Whilst access to water and sanitation is widely understood as a basic need, there is still some uncertainty amongst States as to whether it is a human right, and if it is, the scope and content of that right.

Prioritizing the human rights obligations attached to access to safe drinking water and sanitation is crucial for humanitarian actors and other stakeholders working in emergency situations if they are to ensure that the rights of all those affected are fully respected. Human rights analysis emphasizes inclusion and participation, non-discrimination, empowerment, and accountability. This publication highlights the value of understanding water and sanitation as human rights issues, and it provides very useful guidance on implementing this right within the context of humanitarian emergencies. Ensuring improved access to drinking water and sanitation in emergency situations is a critical step towards better enjoyment of human rights, as well as contributing towards meeting the MDGs on water and sanitation.

I welcome the release of this publication, and express my hope that it will provide an impetus for increased attention to important human rights issues related to water and sanitation in humanitarian emergencies. I look forward to the contribution this and similar efforts will make to ongoing discussions between and within States to recognize and clarify the right to water and sanitation.

Since this is a preliminary version of this Advocacy Tool, I hope that between now and the publication of the final version, there will be even more contributions from stakeholders and experts working in the area of water and sanitation to this Manual.



Catarina de Albuquerque
United Nations Human Rights Council Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation

TABLE OF CONTENTS

| | |
|---|-----------|
| Acknowledgments | 3 |
| Foreword | 5 |
| Table of contents | 6 |
| List of boxes | 8 |
| List of tables | 8 |
| List of case studies and concrete examples | 9 |
| List of figures | 9 |
| List of abbreviations and acronyms used in the document | 10 |
| Executive summary | 13 |
| INTRODUCTION | 15 |
| 1. What constitutes an “emergency”? | 15 |
| 2. The challenge posed by water and sanitation in emergency situations | 15 |
| 3. A brief history of water and sanitation and human rights | 16 |
| 4. Who is responsible for realizing the human right to water and sanitation?..... | 17 |
| 5. Rationale of the document..... | 18 |
| How to make the best use of this document | 19 |
| 1. Objectives of the handbook..... | 19 |
| 2. Target audience..... | 19 |
| 3. Organization of the handbook..... | 20 |
| PART 1 - INTERNATIONAL LAWS APPLICABLE IN EMERGENCIES | 21 |
| Chapter 1 - How is international law relevant to our work? | 22 |
| Chapter 2 - International human rights law | 23 |
| 2.1. What are human rights?..... | 23 |
| 2.2. Key human rights instruments | 24 |
| 2.3. Monitoring the respect of international human rights law | 25 |
| Chapter 3 - International Humanitarian Law | 28 |
| 3.1. What is International Humanitarian Law?..... | 28 |
| 3.2. Key International Humanitarian Law instruments..... | 28 |
| 3.3. Monitoring respect of International Humanitarian Law | 29 |
| Chapter 4 - Relationship between International Humanitarian Law and human rights law | 31 |
| 4.1. Complementarity between IHL and HRL..... | 31 |
| 4.2. Derogations to the application of human rights..... | 31 |
| 4.3. Some human rights can never be suspended | 31 |
| Chapter 5 - International criminal law | 33 |
| PART 2 - DEFINITION OF THE RIGHT TO WATER AND SANITATION IN EMERGENCY SITUATIONS | 35 |
| Chapter 6 - The human right to water as defined by General Comment | 36 |
| 6.1. Key message | 36 |
| 6.2. What is General Comment 15? | 36 |
| 6.3. Definition of the human right to water | 37 |
| 6.4. Key components of the right to water | 37 |
| 6.5. Obligations of States parties | 39 |
| 6.6. Failure to meet obligations | 41 |

| | |
|--|------------|
| 6.7. Responsibilities of actors other than States..... | 43 |
| 6.8. What does General Comment 15 say about emergency situations? | 44 |
| Chapter 7 - Recognition in some human rights instruments targeted at specific groups: focus on women and children | 47 |
| Chapter 8 - Human rights obligations related to sanitation | 49 |
| 8.1. Recognition under Human rights instruments | 49 |
| 8.2. Impetus given by the International Year of Sanitation (IYS)..... | 50 |
| Chapter 9 - Developments at the Human Rights Council | 53 |
| Chapter 10 - The human right to water and sanitation in situations of armed conflict: the legal framework | 57 |
| 10.1. Key message | 57 |
| 10.2. Background | 57 |
| 10.3. Protection of fresh water in time of armed conflict | 58 |
| 10.4. Is it a war crime to attack a population’s water supply? | 62 |
| 10.5. Conclusion | 64 |
| Chapter 11 - The right to water and sanitation in national legislation | 65 |
| Chapter 12 - Operational guidelines applying in emergency situations and the human right to water and sanitation | 69 |
| 12.1. Key message | 69 |
| 12.2. How is the human right to water included in the Sphere Standards?..... | 69 |
| 12.3. How is the human right to water and sanitation included in the Operational Guidelines on Human Rights and Natural Disasters? | 72 |
| 12.4. Conclusion | 74 |
| PART 3 - ADVOCACY ON THE RIGHT TO WATER AND SANITATION IN EMERGENCIES | 75 |
| Chapter 13 - The principles of advocacy on the right to water and sanitation | 76 |
| 13.1. Key message | 76 |
| 13.2. What exactly is advocacy in emergencies?..... | 76 |
| 13.3. Added value of rights-based advocacy in emergencies..... | 77 |
| 13.4. Opportunities offered by a rights-based approach to advocacy..... | 80 |
| 13.5. Key challenges to rights-based water-related advocacy..... | 81 |
| Chapter 14 - Designing and implementing advocacy action on the right to water in emergencies | 83 |
| 14.1. General principles in respect of the identification of violations of economic, social and cultural rights..... | 83 |
| 14.2. Identifying violations of the right to water | 84 |
| 14.3. What types of advocacy should be undertaken in support of the right to water and sanitation?..... | 95 |
| 14.4. Developing an advocacy strategy..... | 103 |
| 14.5. Conclusion | 103 |
| ANNEXES | 107 |
| Annexe 1 30 years of WASH international political progress in brief | 108 |
| Annexe 2 Origin of the General Comment 15..... | 112 |
| Annexe 3 Summary of the key international human rights instruments of law that are relevant to the right to water..... | 113 |
| Annexe 4 Key extracts from the Geneva Conventions and the two Additional Protocols that are relevant for water protection | 116 |
| Annexe 5 Some common misunderstandings about the right to water and sanitation..... | 118 |
| BIBLIOGRAPHY | 119 |

LIST OF BOXES

| | | |
|--------|--|----|
| Box 1 | What is international law? | 22 |
| Box 2 | Governmental obligations with regard to human rights..... | 23 |
| Box 3 | Nature of the legal obligations under human rights instruments | 24 |
| Box 4 | The nine core human rights treaties..... | 25 |
| Box 5 | The Vienna Declaration and Programme of Action on the indivisibility of human rights..... | 25 |
| Box 6 | Categorization of different types of armed conflicts..... | 28 |
| Box 7 | Crimes under the Rome Statute..... | 33 |
| Box 8 | What is a General Comment? | 36 |
| Box 9 | Violations of the right to water..... | 42 |
| Box 10 | Paragraph 60 of GC 15 - Assistance to populations in emergency situations | 43 |
| Box 11 | The right to sanitation in international human rights law | 49 |
| Box 12 | The right to sanitation in terms of human rights..... | 51 |
| Box 13 | Extract from the Report of the UN High Commissioner for Human Rights on access to safe drinking water and sanitation | 53 |
| Box 14 | Extract from Resolution A/HRC/7/22 on access to safe drinking water and sanitation | 55 |
| Box 15 | Protection of the Right to Water under IHL..... | 59 |
| Box 16 | Indonesia and the Sphere Standards | 70 |
| Box 17 | Objectives of advocacy in emergency situations..... | 76 |
| Box 18 | The rights-based approach in brief..... | 78 |
| Box 19 | The position of two main donors in respect of the human right to water and sanitation in emergencies..... | 79 |

LIST OF TABLES

| | | |
|----------|--|----|
| Table 1 | Key components of the human right to water..... | 37 |
| Table 2 | Additional components..... | 38 |
| Table 3 | Obligations of States parties | 40 |
| Table 4 | Core obligations of States Parties..... | 41 |
| Table 5 | GC 15 and emergency situations..... | 44 |
| Table 6 | Prior recognition of the human right to water and sanitation in human rights focussing on women and children | 47 |
| Table 7 | The right to water in national legislation | 65 |
| Table 8 | Some examples of the constitutional right to water | 66 |
| Table 9 | Minimum standards in water supply | 71 |
| Table 10 | Definition of the human right to water and sanitation according to Sphere Standards..... | 72 |
| Table 11 | Guidance for implementing the right to water and sanitation according to the Operational Guidelines on Human Rights and Natural Disasters..... | 73 |
| Table 12 | Checklist: Which aspects of the human right to water are affected?..... | 86 |

LIST OF CASE STUDIES AND CONCRETE EXAMPLES

| | | |
|--------------|--|-----|
| Case Study 1 | - Violence perpetrated against the civilian population of Mozambique | 39 |
| Case Study 2 | - The right to water in emergencies defended at the 5th World Water Forum..... | 97 |
| Case Study 3 | - UN/Government campaign on the right to water in Haiti..... | 99 |
| Case Study 4 | - How is the right to water and sanitation of the Palestinian population being denied? Some examples of advocacy initiatives | 104 |

LIST OF FIGURES

| | | |
|----------|---|-----|
| Figure 1 | Checklist: The victims..... | 89 |
| Figure 2 | Checklist: The responsibility of the authorities..... | 91 |
| Figure 3 | Checklist: rights and legal standards..... | 93 |
| Figure 4 | Checklist: The advocacy message | 95 |
| Figure 5 | Different types of advocacy | 102 |



LIST OF ABBREVIATIONS AND ACRONYMS USED IN THE DOCUMENT

| | |
|--------|---|
| ACF | Action Contre la Faim |
| ACF-IN | Action Contre la Faim International |
| AfCRC | African Charter on the Rights and Welfare of the Child |
| ALNAP | Active Learning Network for Accountability and Performance in Humanitarian Action |
| CEDAW | Convention on the Elimination of all Forms of Discrimination against Women |
| CESCR | Committee on Economic, Social and Cultural Rights |
| COHRE | Centre on Housing Rights and Evictions |
| CRC | Convention on the Rights of the Child |
| CSD | Commission on Sustainable Development |
| DFID | UK Department for International Development |
| ECHO | Humanitarian Aid Department of the European Commission |
| ESCR | Economic, Social and Cultural Rights |
| EU | European Union |
| FAO | Food and Agriculture Organization |
| GC 15 | General Comment 15 |
| HR | Human Rights |
| HRC | Human Rights Council |
| HRL | Human Rights Law |
| HRTW | Human Right to Water |
| HRTWS | Human Right to Water and Sanitation |
| IASC | Inter-Agency Standing Committee |
| IBHR | International Bill of Human Rights |
| IDCDW | International Decade for Clean Drinking Water |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ICC | International Criminal Court |
| ICCPR | International Covenant on Civil and Political Rights |
| ICISS | International Commission on Intervention and State Sovereignty |
| ICJ | International Court of Justice |
| ICRC | International Committee of the Red Cross |
| IDEF | International Institute for Freedom of Expression and French Inspiration |
| IDP | Internally Displaced Person |
| IDWSSD | International Drinking Water Supply and Sanitation Decade |
| IFAD | International Fund for Agricultural Development |
| IGO | Inter-Governmental Organization |

| | |
|----------|---|
| IHL | International Humanitarian Law |
| ILO | International Labour Organization |
| INGO | International Non-Governmental Organization |
| IUCN | International Union for Conservation of Nature |
| IYS | International Year of Sanitation |
| MBPI | Indonesian Society for Disaster Management |
| MDGs | Millennium Development Goals |
| MINUSTAH | United Nations Stabilization Mission in Haiti |
| NGO | Non-Governmental Organization |
| ODI | Overseas Development Institute |
| OHCHR | Office of the High Commissioner for Human Rights |
| RTW | Right to Water |
| UDHR | Universal Declaration of Human Rights |
| UN | United Nations |
| UNDP | United Nations Development Programme |
| UNEP | United Nations Environment Programme |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| UNICEF | United Nations Children's Fund |
| UNFPA | United Nations Population Fund |
| UNHCR | Office of the UN High Commissioner for Refugees |
| UNSGAB | United Nations Secretary General's Advisory Board on Water and Sanitation |
| WASH | Water, Sanitation and Hygiene |
| WHO | World Health Organization |
| WTO | World Trade Organization |
| WWF | World Water Forum |



EXECUTIVE SUMMARY

Water and sanitation are critical determinants for human survival and dignity immediately after and during the initial stages of a disaster. Whilst humanitarian agencies have traditionally been involved in fieldwork on those aspects, now, however, advocacy is playing an increasingly important role in water and sanitation provision during emergencies. In this respect, the recognition of the right to water and sanitation as a right per se offers some new perspectives.

It means that every humanitarian actor, whether a staff member working in the field or a policy maker, should be aware of existing laws pertaining to this fundamental right, and in particular because:

- International law defines the obligations of States and provides a framework for the exercise of the rights and responsibilities of other actors, including humanitarian agencies;
- The right to water and sanitation is fundamentally linked to many other human rights;
- Lack of access to basic services such as water and sanitation is increasingly considered as a denial/ violation of human rights.

This document is based on the following key characteristics of the right to water and sanitation:

- **Access to water and sanitation is a human right** that States and non-State actors must respect, even in humanitarian crises;
- **Every person has the right to water**, defined as the right for everyone to «**sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use**»;
- Everyone has a right to have access to adequate sanitation;
- **The right to water is inextricably linked to other human rights**, including the right to health and the right to adequate food. As such, it is a component part of all the rights that are essential for human survival, and that must be guaranteed, especially in emergencies;
- Water and sanitation recognized as human rights ensure that **focus is placed on vulnerable and marginalized groups**, especially in emergency situations;
- **States have an obligation to guarantee availability, quality and accessibility of water for everyone, as well to ensure non-discrimination, access to information and participation and accountability;**
- **States must respect, protect and fulfil the right to water and sanitation, at national, community and individual levels;**
- **The Geneva Conventions and their Additional Protocols protect the right to water and sanitation of people in the context of armed conflict.** For instance, in times of armed conflict, under International Humanitarian Law it is prohibited to attack, destroy, remove or render useless drinking water installations or irrigation works.

These elements demonstrate how important it is to develop a **rights-based advocacy** focused on identifying violations of the exercise of the right to water and setting out a message of change to address violations, promote respect for international standards and protect all people against violations of their rights. Humanitarian actors using this approach then need to **identify violations, victims and perpetrators**. This will allow them to elaborate a strategy and select the best right to water and sanitation initiatives to put into practice. This includes speaking out, raising awareness of people's rights in emergencies, and advocating for the right to water and sanitation at all relevant levels and fora. It is up to each individual organization to define the aspect or aspects of the right that are important to its own work, to identify any

possible violations of which it might be aware, to set its own priorities and then to choose the strategies best suited to achieving its stated goals.

The WASH Cluster, whose mission is to make every effort to improve and better coordinate the response to humanitarian emergencies, has identified a gap in the knowledge its members have of key human rights and how to use such knowledge to improve their advocacy work. This book has been specifically drafted as a tool for use in the field to assist and promote such advocacy endeavours.

It should be noted that references to the right to water in this publication include the right to sanitation and the right to hygiene even when these are not explicitly spelled out each time the right to water is mentioned.

INTRODUCTION

1. What constitutes an “emergency”?

Each year more than 30 million people flee their homes as a result of conflict and natural disasters; and more than 200 million people are affected by natural hazards¹. In the current global situation, characterized by conditions of inequity and extreme poverty, environmental degradation and climate change have brought about an increase in the occurrence of natural disasters such as landslides, heavy rainfall, hurricanes, drought, fires, and earthquakes². As amply demonstrated by recent events, they can affect anyone anywhere. Furthermore, emergency situations are becoming more and more frequent, recurrent, diverse and difficult to define: natural hazards and armed conflict are no longer the only situations that have to be dealt with. Indeed, since the end of the Cold War, some “new conflicts” have appeared on the horizon, such as anarchic or identity-related conflicts. In addition, natural disasters are often overlaid by conflict, or may be combined with protracted livelihood insecurity.

These elements all contribute to defining what constitutes an “emergency”, in the widest sense of the term, with which humanitarian agencies have to cope: *“where and when a disaster provokes an immediate, exceptional and **widespread threat to life, health or basic subsistence**, which requires an international response that goes beyond the mandate or capacity of any single agency and/or the ongoing UN country programme³”*

2. The challenge posed by water and sanitation in emergency situations

In an emergency, inadequate water supplies and poor sanitation put lives at risk, and water – the supreme life-sustaining element – can become a source of major concerns. Human excreta are noxious and can become one of the foremost causes of disease if not safely disposed of, out of human contact and away from water sources. Consequently, water and sanitation are critical determinants for survival immediately after and during the initial stages of a disaster. People affected by disasters are generally much more susceptible to illness and death from diseases related to inadequate sanitation, insufficient water supplies and poor hygiene. Moreover, availability of sufficient clean water in the immediate aftermath of a disaster is crucial in order to take care of the sick, provide for human consumption and maintain basic hygiene, support search and rescue efforts, and ensure that productive and commercial activities get back to normal. In addition, the lack of water and water facilities often adversely affects the dignity of those caught up in emergencies.

1 / UNDP Human Development Report 2007/2008, Fighting Climate Change: Human Solidarity in a Divided World.

2 / The latest World Disaster Report indicates that disasters (excluding wars, conflict-related famine, disease or epidemic) have increased constantly in Asia, Africa, Europe and Oceania since 1997, even if Asia remained the most frequently hit continent in 2006, accounting for 42 per cent of the year's disasters. The last decade saw a number of major disasters that caused a huge number of deaths: the Indian Ocean tsunami, 2004 (226,408 deaths); a heat wave in Europe, 2003 (more than 70,000 deaths); floods in Venezuela, 1999 (30,000 deaths); three earthquakes: one in Iran, 2003 (Bam: 26,796 deaths), one in India, 2001 (Gujarat: 20,005 deaths), one in Turkey, 1999 (Izmir: 17,127 deaths); and a hurricane in Central America, 1998 (Mitch: 18,791 deaths).

3 / Definition endorsed at the Inter-Agency Standing Committee (IASC) Principals Meeting, December 1994.

The Sphere Standards (2004), which nowadays reflect a broad consensus within the humanitarian community, recognize that: “*Everyone has the right to water*”⁴. International human rights instruments also refer to the importance of access to safe drinking water and sanitation. The UN Committee on Economic, Social and Cultural Rights has defined the right to water as every person’s entitlement to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use. However, practice has amply demonstrated that in emergency situations the right to water is one of the first rights to be denied, both for political and/or financial reasons and through lack of coordination.

3. A brief history of water and sanitation and human rights⁵

The debate on the right to water and sanitation has been moving on since the early 1970s and access to water for personal and domestic use is now recognized as a basic human right and not simply as a need⁶. Indeed, since the Mar del Plata Conference (1977) during which it was declared that “*all peoples, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs*”, the international community as a whole has become very active in issues related to the management of water and a fortiori to the right to water.

A number of high-level conferences have made significant advances in furthering the links between the access to water and sanitation and human rights, gradually calling attention to the duties and responsibilities of Governments and other actors concerned. The adoption of the Millennium Development Goals (MDGs) in 2000 and particularly Goal No. 7, which aims “*to reduce by half the proportion of people without sustainable access to safe drinking water by 2015*”, has been an important catalyst in generating debate on the right to water and sanitation⁷. However, despite the political strength of this declaration, from a human rights perspective, the Goals fall short of full realization of human rights. It is important to note that, even if the MDG targets were to be achieved in full, in 2015 more than 800 million people would still be without access to water and 1.8 billion people without basic sanitation.

In 2002, the United Nations Committee on Economic, Social and Cultural Rights (CESCR) adopted General Comment 15, which clarified the scope of the right to water and sanitation and offered a legal framework for better understanding this right. The publication of this document marks the moment when the right to water and sanitation ceased to be a slogan and became an important tool for all people involved in the water, sanitation and hygiene sector, from policy makers to field staff.

Nowadays virtually all humanitarian aid agencies, organizations and UN programmes take human rights into account in their work. Furthermore, many governments in industrialized and developing countries alike have integrated human rights obligations into their activities. However, despite the significant progress made in advancing human rights as a whole, much remains to be done before human rights become fully integrated into the framework of water, sanitation and hygiene activities.

These developments have led to a number of studies being undertaken and books and documents being published on the right to water and sanitation. However, the present document is intended to add a new

4 / The Sphere Project, Humanitarian Charter and Minimum Standards in Disaster Response (2004), p. 55.

5 / See Annexe 1 for more details.

6 / Further progress is called for regarding recognition of sanitation as a human right.

7 / During the Second Earth Summit held in 2002 in Johannesburg, sanitation was added to MDG No. 7 on safe drinking water.

dimension to the realization of the right to water and sanitation focussing as it does on humanitarian emergency agencies⁸ and offering guidelines at the crossroads of practice and theory for all those working towards the achievement of humanitarian ideals.

4. Who is responsible for realizing the human right to water and sanitation?

States are primarily responsible for guaranteeing the fundamental human rights of all individuals living within their jurisdictions or in areas under the effective control of their armed forces (in cases of occupation or intervention). However, today, NGOs, International Organizations and Red Cross and Red Crescent Movements have an increasingly important role to play in promoting human rights, including the right to water and sanitation, and putting them into practice, especially in emergency situations where the capacity to act of the State is often undermined. Moreover, it is an inherent principle of the charters of most humanitarian agencies⁹ to ensure that the rights of those affected by catastrophe or armed conflict (as defined by human rights law, International Humanitarian Law and refugee law) are respected, protected and implemented. As a result, humanitarian aid agencies have promoted two fundamental principles: the responsibility to assist and the responsibility to protect.

The responsibility to assist, as defined by the code of conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Response Programmes rules that “*the right to receive humanitarian assistance and to offer it is a fundamental humanitarian principle (...) As members of the international community we recognize our obligation to provide humanitarian assistance wherever it is needed*”¹⁰ and is the root from which humanitarian action often stems. In crises where States block access it has highlighted the notion of the right of intervention to provide assistance.

The responsibility to protect is, on the other hand, a more recent concept within the humanitarian community. Its emergence (at the beginning of the 1990s) was motivated by a number of conflicts that were the theatre of significant and systematic violations of human rights (Rwanda, Srebrenica, etc). In December 2001, the publication of a report entitled “*The Responsibility to Protect*” (R2P)¹¹ by the International Commission on Intervention and State Sovereignty (ICISS) was a milestone in the evolution of the concept. This report reaffirms that States are responsible for protecting their citizens and those under their control in all circumstances. But it also states that if a State is unable to assume this responsibility, or in cases of serious violations of human rights, such responsibility will be transferred to the international community. Therefore, from the point of view of NGOs, the responsibility to protect means “*all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. human rights law, international human rights law and refugee law)*”¹². Put in simpler terms, this means that protection is about seeking to ensure the protection of individuals from acute harm, especially in terms of armed conflict. It has to do with preventing or mitigating the most damaging effects – whether direct or indirect – of violent or abusive behaviour perpetrated on a civilian population. Acute harm can be interpreted in legal terms as violation of the civil, political, social and economic rights which are codified in human rights law, International Humanitarian Law and refugee law, or in more physical terms, as threats to

8 / This focus on humanitarian emergencies explains why there are some – intentional – omissions from the document, for example developmental aspects.

9 / This deep-rooted position is reflected in the two main reference texts in the field of humanitarian assistance: the Sphere Standards together with the Humanitarian Charter (2004) and the Code of Conduct (1994).

10 / See Principle 1: The humanitarian imperative comes first.

11 / The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty (ICISS), December 2001.

12 / Jaspars (S.), O’Callaghan (S.) and Stites (E.) Linking Livelihoods and Protection: A Preliminary Analysis Based on a Review of the Literature and Agency Practice. ODI HPG Working Paper, December 2007, p. 43.

people's life, dignity and integrity¹³. When States engage in widespread and systematic abuse of civilians in areas they control, controversially, R2P envisages military intervention by the United Nations (under Chapter VII of the UN Charter).

The responsibilities to assist and to protect are therefore both related to international humanitarian and human rights standards – even though international law in these fields is still evolving. As a result, it is essential that humanitarian staff dealing with emergency situations should have an adequate understanding of these humanitarian principles and of the rights of populations in emergencies.

5. Rationale of the document

This document has been prepared by the Global WASH Cluster and is above all meant to be a comprehensive advocacy tool that humanitarian agencies working in the water, sanitation and hygiene sector can use when providing assistance during humanitarian emergencies. The document's main objective is to supply these organizations with sufficient information on the right to water and sanitation – its legal nature, scope, normative content, roles and responsibilities of different actors – to enable them to build up rights-based advocacy activities at international and national levels.

Indeed, whilst many humanitarian agencies have traditionally been more involved in providing technical assistance at field level, now however, advocacy is taking on an increasingly important role in several of their activities. Making use of legal instruments as a way to enforce the right to water and sanitation may be a relatively new strategy, but it is, nonetheless, becoming ever more widespread, in the same way as NGOs are increasingly employing a legal approach in their advocacy work. This means that it is of the utmost importance that all those involved in water, sanitation and hygiene advocacy are fully aware of what international instruments concerning those rights already exist and have a thorough understanding and knowledge of economic, social and cultural rights. These offer yet another mode of action that can be added to the toolbox of options that can be deployed when responding to humanitarian crises.

13 / Ibid.

HOW TO MAKE THE BEST USE OF THIS DOCUMENT

1. Objectives of the handbook

The purpose of this handbook is to provide humanitarian staff with a specific, clear-cut and field-oriented tool to facilitate the integration of the human right to water and sanitation into humanitarian action (both in their operational activities and in advocacy work). To this end, it sets out the legal basis and the normative content of the right to water before concluding with proposals for a number of innovative rights-based advocacy activities that will have more force and more legitimacy.

Specifically, the handbook seeks to:

- Ensure that humanitarian staff are familiar with and understand the international legal instruments applicable in emergencies (i.e. human rights law, humanitarian law, refugee law);
- Ensure that they have basic knowledge of the core concepts, principles and international laws that form the legal framework of the human right to water and sanitation;
- Improve both their capacities to prepare and respond to emergency situations and their advocacy skills by building up their knowledge and understanding of the concept of the human right to water and sanitation;
- Increase human rights-related reporting which might be undertaken and develop solid, well-founded advocacy campaigns;
- Raise the awareness of humanitarian staff to the human rights perspective of water and sanitation and remove any doubts that might remain about the potential added value of a rights-based approach to the water and sanitation issue;
- Emphasize the important role they can play by promoting and protecting the right to water and sanitation;
- Present case studies of concrete ways in which the right to water and sanitation has been put into practice, mainly in terms of advocacy;
- Make use of international treaties to protect all populations involved in an emergency.

2. Target audience

This document is primarily targeted at a broad range of actors involved in the water, sanitation and hygiene emergency sector, such as Global and Sector WASH Cluster Leads, field coordinators, donors, governments, United Nations and those working in the humanitarian field in general. It is hoped that it will eventually be adopted by key actors at national and local governmental levels, as well as by civil society and community representatives.

3. Organization of the handbook

This handbook consists of 3 parts.

Part 1 - International laws applicable in emergencies

Part 1 summarizes the nature and the purpose of the various sources upon which international texts are based (mainly human rights law, International Humanitarian Law and international criminal law) used throughout this document to define the right to water and sanitation. Without any pretensions to being exhaustive, this chapter aims at providing humanitarian actors with a starting point towards understanding this document per se. The overall objective of Part 1 is, therefore, to define the nature of these legislative texts and attempt to explain how they work in practice.

➔ **Readers familiar with international law and its rules and regulations can directly go to Parts 2 and 3.**

Part 2 - Definition of the human right to water and sanitation in emergencies

Part 2 outlines those sources of law that can be called on to define the right to water and sanitation in emergency situations. In more concrete terms, the link between this right and the whole spectrum of human rights, General Comment 15, International Humanitarian Law, national legislation and the operational guidelines developed and used by humanitarian agencies in their daily work will be explored.

Part 3 - Advocacy on the right to water in emergencies

Part 3 explains how the framework of the right to water and sanitation can be used to develop rights-based advocacy in situations of emergency. To this end, a methodology for the preparation of advocacy activities is proposed, as well as examples of such activities and action that can be developed.

Feedback on this Handbook and examples of field practices on the right to water and sanitation in emergencies are welcome at any time. Email us at: jau@actioncontrelafaim.org



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- PART 1 - INTERNATIONAL LAWS APPLICABLE IN EMERGENCIES

CHAPTER 1 - HOW IS INTERNATIONAL LAW RELEVANT TO OUR WORK?

International law (See Box 1) sets out the rights of every individual and the responsibility of States and other authorities in ensuring their protection. International law is essential to ensure that protective action is carried through at national and international levels. When working within domestic legal systems and with alternative dispute resolution mechanisms, international law provides guidance for protection that can help to:

- Assess to what extent human rights are being respected and identify the risks or obstacles individuals face in exercising their rights;
- Clarify the responsibility of national authorities and what action must be taken to discharge that responsibility;
- Develop a sound operational response to humanitarian crises, using rights-based and community-based approaches that strengthen the capacity of individuals to protect themselves;
- Provide a basis for advocacy, awareness-raising, training, capacity-building and other similar activities;
- Guide the activities of humanitarian actors, behaviour and interaction with populations concerned.

BOX 1 - What is international law?

International law is the body of law that governs the conduct of and relations between States. International law stems from two primary sources: international treaties and customary law.

- **International treaties** are agreements between States. A treaty is legally binding on all States that have agreed to be bound by it for instance by way of ratification or accession. A treaty can also be known as a covenant, convention, charter or protocol.
- **Customary International law** or **custom** results from a general and consistent practice of some conduct that States abide by out of a sense of legal obligation. It is binding on all States, unless a State has persistently objected to the practice.

CHAPTER 2 - INTERNATIONAL HUMAN RIGHTS LAW

2.1. What are human rights?

Human rights are freedoms and entitlements inherent to all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status.

Human rights apply to all persons, regardless of their legal status or nationality. Thus, non-citizens including refugees, asylum seekers, IDPs and stateless persons are protected by human rights law. However, refugee law (notably the Convention relating to the Status of Refugees¹⁴) and the Guiding Principles on Internal Displacement¹⁵ reinforce the protection of refugees and IDPs.

Universal human rights are expressed and guaranteed by law in the form of treaties, customary international law, general principles and other sources of international law. International human rights law lays down the obligations of Governments to act in certain ways, or to refrain from certain acts, in order to promote and protect the human rights and fundamental freedoms of individuals or groups. States have three obligations in respect of human rights: to respect, to protect and to fulfil (See Box 2).

BOX 2 - Governmental obligations with regard to human rights

Governmental obligations can be broadly categorized under 3 headings:

- **To respect:** The obligation to respect requires that States Parties (that is, governments ratifying a treaty) refrain from interfering directly or indirectly with the enjoyment of human rights.
- **To protect:** The obligation to protect requires that States Parties prevent third parties, such as corporations, from interfering in any way with the enjoyment of human rights.
- **To fulfil:** The obligation to fulfil requires that States Parties adopt all necessary measures to achieve the full realization of human rights.

States are obligated to respect, protect and fulfil human rights. Additionally, non-state actors, including NGOs, humanitarian agencies and private companies who have an impact on water and sanitation services/provision and therefore the right to water and sanitation, have responsibilities to respect **rights**, even in emergency situations.

Many countries experiencing conflict, natural disaster or any kinds of public emergencies often come up against significant constraints in terms of resources. Although human rights law recognizes that a country with limited resources might not have the capacity to ensure full realization of a number of economic, social and cultural rights, the said country is still obliged *“to take steps (...), to the maximum of its available*

¹⁴ / Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950.

¹⁵ / The Guiding Principles on Internal Displacement address the rights of Internally Displaced Persons (IDPs) and the responsibilities of national authorities and non-States actors towards them. Although a non-binding document as such, the guiding principles are based on and reflect existing standards of international law, which are binding. Moreover, the Guiding Principles have gained considerable authority and wide international acceptance in several countries where national authorities have used them when drawing up national legislation and policies for the protection of IDPs (particularly in Angola or Columbia).

resources, with a view to achieving progressively the full realization¹⁶ of such rights. In this respect it must at the very least ensure access to rights essential to survival (such as food and water, basic shelter, medical services and sanitation) and also request international assistance when its own resources are insufficient.

2.2. Key human rights instruments

The Universal Declaration of Human Rights (UDHR), adopted in 1948 by the United Nations General Assembly, is among the very first human rights instruments to have been drawn up by that body. This declaration establishes the main civil, cultural, economic, political and social rights to which all persons are entitled, without discrimination of any kind. Although a non-binding instrument per se, many of its principles constitute customary law and/or have been incorporated into treaties, thus gaining binding force.

Building upon the UDHR and incorporating its principles into legally binding instruments are two covenants that, taken together with the Optional Protocols thereto and the UDHR constitute the International Bill of Human Rights. These covenants are:

- The International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966)
- The International Covenant on Civil and Political Rights (ICCPR, 1966);

BOX 3 - Nature of the legal obligations under human rights instruments¹⁷

Progressive Obligations. The principal obligation incumbent upon States under international human rights standards on economic, social and cultural rights is to achieve, progressively, the full realization of these rights according to the maximum of available resources. It is the duty of States to take deliberate, concrete and targeted steps, as “expeditiously and effectively as possible” towards fulfilling these rights. Such steps might include adopting legislation or administrative, economic, financial, educational or social reforms, or establishing action programmes, appropriate oversight bodies and judicial procedures.

Immediate Obligations include:

- The **duty to “take steps”**. The concept of progressive realization of rights does not justify government inaction on the grounds that a state has not reached a certain level of economic development. Conversely, taking steps to limit a right or taking retrogressive steps, for example by massively reducing investment in education or health services, can only be justified by an analysis of all the resources available to the state (including those available through international cooperation) and of the full range of obligations it faces.
- The **duty not to discriminate**. The adoption of laws, policies or practices that have a direct or indirect discriminatory impact on the ability of people to realize their rights amounts to a human rights violation.
- The **duty to prioritize the most vulnerable**. States should actively reach out to marginalized and excluded populations, who are the ones facing the greatest barriers to realizing their rights. These people are the ones who should be given “first call” when allocating resources.

¹⁶ / ICESCR, Art 2.1

¹⁷ / Committee on Economic, Social and Cultural Rights, General Comment 3, The Nature of States Parties’ Obligations, UN Doc. E/1991/23.

Several additional instruments reinforce the protection of human rights relating to:

- **Particular issues**, such as torture or racial discrimination.
- **Particular groups of persons** who may face specific obstacles to the full and equal enjoyment of their rights. These groups include women, children, migrants, and persons with disabilities.
- The protection of human rights is also reinforced in a number of **regional human rights instruments**.

Box 4 outlines the nine international core human rights treaties. It should be noted that although none of these instruments specifically address the right to water and sanitation, they do, nevertheless, cover a range of issues that are closely related to it (see Part 2).

BOX 4 - The nine core human rights treaties

- International Covenant on Economic, Social and Cultural Rights (1966)
- International Covenant on Civil and Political Rights (1966)
- International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Elimination of All Forms of Discrimination Against Women (1979)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Rights of the Child (1989)
- International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families (1990)
- International Convention for the Protection of All Persons from Enforced Disappearance (2006)
- Convention on the Rights of Persons with Disabilities (2006)

Finally, the Vienna Declaration¹⁸ recognizes the **interrelation, interdependency and the indivisibility** of human rights (See Box 5).

BOX 5 - The Vienna Declaration and Programme of Action on the indivisibility of human rights

“All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms”.

2.3. Monitoring the respect of international human rights law

There are several mechanisms entrusted with monitoring and encouraging State compliance with human rights law at the international, regional and national levels. At the international level, the UN treaty monitoring bodies and the “Special Procedures”, created by the UN Human Rights Council, are of particular importance.

¹⁸ / The Vienna Declaration and Programme of Action (VDPA) was adopted by consensus at the World Conference on Human Rights on 25 June 1993.

2.3.1. UN treaty-monitoring bodies

For each of the main human rights treaties, there is a corresponding committee, composed of independent experts, responsible for monitoring state compliance with it. In general, the committees fulfil this role in three ways:

- By examining reports submitted by States and issuing concluding observations that outline main concerns and then providing recommendations to States;
- By issuing general comments that provide guidance on the interpretation of particular rights;
- By examining individual complaints of alleged violations of human rights, subject to the consent of the State to do so.



In our work, we can:

- Consult the treaty-monitoring bodies' concluding observations on the country in which we are working, in particular recommendations on improving the respect of human rights;
- Promote, monitor and support follow-up to recommendations, including by strengthening the State's capacity, through training and capacity building activities, to respect human rights;
- Provide information about protection concerns when a report submitted by a State report is reviewed.

2.3.2. UN Human Rights Council's "Special Procedures"

A network of independent human rights experts has been appointed by the UN Human Rights Council to examine, monitor, advise and publicly report on particular human rights themes or country situations.

Thematic experts handle a range of specific issues some of which are related to the right to water and sanitation. For instance the work of the Special Rapporteur on the right to food has examined the right to water, as it relates to the right to food, and in 2001, the Commission on Human Rights¹⁹ extended the mandate of the Special Rapporteur to cover the issue of drinking water, requesting him: *"to pay attention to the issue of drinking water, taking into account the interdependence of this issue and the right to food"*²⁰. Also, the Special Rapporteur on the right to adequate housing has particularly looked at how privatization of water resources has affected the right to adequate housing²¹. More recently, the Human Rights Council established a new mandate of Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation (see chapter 9).

Country specific experts address particularly serious human rights violations. Such cases almost inevitably include large numbers of situations in which the fundamental right to water is denied. Countries currently under the spotlight include the Myanmar, Somalia and Sudan (as of June 2008).

19 / The Human Rights Council was established in 2006 as the successor to the Human Rights Commission. Special procedures, which used to be governed by the Commission, now come under the auspices of the Council.

20 / Resolution 2001/25. See also the report of Jean Ziegler (E/CN.4/2003/54) submitted on 10 January 2003 to the Fifty-ninth session of the Commission on Human Rights.

21 / Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, Commission on Human Rights, Fifty-eighth session, 1 March 2001, UN Doc. E/CN.4/2002/59.



In our work, we can:

- Consult "Special Procedures" reports that address the situation of human rights in the country in which we are working. These reports provide valuable insights into the whole range of protection issues and can assist in developing a protection strategy;
- Provide information to country and thematic experts who might then send a written communication to the State concerned, conduct a country mission and raise the issue directly with national officials, make a public statement, and/or report on the issue to the UN Human Rights Council and/or the UN General Assembly;
- Seek technical guidance and advice, as needed, from "Special Procedures" on issues falling under their mandate, such as questions of national legislation;
- Suggest a "Special Procedures" country mission to examine and discuss the human rights situation with national authorities and other stakeholders;
- Distribute the recommendations (which might be directed not only to States but also to non-State actors and UN agencies) to relevant stakeholders;
- Promote, monitor and support follow-up to the recommendations, including by strengthening the State's capacity through training and capacity building activities to respect human rights.

At the regional level, in Africa, the Americas and in Europe, there are also human rights monitoring mechanisms that provide protection especially since rights can be enforced in regional human rights courts. At the level of a country, national courts and human rights institutions have a crucial role to play in providing a channel through which individuals can claim their rights. These institutions also work to ensure that domestic legislation, policies and programmes respect and protect human rights.

CHAPTER 3 - INTERNATIONAL HUMANITARIAN LAW

3.1. What is International Humanitarian Law?

International Humanitarian Law (IHL) can be defined as the principles and rules that limit the use of violence **in times of armed conflict** and aim at protecting certain categories of **persons and objects**:

- Protect persons who are not, or who are no longer, directly engaged in hostilities, such as the wounded, shipwrecked, prisoners of war and, more generally, civilians. The distinction between the civilian population and combatants is fundamental to IHL. The civilian population shall not be the object of attack; attacks shall be directed solely against military objectives.
- Limit the effects of violence in fighting to attain the objectives of the conflict and to regulate the methods and means of warfare.

IHL applies in all situations of **international armed conflicts and non-international armed conflicts**. Internal disturbances are not, however, taken into consideration by IHL (See Box 6). IHL is binding on all parties to an armed conflict: States, their armed forces and non-States armed groups, whether these are insurgent groups opposing the State or paramilitary groups supported by States.

BOX 6 - Categorization of different types of armed conflicts

- An International armed conflict means fighting between the armed forces of at least two States. The Geneva Convention defines this type of conflict as “all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them”.
- A non-International armed conflict means fighting on the territory of a State between the regular armed forces and identifiable armed groups, or between armed groups fighting one another. (To be considered a non-international armed conflict, fighting must reach a certain level of intensity and extend over a certain period of time).
- Internal disturbances are characterized by a disruption of internal order resulting from acts of violence, which nevertheless have not reached a scale representative of an armed conflict (riots, struggles between factions or against the authorities, for example).

Because some human rights can be temporarily limited or suspended during armed conflict, the protection provided by IHL is particularly important (see chapter 4).

3.2. Key International Humanitarian Law instruments

The core instruments of International Humanitarian Law are the Four Geneva Conventions (1949) and their two Additional Protocols (1977)²². The Geneva Conventions contain “*the most important rules limiting the barbarity of war. They protect people who do not take part in fighting... and those who can no longer fight*”²³.

22 / Originally adopted in 1864, the Geneva Convention was updated in several areas in 1949 and two Additional Protocols were added in 1977.

23 / The Geneva Conventions: The Core of International Humanitarian Law, ICRC, March 2004.

One of the purposes of the Conventions is to prevent “grave breaches” during and in the aftermath of war and provide enforcement mechanisms for violations that might have taken place. Whilst setting the limits for armed combatants and also their rights to engage within these limitations, IHL also establishes the rights to protection of civilians, as well as what protected objects and locations are to be protected. Many of the key principles contained in these instruments also constitute customary international law, which means that they are automatically binding in all situations of armed conflict and on all parties to a conflict²⁴.

| TYPE OF CONFLICT | DESCRIPTION | IHL APPLICABLE |
|----------------------------------|---|--|
| International armed conflict | Armed conflict between two or more States | - Customary law - Four Geneva Conventions - Additional Protocol One |
| Non-international armed conflict | Armed conflict between the State and one or several non-State actor, or between two or more such actors | - Customary law - Article 3 common to all Geneva Conventions - Additional Protocol Two |

The earlier Hague Regulation represents the second major source of law during conflict by focusing on rules relating to the methods and means of warfare, whereas the Geneva Conventions are concerned with the victims of warfare. In addition, several important treaties prohibit or regulate the use of certain weapons, such as the Mine Ban Treaty and the Convention on Conventional Weapons and its Protocols.

3.3. Monitoring respect of International Humanitarian Law

Each party to a conflict has an obligation to respect and ensure respect for IHL by its armed forces and any other persons or groups acting on its instructions, or under its direction or control. In particular, States must:

- Provide instruction and training on IHL to the armed forces and the general public;
- Criminalize violations of the law and put in place adequate legal, administrative and disciplinary structures to prevent, monitor and investigate violations;
- Prosecute and punish or extradite those responsible for serious violations of law.

In addition, IHL obliges other (neutral) States to work to ensure that the parties in a given conflict respect IHL. This can be accomplished through advocacy, capacity-building, support to humanitarian operations, and prosecution or extradition of those responsible for violations of the law.

All States, regardless of whether or not they are parties to a given conflict, have a duty to prosecute and punish in their own courts, or to extradite those responsible for serious violations of IHL, such as war crimes and/or grave breaches of the law, regardless of where the crime took place or the nationality of the perpetrator. Members of armed forces and groups can be held individually responsible for violations of IHL, regardless of their rank and whether or not they were acting under orders. Military commanders

24 / Henckaerts (J.-M.) and Doswald-Beck (L.) Customary International Humanitarian Law, Volume I: Rules, Cambridge University Press and ICRC, 2005.

can also be held responsible for either ordering or failing to take measures to prevent such violations from taking place. Individual criminal responsibility has been further developed under international criminal law, which is discussed below.

The ICRC is an independent and neutral organization mandated by States on the basis of IHL. Its Statute aims to provide assistance and protection to victims of armed conflict and to promote and monitor respect for IHL. For further information, see www.icrc.org

CHAPTER 4 - RELATIONSHIP BETWEEN INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW

4.1. Complementarity between IHL and HRL

International Humanitarian Law and human rights law are based on similar principles: to protect life, health and human dignity. However, the manner in which they seek to ensure such protection differs significantly. Thus, when conflict arises, questions emerge regarding the applicability of existing treaties and international agreements, especially regarding human rights. During armed conflict, most human rights obligations of States continue, as do the obligations of States under International Humanitarian Law as *lex specialis*. IHL articulates the special rights that exist in conflict, and can be expressed as extensions (in detail) of core rights laid down in human rights treaties.

4.2. Derogations to the application of human rights

During wartime or public emergency the enjoyment of certain human rights may be restricted. Indeed, whether the duty of the State to respect, fulfil and protect human rights applies at all times or not, under certain narrowly defined circumstances, such as during a declared **state of emergency**, the State may temporarily suspend or derogate from one or other human right. Such derogations are exceptional measures that are regulated under human rights law. Indeed, Article 4 of the International Covenant on Civil and Political Rights allows States to take measures temporarily suspending some of their obligations under the Covenant “*in time of public emergency which threatens the life of the nation*”, but only “*to the extent strictly required by the exigencies of the situation*”. Such a situation is defined as something that threatens the political independence or territorial integrity of the State, or the physical safety of its population. Internal disturbances, war and natural disasters can be said to be examples of such public emergencies whereby a State may suspend human rights for a limited duration because normal measures are inadequate to address its concerns.

4.3. Some human rights can never be suspended

Despite the possibility of derogating from certain obligations under the ICCPR, Article 4 also specifies that certain rights may never be suspended²⁵. Interestingly, there is no provision in the Covenant on Economic, Social and Cultural Rights that allows for derogation. Therefore, economic, social and cultural rights are applicable also during emergency situations. A State must at least ensure access to rights essential to survival, such as food and water, basic shelter, medical services and sanitation and request international assistance when its resources are insufficient. In addition, derogations do not allow suspension of obligations laid down by International Humanitarian Law. Moreover, Article 3 common to the four Geneva Conventions provides that in times of armed conflict, persons protected by the conventions should “*in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria*”.

²⁵ / Article 4.2 of the ICCPR lists the rights that States may not suspend even during an emergency: Right to life; Right to freedom of thought, conscience and religion; Prohibition of genocide; Prohibition of torture or cruel, inhuman or degrading treatment or punishment; Prohibition of slavery; The right to due process of law; The prohibition of punishment for any act that was not a crime when act was committed



In our work:

As we can see from what has been considered above, most human rights apply equally in times of peace and war. Whilst a State may temporarily suspend the fulfilment of certain rights during war or other public emergencies it can only do so to a limited extent and subject to strict conditions (crucially, States are obliged to protect the rights of all civilians in areas under their effective control - citizens, those crossing into their areas of control, and those in occupied areas). National authorities should respect human rights at all times. **Thus, where rights have been lawfully suspended we can continue to monitor and advocate for respect of those rights which cannot.**

CHAPTER 5 - INTERNATIONAL CRIMINAL LAW

National authorities have an obligation to criminalize violations of international human rights and humanitarian law in national legislation and to prosecute and punish those responsible before national courts and tribunals.

The statute of the International Criminal Court (ICC)²⁶, the so-called “Rome Statute”, defines a number of crimes that are considered to be of international concern and which can be investigated and prosecuted by the court, provided that the court has jurisdiction over these acts. These are included in Box 7.

BOX 7 - Crimes under the Rome Statute

| | |
|--------------------------------|---|
| Crimes against humanity | Defined as acts committed as part of widespread or systematic attack directed against a civilian population, whether in times of war or peace, including murder, extermination, enslavement, deportation or forcible transfer of population, arbitrary imprisonment or other severe deprivation of liberty, rape and sexual violence, persecution, enforced disappearance, and other inhuman acts intentionally causing great suffering or serious injury to body or to mental or physical health. |
| Genocide | Defined as acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group. |
| War crimes | Serious violations of IHL include: <ul style="list-style-type: none"> - Grave breaches of the Geneva Conventions of 12 August 1949; - Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law; - In the case of an armed conflict not of an international character, serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949; and/or - Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law. |

Nowadays, the ICC provides perhaps the best hope yet for a uniform system of international accountability. International criminal law is complementary to national law in the sense that international courts, such as the ICC, generally only exercise jurisdiction when national courts have proved unwilling or unable to

26/ The “Rome Statute” was adopted in Rome, Italy on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. The Rome Statute is an international treaty, binding only on those States which formally express their consent to be bound by its provisions. These States then become “Parties” to the Statute. In accordance with its terms, the Statute entered into force on 1 July 2002, once 60 States had become Parties. Thus, anyone who commits any of the crimes under the Statute after this date is liable for prosecution by the Court. Today, 105 States have become Parties to the Statute. The States Parties meet in the Assembly of States Parties which is the management oversight and legislative body of the Court. The ICC was established not as an organ of the United Nations but as an independent organization with an independent budget. For more details on the ICC, refer to the following website www.icc-cpi.int.

prosecute and punish the crimes in question²⁷. To date (as of June 2008), the ICC has opened investigations into four situations: Northern Uganda, the Democratic Republic of Congo, Central African Republic and Darfur.



- PART 2 - DEFINITION OF THE RIGHT TO WATER AND SANITATION IN EMERGENCY SITUATIONS

^{27/} In the past, the international community has also established a number of ad hoc criminal tribunals, whose decisions may be drawn upon to interpret facets of international criminal law. These tribunals include the International Criminal Court for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, which were established by the UN Security Council and use foreign judges. The UN has also supported the creation of hybrid tribunals such as the Special Court for Sierra Leone and the Extraordinary Chambers in the courts of Cambodia, which have both foreign and domestic judges [0] .

CHAPTER 6 - THE HUMAN RIGHT TO WATER AS DEFINED BY GENERAL COMMENT 15

The purpose of this section is to clarify the definition of the right to water contained in General Comment 15. Each main section of GC 15 is explained and the obligations of States parties, as well as the responsibilities of other actors in relation to this right, are spelled out.

6.1. Key message

In 2002, the UN Committee for Economic, Social and Cultural Rights adopted General Comment 15, which asserts that: **“The human right to water is indispensable for leading a healthy life in human dignity. It is a pre-requisite to the realization of all other human rights.”** Access to water was henceforth no longer seen merely as a need, or as an isolated aspect of human life, but as a fundamental right and a prerequisite to the achievement of all other fundamental human rights explicitly recognized by the international community. **General Comment 15 is currently the most precise framework defining the human right to water**, giving a detailed description of this right and spelling out responsibilities and duties incumbent upon the different actors concerned. It also goes some way to defining a number of elements within the framework of the human right to water and sanitation in emergency situations.

6.2. What is General Comment 15?

General Comment is a tool that serves to illustrate the normative content of the International Covenant on Economic, Social and Cultural Rights. Thus, it makes a number of recommendations intended to assist States parties to put the right to water into practice by virtue of two articles contained in the ICESCR: Article 11 on the “right to an adequate standard of living” and Article 12 on the “right to the highest attainable standard of mental and physical health” both of which refer implicitly to the right to water.

General Comment 15 is important because it defines the right to water and sanitation in detail and provides guidance on how to realize this right. Although it does not have legally binding force and is not endorsed by the political bodies of the United Nations, the Experts charged with overseeing the implementation of the Covenant consider it to be an authoritative interpretation.

BOX 8 - What is a General Comment?

Each of the six United Nations human rights treaty-monitoring bodies, including the Committee on Economic, Social and Cultural Rights, periodically publishes documents known as General Comments, which provide guidelines for States parties on how to interpret certain aspects of the human rights treaty of concern to the particular committee and spell out the content of Covenant rights. These documents may also outline potential violations of those rights and offer advice to States parties on how best to comply with their obligations under the treaties. General Comments are instruments of interpretation and have no legal force in themselves.

6.3. Definition of the human right to water

General Comment 15 defines the right to water as the right for everyone to have “sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.” In so doing, GC 15 advocates a human-centred approach, focussing on the satisfaction of needs and basic human rights, thus requiring the 157 States Parties to the ICESCR to implement the right to water.

The right to water is recognized as being a prerequisite for the realization of other human rights²⁸, and especially the right to life and human dignity. In addition, General Comment 15 states that the right to water is linked to other human rights such as the right to food, the right to cultural life, and the right to health. Consequently, the right to water is a fundamental requirement to allowing human beings to live in dignity. Finally, the right to water only rules on water for personal and domestic use. It thus concerns only a small proportion of water used. General Comment 15 determines the amount of water that is adequate by stating that: “An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water related disease and to provide for consumption, cooking, personal and domestic hygienic requirements²⁹” (See Table 1 for more details).

6.4. Key components of the right to water

The right to water is defined by means of 3 key parameters: sufficient and continuous supply of water understood as **availability**; safe and acceptable water understood as **quality**; physically accessible and affordable water understood as **accessibility**. These components are detailed in Table 1.

Table 1 - Key components of the human right to water

| PARAMETERS | WORDING |
|----------------------------------|--|
| Availability³⁰ | According to GC 15, everyone has the right to a water supply that is sufficient and continuous for personal and domestic use. The Comment states that the quantity of water available for each person should correspond to World Health Organization (WHO) guidelines, which specify a minimum level of 20 litres of water per person per day (but acknowledge that additional amounts may be needed for some individuals or groups, due to health, climate or work conditions). |
| Quality³¹ | According to GC 15, water must be clean, free from micro-organisms and chemical substances and therefore safe for domestic and personal consumption. Furthermore, the concept of acceptability is also important since it stipulates that water must have an acceptable colour, odour and taste for each personal or domestic use. WHO standards are again the benchmark in terms of water quality. Sphere standards (2004) also provide valuable indicators about water quality in emergency situations |

28/ GC 15, paragraphs 1, 3 and 6

29/ GC 15, paragraph 2

30/ GC 15, paragraph 12 a) footnotes not quoted

31/ GC 15, paragraph 12 b)

| | |
|-----------------------------------|--|
| Accessibility³² | <p>The Comment stipulates that water and water facilities and services must be accessible to everyone, without discrimination, within the jurisdiction of the State Party. Two parameters define accessibility: those of a physical and those of an economic nature.</p> <p>a) Water sources must be available within safe physical reach for everyone, without discrimination. Water sources must be available in the vicinity of each household, workplace and educational institution and respect traditions, culture, privacy and gender requirements of populations concerned.</p> <p>b) Whilst GC 15 does not fix a price for water it stresses the principles of equity and financial accessibility, or affordability: everyone, even the poorest, should be able to have access to water and sanitation.</p> |
|-----------------------------------|--|

As outlined in GC 15, the following aspects are also important components of the human right to water.

Table 2 - Additional components

| | |
|---|---|
| Non- discrimination³³ | Access to water and water facilities and services should be realized, in law and in fact, without discrimination on any of the prohibited grounds – race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status; and equally. In ensuring the right to water and sanitation, priority attention should be given to marginalized groups or groups that have traditionally experienced discrimination |
| Access to information and participation³⁴ | GC 15 defines the right to water as a right that includes “ <i>the right to seek, receive and impart information concerning water issues</i> ”. |
| Accountability³⁵ | According to GC 15, any persons or groups denied of their right to water should have access to effective judicial or other appropriate remedies, for example, national ombudsmen or human rights commissions. |

32/ GC 15, paragraph 12 c)
 33/ GC 15, paragraphs 12, 13, 16
 34/ GC 15, paragraphs 12, 48
 35/ GC 15, paragraph 38

Case Study 1 - Violence perpetrated against the civilian population of Mozambique

Whilst Mozambique’s civil war ended with the signing of a peace accord in October 1992, it left an estimated 2 million landmines strewn across its countryside. Human Rights Watch³⁶ accused the Mozambican Government, the former Renamo armed opposition movement³⁷ and foreign forces of laying the mines. Landmines had been planted in Mozambique for more than a quarter of a century. During 16 years of civil war, and throughout a decade of national liberation conflict against the Portuguese before that (1964-74) led by the Front for the Liberation of Mozambique (Frelimo)³⁸, mines were laid not only by government troops and Renamo rebels, but also by soldiers from Rhodesia, South Africa and Tanzania who came to the assistance of the warring parties. During that latter conflict, it appears that **mines were used deliberately to terrorize civilian communities and to deny them access to fields, water** and fishing. Minefields have been located in all provinces and the HALO Trust’s 1994 survey found that **mines had been used for defensive and offensive reasons, principally around areas of strategic importance** such as military headquarters, towns and villages, **sources of water** and power, pylon lines and dams³⁹. As a result, Simon Baynham states that “**Drawing water from wells and rivers has become a daily struggle for survival where water points have been surrounded by mines**”⁴⁰.

According to General Comment 15 of the UN Committee on Economic, Social and Cultural Rights, “**Water, and adequate water facilities and services, must be within safe physical reach for all sections of the population**” and, in the same way “**Physical security should not be threatened during access to water facilities and services**”⁴¹. In the situation mentioned above, physical accessibility, which is one of the key components of the right to water, was particularly threatened.

6.5. Obligations of States parties

General Comment 15 emphasizes the obligations and duties of States parties and their key role in implementing the right to water. Constraints due to limited available resources are taken into account and States are not obliged to implement their policies immediately, but can set them in place **progressively** (however, they must act on and respect the principles of non-discrimination). As with all treaties, and just as for any other human rights, States parties must comply with three basic principles when implementing the right to water: **respect, protect and fulfil**⁴² (See Table 3).

36 Landmines in Mozambique, Human Rights Watch Report, 1994
 37/ In 1977, the guerrilla armed resistance, the Mozambique National Resistance (Renamo), was created by the Rhodesian Central Intelligence Office in response to Mozambique’s support for Zimbabwean nationalist guerrillas. Rhodesian military began training Renamo combatants in landmine use for route denial and ambush by mining major roads, supply routes and rural tracks
 38/ In 1964, the Front for the Liberation of Mozambique (Frelimo) began an armed struggle for independence from Portuguese colonial rule and began to use anti-vehicle mines
 39/ As well as on roads, tracks and paths and alongside bridges and railway lines
 40/ Baynham (S.) Eternal Sentinels: “The Legacy of Landmines in Africa”. In: African Defence Review, Issue No 18, 1994
 41/ GC 15, paragraph 12 c)
 42/ For more details about the obligations incumbent on States, please refer to the “Manual on the Right to Water and Sanitation” (2007) produced by COHRE, which is available on line at the following address: <http://www.cohre.org/store/attachments/RWP-Manual-water.pdf>

Table 3 - Obligations of States parties

| OBLIGATIONS | WORDING |
|-----------------------------|--|
| Respect⁴³ | States parties must not interfere directly or indirectly with the enjoyment of the right to water and must not engage in any practice or activity that denies or limits access to water, for instance by developing water-polluting industries. Crisis situations are also covered by GC 15, which stipulates that in the event of armed conflict, emergency situations and natural disasters, States parties are bound under International Humanitarian Law. |
| Protect⁴⁴ | States parties should adopt all necessary legislative and other measures that will prevent third parties (corporations and individuals) from interfering in any way with the enjoyment of the right to water. This obligation can include regulating and monitoring private water and sanitation providers in order to ensure equitable access. |
| Fulfil⁴⁵ | States parties must fully apply the right to water. In other words, facilitate (take positive measures to assist individuals and communities to enjoy the right to water), promote (disseminate information about the right to water), and ensure the application of this right. To comply with all of the above, States parties must set appropriate legislative measures ⁴⁶ and a national plan of action ⁴⁷ in place that respect the principles of non-discrimination and participation by taking into account the needs of the most vulnerable populations and choosing the most appropriate management methods to implement the right to water. States parties must identify clear indicators ⁴⁸ to help them monitor the implementation of water and sanitation rights and create and/or incorporate legislative bodies to provide access to effective judicial remedies and promote the activities of all those defending human rights. Moreover, GC 15 interprets a responsibility on developed and high-income countries to help the developing world deliver the right to water to their populations. GC 15 emphasizes that States Parties must take steps to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries ⁴⁹ . |

In conclusion, GC 15 sets out **9 core obligations** (the minimum essential levels of the right to water) that States parties must respect to ensure satisfaction of this right⁵⁰. They cannot be derogated and have immediate effect. These core obligations are contained in Table 4.

43/ GC 15, paragraphs 21 and 22
44/ GC 15, paragraphs 23 and 24
45/ GC 15, paragraphs 25 to 29
46/ GC 15, paragraphs 45 and 46
47/ GC 15, paragraphs 47 and 48
48/ GC 15, paragraphs 53 and 54
49/ GC 15, paragraph 33
50/ GC 15, paragraph 37

Table 4 - Core obligations of States Parties

| AT THE NATIONAL LEVEL |
|--|
| a) Adopt and implement a national water strategy and plan of action addressing the whole population; the strategy and plan of action should be devised, and periodically reviewed, on the basis of a participatory and transparent process; it should include methods, such as right to water indicators and benchmarks by which progress can be closely monitored; b) Monitor the extent of the realization, or the non-realization, of the right to water; c) Adopt relatively low-cost targeted water programmes to protect vulnerable and marginalized groups. |
| AT THE COMMUNITY LEVEL |
| d) Ensure the right of access to water and water facilities and services on a non-discriminatory basis, especially for disadvantaged or marginalized groups; e) Ensure physical access to water facilities or services that provide sufficient, safe and regular water; that have a sufficient number of water outlets to avoid prohibitive waiting times; and that are at a reasonable distance from the household; f) Ensure equitable distribution of all available water facilities and services. |
| AT THE INDIVIDUAL LEVEL |
| g) Ensure access to the minimum essential amount of water that is sufficient and safe for personal and domestic uses to prevent disease; h) Ensure personal security is not threatened when having to physically access to water; i) Take measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation. |

Source: M. Woodhouse. *Realizing the Right to Water*, In: *Waterlines*, Vol. 23, n°1, July 2004, pp. 22-23

6.6. Failure to meet obligations

States parties who breach any of the above-mentioned nine core obligations will be in **violation of the law⁵¹**. Nevertheless, it is important to distinguish between the inability of a States party to comply with its obligations governing the right to water (violation by omission) and unwillingness (violation by commission)⁵². A violation only occurs either when a state has omitted to act to overcome deprivation or, alternatively, when it has actively impeded, or allowed others to impede, the realization of a right. There can be violations of duties to respect, protect or fulfil rights. However, where denial of economic, social and cultural rights is the result of inability (where there are genuine resource constraints, or circumstances beyond the control or outside the knowledge

51/ GC 15, paragraph 40
52/ GC 15, paragraphs 41, 42 and 43

of the state), a State cannot be said to have violated its international obligations. Violations of obligations are the result of unwillingness, negligence or discrimination. In this respect, Paragraph 44 of General Comment 15 specifies a number of situations in which the right to water may be deemed to have been violated. (See Box 9).

There are no possible derogations to these core obligations and States must:

- Understand that **armed conflict is no pretext**. Whilst the realization of economic, social and cultural rights may present a greater challenge during armed conflict, the ICESR makes no provision for derogation from obligations.
- Remember that **insufficient resources are no excuse** to justify violation of economic, social and cultural rights. If a State is relying on the pretext of insufficient resources to excuse its failure to meet minimum core obligations then it has to demonstrate that every effort has been made to use all resources at its disposal. States are also required to seek international cooperation and assistance if they are unable to meet their obligations, or if their own resources are insufficient to allow them to do so. This implies some corresponding obligation on other states that are in a position to provide international cooperation and assistance to states seeking it.

BOX 9 - Violations of the right to water⁵³

While it is not possible to draw up a complete list of violations in advance, some typical examples relating to the levels of obligations, emanating from the Committee's work, can be identified:

- (a) Violations of the obligation to **respect** follow from a State party's interference with the right to water. This includes, inter alia: (i) arbitrary or unjustified disconnection or exclusion from water services or facilities; (ii) discriminatory or unaffordable increases in the price of water; and (iii) pollution and diminution of water resources affecting human health;
- (b) Violations of the obligation to **protect** follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to water by third parties. This includes, inter alia: (i) failure to enact or enforce laws to prevent the contamination and inequitable extraction of water; (ii) failure to effectively regulate and control water services providers; (iii) failure to protect water distribution systems (e.g., piped networks and wells) from interference, damage and destruction; and
- (c) Violations of the obligation to **fulfil** occur through the failure of States parties to take all necessary steps to ensure the realization of the right to water. Examples include, inter alia: (i) failure to adopt or implement a national water policy designed to ensure the right to water for all; (ii) insufficient expenditure or misallocation of public resources which results in the non-enjoyment of the right to water by individuals or groups, particularly the vulnerable or marginalized; (iii) failure to monitor the realization of the right to water at the national level, for example by identifying right-to-water indicators and benchmarks; (iv) failure to take measures to reduce the inequitable distribution of water facilities and services; (v) failure to adopt mechanisms for emergency relief; (vi) failure to ensure that the minimum essential level of the right is enjoyed by everyone (vii) failure of a State to take into account its international legal obligations regarding the right to water when entering into agreements with other States or with international organizations.

6.7. Responsibilities of actors other than States

Actors other than States parties also have obligations and responsibilities. General Comment 15 urges UN agencies and international organizations such as the World Trade Organization (WTO) to cooperate and make their competence and expertise available to Member States to assist them to put the right to water into practice. Moreover, General Comment 15 evokes the key role incumbent on **NGOs and international institutions in times of emergency** and the priority that must be given to the poorest communities (See Box 10). GC 15 appeals to NGOs and international organizations to place their technical expertise at the service of States convinced that a very visible presence in the field that is also reflected in their policy strategies could have a positive impact on the emergence of an effective right to water, as GC 15 would seem to indicate in several instances.

General Comment 15 summarizes the obligations of actors other than States parties as follows:

- Cooperate effectively with States parties in all matters related to the implementation of the right to water;
- Incorporate human rights law and principles into both policy and action; for example, the right to water should be integrated into lending policies, structural adjustment programmes and development projects;
- Give priority to the most vulnerable or marginalized population groups in the provision of aid and the distribution and management of water and water facilities.

BOX 10 - Paragraph 60 of GC 15 - Assistance to populations in emergency situations

United Nations agencies and other international organizations concerned with water, such as WHO, FAO, UNICEF, UNEP, UN-Habitat, ILO, UNDP, the International Fund for Agricultural Development (IFAD), as well as international organizations concerned with trade and commerce such as the World Trade Organization (WTO), should cooperate effectively with States parties, building on their respective expertise in all matters related to the implementation of the human right to water at the national level. International financial institutions, notably the International Monetary Fund and the World Bank, should take the human right to water into account in their lending policies, credit agreements, structural adjustment programmes and other development projects in order to promote the enjoyment of the human right to water (see General Comment 2, 1990). When examining the reports of States parties and their ability to meet the obligations to realize the human right to water the Committee will consider the effects of the assistance provided by all other actors. The incorporation of human rights laws and principles into their programmes and policies by international organizations will greatly facilitate implementation of the human right to water. The role of the International Federation of the Red Cross and Red Crescent Societies, the International Committee of the Red Cross, the Office of the United Nations High Commissioner for Refugees (UNHCR), WHO and UNICEF, as well as NGOs and other associations, is of particular importance in relation to disaster relief and humanitarian assistance in times of emergency. Priority in the provision of aid, distribution and management of water and water facilities should be given to the most vulnerable or marginalized groups of the population.

Finally, GC 15 calls upon States parties, NGOs and international organizations, including the Red Cross Movement, to apply the right to water.

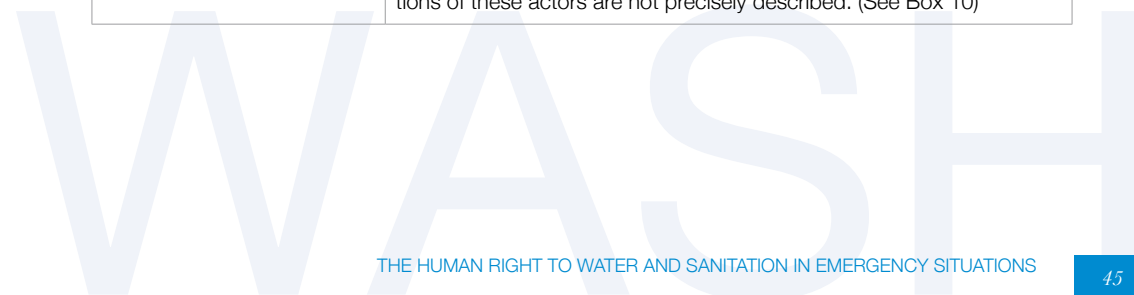
6.8. What does General Comment 15 say about emergency situations?

General Comment 15 also focuses on emergency situations and identifies a number of factors that define which populations are particularly vulnerable in such situations, as well as the responsibilities of Member States and other key actors in this respect. These elements are of particular importance for humanitarian aid agencies and are described in Table 5.

Table 5 - GC 15 and emergency situations

| Duties and obligations of actors during emergencies | GC 15 |
|--|---|
| <p>Protection of vulnerable groups affected in emergency situations (States)</p> <p>GC 15 pays special attention to vulnerable groups, such as women, children, refugees, asylum seekers, IDPs and returnees.</p> | <p>Para. 16 - “States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right (...). In particular, (...) (f) Refugees, asylum-seekers, internally displaced persons and returnees have access to adequate water whether they stay in camps or in urban and rural areas. Refugees and asylum-seekers should be granted the right to water on the same conditions as granted to nationals; (g) Prisoners and detainees are provided with sufficient and safe water for their daily individual requirements, taking note of the requirements of International Humanitarian Law and the United Nations Standard Minimum Rules for the Treatment of Prisoners; (h) (...) victims of natural disasters, persons living in disaster-prone areas (...).</p> |
| <p>Obligation to respect (States)</p> <p>In direct reference to IHL, GC 15 states that it is prohibited to attack, destroy or limit the access to water as a punitive measure.</p> | <p>Para. 21 - “The obligation to respect requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to water. The obligation includes, i.e., (...) limiting access to, or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts in violation of International Humanitarian Law”.</p> |

| | |
|---|---|
| <p>Obligation to respect (States)</p> <p>GC 15 includes a reference to the obligation incumbent on States parties to comply with articles contained in the ICESCR, under IHL. This appears to be a confirmation of the existing provision in IHL for fresh water, prisoners of war, and civilians suffering the effects of warfare..</p> | <p>Para. 22 - “The Committee notes that during armed conflicts, emergency situations and natural disasters, the right to water embraces those obligations by which States parties are bound under International Humanitarian Law. This includes protection of objects indispensable for survival of the civilian population, including drinking water installations and supplies and irrigation works, protection of the natural environment against widespread, long-term and severe damage and ensuring that civilians, internees and prisoners have access to adequate water”.</p> |
| <p>Obligation to fulfil (States)</p> <p>GC 15 refers to emergency situations, especially under the obligation to fulfil which appeals to each State to adopt mechanisms to respond to emergency situations and to focus on mechanisms aimed at the anticipation of emergencies and contingency planning.</p> | <p>Para. 28 - “States parties should adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations. Such strategies and programmes may include: (...) (h) response mechanisms for emergency situations”.</p> |
| <p>International obligations</p> <p>According to GC 15, in disaster relief and emergency relief, including that provided to refugees and displaced people, priority should be given to rights under ICESCR, such as the provision of adequate water.</p> | <p>Para. 34 - “(...) In disaster relief and emergency assistance, including assistance to refugees and displaced persons, priority should be given to Covenant rights, including the provision of adequate water. International assistance should be provided in a manner that is consistent with the Covenant and other human rights standards, and sustainable and culturally appropriate. The economically developed States parties have a special responsibility and interest to assist the poorer developing States in this regard”.</p> |
| <p>Responsibility of other actors than States</p> | <p>Paragraph 60 refers to emergency situations reaffirming the central role that humanitarian aid agencies, the Red Cross and Red Crescent Movement and international organizations are playing. However, the obligations of these actors are not precisely described. (See Box 10)</p> |





Bearing these points in mind, in our work we should:

- Ensure that special attention is paid to vulnerable groups, especially in emergency situations;
- Carry out activities that contribute to the recognition, understanding and respect of International Humanitarian Law;
- Ensure that a disaster response strategy addressing water and sanitation needs is in place in the countries in which we work;
- Provide technical support to States in setting up disaster response strategies;
- Contribute to a better definition of obligations of actors other than States in respect of the human right to water in situations of emergency.

CHAPTER 7 - RECOGNITION IN SOME HUMAN RIGHTS INSTRUMENTS TARGETED AT SPECIFIC GROUPS: FOCUS ON WOMEN AND CHILDREN

This section illustrates that the right to water and sanitation is explicitly recognized in a number of international human rights treaties pertaining to women, children and the disabled.

Three international and one regional human rights instruments refer to water and sanitation. These treaties pertain to specific groups, such as women, children and disabled persons, who are traditionally identified as vulnerable groups, especially in emergency situations. Humanitarian aid agencies pay particular attention to these population groups. Similarly, the Sphere Standards state that women and children are one of the groups most frequently at risk in emergencies. According to UNFPA, the impact of armed conflict or natural disasters on women and children is devastating. Women and children account for more than 75 per cent of refugees and displaced persons at risk from war, famine, persecution and natural disaster. So, it is particularly important to bear in mind that the right to water and sanitation is specifically recognized by means of these international instruments of public law.

Table 6 - Prior recognition of the human right to water and sanitation in human rights focussing on women and children

| | |
|-----------------|---|
| Women | The first human rights treaty to explicitly mention the right to water and sanitation was the Convention for the Elimination of all Forms of Discrimination Against Women (1979, CEDAW), which has currently been ratified by 185 States. CEDAW obliges States parties to eliminate discrimination against women, particularly in rural areas to ensure that women “ <i>enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply (...)</i> ”. The explicit recognition of the right to water and sanitation may be viewed as a testament to the burden traditionally placed on women of collecting water (mainly in developing countries), especially in emergencies. This treaty gives the first legal basis of the right to water and sanitation. |
| Children | Two human rights instruments, both international and regional, and both referring to the rights of the child make clear reference to the right to water and sanitation. At the international level, the Convention on the Rights of Child (1989, CRC) refers to the right to water and sanitation of children in recognizing their right to enjoy the highest attainable standard of health. Article 24 (2) entitles States parties to take appropriate measures to “ <i>combat disease and malnutrition (...) through the provision of adequate nutritious foods and clean drinking water (...)</i> ”. The focus is on children’s health and the quality of water necessary to attain this highest attainable standard of health. It should be noted that this Convention is the mostly widely ratified international human rights treaty ⁵⁴ . Moreover, the CRC recognizes the right of all children to an adequate standard of living. The UN expert body monitoring the CRC has clarified that this entitlement includes access to clean drinking water and latrines ⁵⁵ . At the regional level, the African Charter on the Rights and Welfare of the Child (AfCRC, 1990) contains explicit references to water and sanitation (See Annex 3). |

54/ Only Somalia and the United States have not ratified this Covenant

55/ Sanitation: A Human Rights Imperative. COHRE, SDC, UN-Habitat, WaterAid. May 2008

| | |
|-------------------------|--|
| Disabled Persons | The last human rights treaty to explicitly mention the right to water is the International Convention on the Rights of Persons with Disabilities (2006) which states in its Article 28 that: “2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures: a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs (...) ” |
|-------------------------|--|

The human rights obligations connected to safe drinking water and sanitation are explicit in these three human rights instruments ratified by a very great number of States. Nevertheless, for them, a reference to the right to access to water in these two texts does not make this a universal right. In reality, States generally do not consider that because a right has been conferred on a particular group (in this case, women or children) it can be understood to be an integral part of universal human rights. Moreover, there is still a lack of explicit definition as to the obligations of the State to realize this right.

CHAPTER 8 - HUMAN RIGHTS OBLIGATIONS RELATED TO SANITATION

This section illustrates that the right to sanitation is explicitly recognized in a number of human rights instruments.

8.1. Recognition under Human rights instruments

Access to sanitation is integrally linked to the right to water. Sanitation also raises key concerns about dignity, non-discrimination, physical security, health and other fundamental human rights. Some international human rights treaties implicitly, or explicitly, recognize the right to sanitation (See Box 11).

BOX 11 - The right to sanitation in international human rights law

| | | |
|---------------------------|----------------------|--|
| ICESCR, Article 11 | Implicit recognition | “The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent”. |
| CEDAW, Article 14 | Explicit recognition | States parties shall guarantee to women, “the right to enjoy adequate living conditions, particularly in relation to housing, sanitation , electricity and water supply , transport and communication”. |
| CRC, Article 24 | Explicit recognition | States parties shall ensure that all segments of society, “are informed, have access to education and are supported in the use of basic knowledge of ... hygiene and environmental sanitation ”. |

General Comment 15 presents access to sanitation as an essential component of the right to water and declares that States are required to ensure that everyone has access to adequate sanitation which is not only fundamental for human dignity and privacy, but also for protecting water quality⁵⁶. However, the General Comment provides less guidance on how to interpret the right to sanitation.

At its fifty-sixth session in 2005, the Sub-Commission on the Promotion and Protection of Human Rights requested Special Rapporteur Mr. El Hadji Guissé to prepare draft guidelines for the realization of the right to drinking water and sanitation⁵⁷. This document offers further guidance on the conceptual content of the

56/ Indeed, GC 15 states in its paragraph 29 that: “Ensuring that everyone has access to adequate sanitation is not only fundamental for human dignity and privacy, but is one of the principal mechanisms for protecting the quality of drinking water supplies and resources. In accordance with the rights to health and adequate housing (see General Comments No. 4 (1991) and 14 (2000)) States parties have an obligation to progressively extend safe sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children.”

57/ UN Doc. E/CN.4/Sub.2/2005/25, Sub-Commission for the Promotion and Protection of Human Rights. Realization of the Right to Drinking Water and Sanitation, Report of the Special Rapporteur, El Hadj Guissé, July 2005

right to sanitation, asserting that everyone has a right to have access to adequate and safe sanitation that is conducive to the protection of public health and the environment⁵⁸. According to this document, States have specific obligations to ensure universal and non-discriminatory access to sanitation and sanitation facilities that are physically accessible, affordable, of a sufficient and culturally acceptable quality and in a location where physical security can be guaranteed⁵⁹. In particular, States should ensure that no population group is excluded and that services are delivered in an equal and non-discriminatory manner consistent with the principles inherent in human rights. States should give priority to anyone without basic access and the most vulnerable groups, ensuring that everyone can afford sanitation and that no one is deprived of the minimum access to basic sanitation services. The draft guidelines do not dictate a particular form of service delivery or pricing policy, but focus on the actual impact that any given water management scheme can have on the enjoyment of human rights. Similar procedural protective measures consistent with those outlined in General Comment 15 should be provided in respect of the right to sanitation, including access solutions, information availability and participation in decision-making. Although the Sub-Commission guidelines are not legally binding, they are valuable in contributing to understanding the right to sanitation and how it is linked to the right to water.

This right now merits better definition, not only in normative terms, but also in terms of the duties and responsibilities incumbent upon the different actors involved, and notably States.

8.2. Impetus given by the International Year of Sanitation (IYS)

On 20 December 2006 the United Nations General Assembly declared 2008 the International Year of Sanitation (IYS). The overall aim of the Year, officially launched on 21 November 2007, was to create a favourable context for policy-makers and governments to commit greater resources to sanitation for the poor and vulnerable, stressing the concomitant positive impact on health. On the occasion of the launching of the IYS, it was declared that: *“everyone, and that means ALL people in the world, has the right to a healthy life and a life with dignity. In other words: everyone has the right to sanitation”*⁶⁰. The IYS offers a unique opportunity to place sanitation in the spotlight and to contribute to better defining the human right to sanitation, particularly in emergency situations.

Taking this opportunity and on the occasion of the 16th session of the Commission on Sustainable Development (CSD, May 2008), a group of NGOs and international organizations made a first attempt at defining the right to sanitation in terms of human rights⁶¹. In their first draft, the right to sanitation was defined as: *“the entitlement of everyone to the safe collection, transport, treatment, disposal or reuse of human excreta and wastewater from personal and domestic uses, with associated hygiene promotion”*. Experience has shown that, at least in normal development conditions (outside of an emergency), the promotional aspect of sanitation and hygiene is important. A key element in the right to sanitation should consequently be promotion by States and other actors of an awareness of hygiene and active support to the mobilization of households and communities to adopt improved sanitation and safer hygiene practices. The question then arises as to the relevance of this in emergencies: in the immediate aftermath of a disaster it may not be a significant

58/ Ibid. paragraph 1.2

59/ Ibid. paragraph 1.3

60/ His Royal Highness Willem-Alexander, The Prince of Orange – United Nations Secretary General’s Advisory Board on Water and Sanitation (UNSGAB)

61/ Sanitation: A Human Rights Imperative. COHRE, Swiss Agency for Development and Cooperation (SDC), UN-Habitat and WaterAid, May 2008

consideration, but it may later become so for displaced persons living in temporary accommodation, sometimes for long periods, or communities undergoing reconstruction. In addition, it has been asserted that sanitation must be safe, physically accessible, affordable and culturally acceptable, as outlined in Box 12.

BOX 12 - The right to sanitation in terms of human rights⁶²

Sanitation must be:

- **Safe:** Sanitation must effectively prevent human, animal and insect contact with excreta. Toilets (including latrines) must provide privacy and a safe and dignified environment for all. Water must be available for good personal hygiene, and facilities for safe wastewater disposal must be set in place.
- **Physically accessible:** Toilets must be if not inside then certainly in the immediate vicinity of each household, educational institution or workplace and available for use at all times of the day or night, along with associated services such as removal of wastewater and sewerage or latrine exhaustion. Appropriate facilities for use by children, the disabled and elderly persons must also be available. If disease is to be prevented then toilets must be available for, and used by, all persons in a given locality.
- **Affordable:** Access to sanitation, including maintenance, must be affordable, without reducing the capacity of individuals or households to purchase and acquire other essential goods and services, such as food, education and health.
- **Culturally sensitive:** The construction and design of latrines should be culturally appropriate. Male and female public facilities, in particular in schools, need to be separate so as to ensure privacy, dignity and safety.
- In addition, sanitation should be non-discriminatory and provided to **vulnerable and marginalized groups**⁶³. No distinction must be made based on prohibited grounds such as race, gender, health status or colour that leads to unequal access to sanitation. Non-discrimination also includes proactive measures to ensure that the particular needs of vulnerable and marginalized groups are met.
- Further, all people have the **right to participate** in decision-making processes that may affect their access to sanitation and must be given **full and equal access to information** concerning sanitation⁶⁴.
- Finally, in terms of **accountability**, people who are denied their right to sanitation should have access to effective judicial or other appropriate remedies, for example courts, regulatory agencies or human rights commissions⁶⁵.

The increased attention paid by activists, scholars and other human rights experts to the right to sanitation will take the conceptual understanding of this issue forward, and hopefully lead to explicit political recognition of this right. Realization of the right to water is impossible without due consideration of the effects of poor sanitation. Therefore, it is vital that humanitarian agencies focus on a rights-based approach to sanitation during situations of emergency.

62/ Adapted from ‘Sanitation: A Human Rights Imperative’.

63/ ICESCR, Art. 2 (2), Sub-Commission Guidelines, s. 3

64/ Sub-Commission Guidelines, s. 8.1- 8.3

65/ Sub-Commission Guidelines, s. 9



Bearing all these points in mind, in our work, we should promote and contribute to efforts focused on succeeding in formulating a better definition of the normative content of human rights obligations as they relate to access to sanitation in order to bring them in line with those relating to the right to water.

CHAPTER 9 - DEVELOPMENTS AT THE HUMAN RIGHTS COUNCIL

This section gives details of the latest political developments at the Human Rights Council.

“In November 2006, a number of States⁶⁶ decided to advance on-going dialogue on human rights and water and sanitation and to give it worldwide visibility by requesting the Office of the United Nations High Commissioner for Human Rights (OHCHR) to conduct a detailed study on human rights obligations relating to water and sanitation, and on the tools available to fulfil them.⁶⁷”. Accordingly, the OHCHR launched a consultation process among various stakeholders⁶⁸ to which more than 90 contributions were received⁶⁹. OHCHR held a consultation in March 2007 to follow up this process. Its report⁷⁰ was submitted to the 6th session of the Council and concludes that: “*it is now time to consider access to safe drinking water and sanitation as a human right*”. The main recommendations and conclusions are set out in Box 13.

BOX 13 - Extract from the Report of the UN High Commissioner for Human Rights on access to safe drinking water and sanitation

VI. Conclusions and Recommendations

65. Access to safe drinking water and sanitation is an issue of great importance to the international community. The considerable number of submissions received from Governments, intergovernmental organizations, national human rights institutions and civil society are evidence not only of the interest in this issue, but also of the growing recognition **that access to safe drinking water and sanitation must be addressed within a human rights framework**. The increasing references to safe drinking water in human rights instruments as a component of other human rights similarly highlights the growing importance of this issue to the international community, as does the inclusion of access to safe drinking water and sanitation amongst the Millennium Development Goals. Importantly, an increasing number of States are recognizing safe drinking water as a human right in their constitutions, as well as national legislation, while national courts are enforcing it as a justiciable right.

66. The United Nations High Commissioner for Human Rights believes that **it is now time to consider access to safe drinking water and sanitation as a human right, defined as the right to equal and non-discriminatory access to a sufficient amount of safe drinking water for personal and domestic uses - drinking, personal sanitation, washing of clothes, food preparation and personal and household hygiene - to sustain life and health. States**

66/ Spain and Germany were at the forefront of this project and were followed by no less than 33 countries: Algeria, Germany, Belgium, Bolivia, Burkina Faso, Cameroon, Chile, Cyprus, Costa Rica, Cuba, Ecuador, Spain, Estonia, France, Greece, Guatemala, Ireland, Italy, Luxembourg, Mali, Malta, Morocco, Nicaragua, Nigeria, Panama, Holland, Peru, Portugal, Romania, Slovenia, Switzerland, East Timor, Uruguay. Countries which could oppose this resolution are Australia, China, Egypt, the USA and India

67/ Extract from Decision 2/104 (adopted without a vote), dated 21 November 2006, which requests the OHCHR “to conduct, within existing resources, a detailed study on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments (...)

68/ Stakeholders as various as States, NGOs, IGOs, local governments, human rights institutions, business, universities and individuals submitted reports and contributions

69/ Contributions are available at the following address: <http://www2.ohchr.org/english/issues/water/contributions.htm>

70/ Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments (A/HRC/6/3), submitted on 16 August 2007

should prioritize these personal and domestic uses over other water uses and should take steps to ensure that this sufficient amount is of good quality, affordable for all and can be collected within a reasonable distance from a person's home.

67. The High Commissioner notes that **there is a need for further elaboration of certain aspects of human rights obligations attached to access to safe drinking water and sanitation.** Existing human rights instruments have provided the basis for expert human rights bodies to elaborate on States' obligations, but the study has highlighted the fact that detailed practical advice is required on the following issues: the normative content of human rights obligations in relation to access to sanitation; the human rights obligations attached to the elaboration of a national strategy on water and sanitation; the regulation of the private sector in the context of private provision of safe drinking water and sanitation; criteria to protect the right to safe drinking water and sanitation in case of disconnection; and the specific obligations of local authorities.

68. A number of questions require further debate: whether access to safe drinking water and sanitation is a self-standing right or is derived from other human rights; prioritization among various water uses; interaction with other areas of international law, including trade and investment law.

69. Although various mechanisms at the international, regional and national level monitor certain aspects and dimensions of human rights obligations in relation to access to safe drinking water and sanitation, the overall issue is currently being neglected. While United Nations special procedures and treaty bodies have contributed to clarifying human rights obligations in relation to access to safe drinking water and sanitation, their work also highlights the difficult task of covering these issues in a comprehensive and continuous way. Specific, dedicated and sustained attention to safe drinking water and sanitation is lacking at the international level, given the broad range of issues that special procedures and treaty bodies have to address within their mandate and the specific questions that arise in relation to access to safe drinking water and sanitation.

70. To this end, the High Commissioner:

- (a) Encourages the Human Rights Council to continue its consideration of human rights obligations in relation to access to safe drinking water and sanitation as set out above;
- (b) Encourages States, intergovernmental organizations, national human rights institutions, civil society and business enterprises **to identify good practices** in the field of safe drinking water, sanitation and human rights and make them available to the OHCHR.

As the principal United Nations body responsible for human rights, the steps taken by the Human Rights Council towards recognition of the right to water and sanitation are positive developments. At its March 2008 session, the Human Rights Council adopted without a vote a resolution (A/HRC/7/22)⁷¹, which made an important legal statement: *"Emphasizing that international human rights law instruments, including the Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Right of the Child, entail obligations in relation to access to safe drinking water and sanitation."* The resolution also established the mandate of an independent expert on the issue of human rights obligations related to safe drinking water and sanitation. At its September 2008 session, the Human Rights Council decided to appoint Ms. Catarina de Albuquerque as the independent expert. She took up her mandate on 1 November 2008, the terms of which are set out in Box 14. Ms. de Albuquerque will present her first preliminary report to the Council in March 2009 and annual reports thereafter.

71/ This resolution was adopted by consensus by the Council on 28 March 2008

BOX 14 - Extract from Resolution A/HRC/7/22 on access to safe drinking water and sanitation

2. Decides to appoint, for a period of three years, an independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation in order to:
 - a) Develop a dialogue with governments, the relevant United Nations bodies, the private sector, local authorities, national human rights institutions, civil society organizations as well as academic institutions, to identify, promote and exchange on best practices related to access to safe drinking water and sanitation, and, in that regard, to prepare a compendium of best practices;
 - b) Advance the work by undertaking a study – in cooperation with and reflecting the views of governments and relevant United Nations bodies, and in further cooperation with the private sector, local authorities, national human rights institutions, civil society organizations and academic institutions – on the further clarification of the content of human rights obligations, including non-discrimination obligations, in relation to access to safe drinking water and sanitation;
 - c) Make recommendations that could help the realization of the Millennium Development Goals, in particular of Millennium Development Goal No. 7
 - d) Apply a gender perspective, including through the identification of gender-specific vulnerabilities;
 - e) Work in close coordination, while avoiding unnecessary duplication, with other Special Procedures and subsidiary organs of the Human Rights Council, relevant United Nations bodies, the treaty bodies, and taking into account the views of other stakeholders, including relevant regional human rights mechanisms, national human rights institutions, civil society organizations as well as academic institutions;
 - f) Submit a report to the Human Rights Council at its tenth session including conclusions and recommendations.

Overall, this development would seem to indicate better political support by the member States of the Human Rights Council for the recognition of the right to water and sanitation and also to firmly place this issue on the Council's agenda.



There is a legal framework for recognition of the right to water and sanitation, and political support for this is increasing. The more that NGOs and other stakeholders use this framework, the more it will become enshrined in the interpretation of international human rights law.

Bearing in mind these recent developments at the Human Rights Council, in our work, we should:

- Closely monitor all such on-going developments by attending Council sessions, submitting reports and case studies relating to emergency situations;
- Lobby Governments to obtain their support at the Human Rights Council to gain better recognition of the right to water and sanitation as a human right;
- Promote and contribute to better defining the right to sanitation, which remains the poor relation of the right to water and sanitation, especially in emergency situations;

- Monitor and contribute to the debate on the role and responsibilities of the private sector, especially in emergency situations.

Moreover, humanitarian agencies should be encouraged to:

- Consult and develop a dialogue with the independent expert appointed by the Human Rights Council during her study, identifying, capitalizing upon, promoting and exchanging best practices and recommendations that focus on emergency situations and are related to safe drinking water and sanitation;
- Alert the independent expert to any cases of gross, systematic violations of the right to water and sanitation (for example by sending a communication to her office);
- Disseminate information on the work and mandate of the independent expert.
- Submit examples of good practices to the independent expert at the following address: iewater@ohchr.org

According to these different analyses, if the right to water and sanitation is not explicitly mentioned in any general human rights instruments, this does not signify that this right is excluded from the more general corpus of human rights. Moreover, the latest very encouraging development at the Human Rights Council is a further indication that political dialogue continues to evolve towards recognition of the right to water and sanitation.



Thus, at our level, and as humanitarian aid agencies, we can also protect the right to water and sanitation within the framework of human rights:

- We must remember that, in our daily work, we are not only fighting for the respect of basic human needs, but also, and above all, for the respect of human rights that are recognized by international human rights law. We must raise the awareness of humanitarian staff to the fact that humanitarian work is, in essence, working to ensure the respect, protection and fulfilment of all human rights. The right to water and sanitation is a fundamental right, especially in emergency situations;
- We can inform, negotiate and raise the awareness of governments to the rights they must realize, protect and respect within the overall objective of creating governmental accountability;
- We can inform and raise the awareness of the general population of their own rights in order to assist- all those concerned by informing them of their rights.

CHAPTER 10 - THE HUMAN RIGHT TO WATER AND SANITATION IN SITUATIONS OF ARMED CONFLICT: THE LEGAL FRAMEWORK

This section outlines and clarifies the provisions of International Humanitarian Law which apply to the protection of water in time of war and, by extension, which contribute to protecting the right to water and sanitation of populations affected by armed conflict, whether international or non-international.

10.1. Key message

Given the fact that International Humanitarian Law is the body of law specifically applicable in situations of armed conflict, and that some of its provisions are water-related, it has to be considered as a counterpart to those aspects of human rights law that deal with the right to water and sanitation. By proscribing and prohibiting certain behaviour in order to prevent shortage of fresh water or denial of access to fresh water in situations of armed conflict, IHL can be said to complement human rights standards, and thus the right to water and sanitation, even though it contains no explicit mention of the “right to water and sanitation” as such.

10.2. Background

Armed conflict is one of the primary obstacles to the realization of the right to water and sanitation. War disrupts all stages of access to the fresh water that is essential for human survival, jeopardizing inter alia transport, treatment/processing, and consumption. In addition to the absolute necessity of water for physical survival, lack of this vital element can also have a critical impact on civilians by threatening crops and livestock, inhibiting protection against disease, and forcing displacement of persons. Today’s armed conflicts are currently depriving millions of people of drinking water. These same conflicts could eventually affect freshwater causing severe harm both to civilians and to the environment.

Moreover, denial of access to water can be used as a method of warfare or as part and parcel of a military strategy. During conflicts, civilian populations may be deprived of water resources for various reasons, including to starve or to displace them⁷². Equally, water may itself be targeted by the conflict through contamination or pollution and damage or destruction of water infrastructures. Water facilities are particularly vulnerable to attack in conflict and can be targeted deliberately to induce civilians to flee. Sometimes water facilities suffer indirectly from assaults on other parts of the infrastructure, which are considered as military objectives, resulting in electricity cuts and shortages of fuel and chemical products. Destruction of an electrical generator can affect water supply systems. Shortage of water can increase the incidence of disease and epidemics.

⁷² Interview: ‘What IHL says about water?’ ICRC, 22.3.2007 Available at <http://www.icrc.org/web/eng/siteeng0.nsf/html/water-ihl-interview-220307>

10.3. Protection of fresh water in time of armed conflict

“Humanitarian law is particularly applicable to water resources because contaminated water and lack of water can be more deadly than a whole array of weapons⁷³”.

As we have seen, International Humanitarian Law is the body of law specifically applicable in situations of armed conflict and governs the conduct of parties to such conflicts. In the case under consideration, our goal is to identify those provisions of humanitarian law that apply to the protection of water in time of war and, by extension, those provisions that allow for the respect of the human right to water of persons affected by armed conflict⁷⁴.

Water and facilities that supply water to human populations, as well as sanitation, are afforded protection under International Humanitarian Law through general and particular rules set out in the Geneva Conventions and their Additional Protocols. Some IHL provisions are in fact water-related, although there is no consolidated section devoted to fresh water or any explicit provision protecting it⁷⁵. Thus, two key points should be noted. First of all, IHL does not contain any specific rules regarding a right to water – even though a number of provisions do state that water is indispensable for the basic needs of protected persons. Secondly, the purpose of IHL is not to protect water or water facilities, per se, but rather the human population that is dependent upon them for survival.

International Humanitarian Law should be seen as a complement to human rights law dedicated to the right to water and sanitation. By proscribing certain behaviour in order to prevent lack of, or denial of, access to fresh water in situations of armed conflict IHL can be said to complement human rights standards on the right to water. Box 15 lists the provisions of the Geneva Conventions and their Additional Protocols that are of touch on the right to water and sanitation. Details of water protection under IHL are also given below⁷⁶. All responsibilities outlined in this section are incumbent upon parties to the conflict, especially States parties.

BOX 15 - Protection of the Right to Water under IHL

| International Humanitarian Law Treaties | Articles related to water and sanitation |
|--|--|
| Geneva Convention III – Treatment of Prisoners of War | 20, 26, 29 and 46 |
| Geneva Convention IV – Protection of Civilian Persons in Times of War | 85, 89, 127 |
| Additional Protocol I – Protection of Victims of International Armed Conflicts | 54 and 55 and 56 |
| Additional Protocol II – Protection of Victims of Non-International Armed Conflict | 5 and 14 and 15 |

10.3.1. General Considerations

a) Freshwater is a civilian object under IHL

Civilian objects benefit from immunity from attack in any armed conflict because of their dissociation from the legitimate aim of the conflict, which is to destroy the military capacities of the enemy. Civilian objects are defined by negative reference to military objectives, so being all objects that are not military objectives⁷⁷. In practice, water is a civilian object by essence and is thus protected from attack under IHL.

b) Water is an indispensable resource for the survival of protected persons

The basic needs of the human race cannot be satisfied without water. If it had not been deemed necessary to foresee any detailed rulings on this matter, this was, according to the 26th International Conference of the Red Cross and the Red Crescent, because it is quite obvious that water is a vital resource in every circumstance.

The purpose of International Humanitarian Law is to ensure normal living conditions for populations affected by armed conflict. In practical terms, this goal can only be attained if the satisfaction of basic human needs, such as access to water, is guaranteed. Thus, IHL deters the destruction of water resources in that it protects against targeting “objects indispensable to the survival of the civilian population⁷⁸”, quoting as examples “drinking water installations and supplies, and irrigation work⁷⁹”.

73/ Civilians in War. ICRC, October 1995. Available at <http://www.icrc.org/web/eng/siteeng0.nsf/html/57JMKZ>

74/ This part omits considerations pertaining to water as a source of conflict

75/ According to Théo Boutruche, very few provisions are water-specific. Those that are do not target water itself, but refer to its particular relationship to the basic needs of a population

76/ Note that this outline is not intended to be exhaustive, but rather to reflect a human-centred approach

77/ Military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage. (See Additional Protocol I, Art 52(2)). Although the boundary between civilian objects and military objectives is sometimes the subject of debate, in the case of fresh water it is clear that this is a civilian object
78/ See Additional Protocol I, Art. 54; Additional Protocol II, Art. 14
79/ Ibid.

Some rules focus on ensuring that individuals belonging to specific population groups, such as prisoners of war and civilian internees, caught up in international armed conflicts are adequately supplied with fresh water. These rules are:

| | | |
|---------------------------|------------------------------------|--|
| Prisoners of war | Art. 20, 2; 3rd Geneva Convention | <i>“Prisoners of war who are being evacuated must be supplied by the Detaining Power with sufficient food and potable water, and with the necessary clothing and medical attention”.</i> |
| | Art. 46, 3; 3rd Geneva Convention | The same obligation is laid down for the transfer of prisoners of war. |
| Civilian Internees | Art. 127, 2; 4th Geneva Convention | The same obligation is also laid down for the transfer of internees. |

Stipulations related to the provision of food to these two groups also make reference to water, which must be supplied by the occupying power (3rd Geneva Convention, Articles 20.2, 26.3, 46.3 and 4th Geneva Convention, Articles 89.3 and 127.2).

International Humanitarian Law also clearly requires the provision of clothing, bedding, and means of shelter and other supplies essential to the survival of the civilian population in times of international and non-international armed conflicts, to the fullest extent of the means available and without distinction⁸⁰.

Finally, according to Ameer Zemmali: *«So long as water is a civilian object and indispensable to the survival of the population, warfare against or by means of water is utterly incompatible with the principles and rules of humanitarian law»*⁸¹. This is particularly important in light of the fact that the Rome Statute of the ICC protects civilian objects, and objects indispensable to the survival of the population. (See p.37). As a result, attacking water or water facilities during armed conflict could in many situations constitute a war crime. This offers the hope that parties to an armed conflict will become more accountable for their actions in times of war.

10.3.2. Prohibition relating to the conduct of hostilities: preventive function

a) Prohibition to attack, destroy, remove or render useless water installations

Article 54 of Protocol I specifically states that it is prohibited to *“attack, destroy, remove or render useless (...) drinking water installations and supplies, and irrigation works”* in international armed conflicts. The same rule also applies to non-international armed conflicts pursuant to Article 14 of Protocol II.

80/ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (1977), Article 69, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (1977), Article 18
81/ Zemmali (A.) The protection of water in times of armed conflict. In: International Review of the Red Cross. 31.10.1995. No. 308, p.550-564

Where there might seem to be an ambiguity in the definition of “water installations”, Nikolai Jorgensen explains that *“Practice seems to indicate that the term does not include smallest elements of the fresh water network, but only the largest entities in so far as they are vital to prevent starvation of the civilian population, both by lack of fresh water itself and lack of fresh water for agriculture”*⁸².

The words used to designate acts likely to harm such objects are intended to cover all possibilities (*«it is prohibited to attack, destroy, remove or render useless»* such objects), including through pollution by chemical or other agents⁸³.

According to this rule, warring parties in international armed conflict must respect the following provisions:

- Imperative military necessity entitles a party to the conflict to destroy objects indispensable for civilian survival, provided they are situated within the territory under its own control.
- Derogation may also be accorded if the destruction of the objects serves as sustenance solely for members of the armed forces or in direct support of military action.
- Even in those cases, belligerents must abstain from any action that may be expected to reduce the civilian population to starvation or deprive it of vital water supplies.
- Reprisals against objects indispensable for civilian survival are forbidden.
- It should be noted that none of these exceptions are foreseen in Additional Protocol II, Art. 14, applicable in non-international armed conflict.

b) Prohibition of starvation as a method of warfare

In any armed conflict, warring parties are limited in the choice of their methods of warfare. Starvation of civilians as a method of warfare (i.e. as a method used to weaken a population) is expressly prohibited in both international and non-international armed conflicts (Additional Protocol I, Art. 54 and Additional Protocol II, Art. 14) and may be considered a war crime. The importance of water for avoiding starvation is obvious. The prohibition of starvation thus reinforces the right to water of populations affected by armed conflict.

c) Prohibition of attacks on works and installations containing dangerous forces (dams and dykes)

Attacks on works and installations containing dangerous forces are prohibited. Such works and installations include, in particular, dams and dykes (Additional Protocol I, Art. 56). An exception can be made if the facility is used *“in regular, significant and direct support of military operations”*. In this context, it is worth noting the stronger protection afforded to dams and dykes in non-international armed conflict. Article 15 of Additional Protocol II does not include an exception based on military necessity⁸⁴.

d) Protection of the environment

Water resources are an essential part of the natural environment. Some provisions of Additional Protocol I establish protection for the environment during armed conflict, mainly Articles 35 and 55. Article 35 states

82/ Jorgensen (N.) The Protection of Freshwater in Armed Conflicts. In: Journal of International Law and International Relations, Vol. (3) 2, pp. 57-96

83/ Sandoz (Y.), Swinarski (Ch.) and Zimmermann (B.) (eds.) Commentary on the Additional Protocols of 1977 to the Geneva Conventions of 1949, ICRC and Martinus Nijhoff Publishers, Geneva, 1987, para. 2101, p. 655

84/ Whether the provision is more limited under Protocol 2, the scope of the provision does, in theory, still allow for the possibility of bombing a dam where it is a military target and where the damage ensuing from destroying the dam would not harm the civilian population

that: *"it is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment"*.

Article 55 focuses on the survival of civilian populations stating that: *"1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population"*, and *"2. Attacks against the natural environment by way of reprisals are prohibited"*.

Although neither of these provisions directly mentions water, it can be assumed that water, as an integral part of the environment, is afforded protection under these rules, as well as those established to protect the environment⁸⁵.

10.3.3. Limits to the effectiveness of the protection of water

Whilst International Humanitarian Law contains a number of rules aimed at ensuring the protection of water and water facilities and stipulating that populations affected by armed conflict must have access to fresh water, it should nonetheless be noted that some obstacles do still remain that prevent the application of these rules.

- **Lack of political support.** Not all States have ratified the Additional Protocols to the Geneva Conventions. However, provisions related to the protection of basic needs of detainees, protection of objects indispensable for civilian survival, prohibition of starvation as well as those protecting water resources and the environment in general as civilian objects are part of customary international law applicable to all parties to a conflict, whether international or non-international.⁸⁶
- **Lack of responsible official entity.** There is no effective international authority to apply these laws, even if the establishment of the permanent International Criminal Court (ICC) offers significant hope for the future in this respect (see below)⁸⁷.

10.4. Is it a war crime to attack a population's water supply?

In an interview posted on the ICRC website, ICRC legal adviser Jean-Marie Henckaerts, explaining how International Humanitarian Law provides special protection for life-giving water resources, stated that: *"Attacks against civilian objects and, in particular, against objects that are indispensable for the survival of the civilian population are war crimes. So far there have been no prosecutions before international courts and tribunal for attacks against water installations but the option clearly exists"*⁸⁸. The Rome Statute of the International Criminal Court (ICC) defines three types of war crimes that may relate to water and sanitation: the use of starvation as a method of warfare, the attack of civilian objects and the deterioration of the environment.

85/ To date, parties in conflict have not consistently adhered to these provisions

86/ Henckaerts (J.M.) and Doswald-Beck (L.) Customary International Humanitarian Law, Volume I: Rules, Cambridge University Press and ICRC, 2005, Rules 43, 53–54 and 118.

87/ Boutruche (T.) Le statut de l'eau en droit international humanitaire. In: Revue Internationale de la Croix-Rouge, N°840, p. 887-916. Available at <http://www.icrc.org/web/fre/sitefre0.nsf/iwplList464/7D4099003C70EC46C1256C750042FA32>. (In French: English abstract available: The status of water in the law of armed conflict. International Review of the Red Cross) 88/ Interview. What IHL says about water, ICRC, 22.03.2007. available at <http://www.icrc.org/web/eng/siteeng0.nsf/html/water-ihl-interview-220307>

- According to the ICC Statute, the use of starvation as a method of warfare is a war crime when committed in international armed conflicts⁸⁹. Even though the provision does not explicitly refer to water, this natural resource is clearly among the objects deemed indispensable to survival. It should be noted that no similar provision exists for non-international armed conflicts. However, in case of non-international armed conflict, *"it may be argued that this act does constitute a war crime under customary international law"*.⁹⁰
- In addition, under the ICC Statute, *"Intentionally directing attacks against civilian objects, that is, objects which are not military objectives"*⁹¹ is a war crime when committed in international armed conflicts. In non-international armed conflict, it is a war crime to *"destroy the property of an adversary unless such destruction be imperatively demanded by the necessities of the conflict"*. This would clearly apply to the destruction of water installations.
- Finally, the ICC considers that: *"widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated"*⁹² constitutes a war crime in international armed conflicts.



In light of this, and taking into account the responsibility to protect⁹³ populations from genocide, war crimes and crimes against humanity which lies with States and the international community, in our work:

- We can stress that water and sanitation crimes can be considered as international crimes. Indeed, water-related abuses provide key opportunities for field-based advocacy linked to international messaging (e.g. with States, the Security Council, Human Rights Council, IASC, and with alliances with humanitarian and human rights NGOs, UN agencies and Red Cross and Red Crescent Movement). The expertise and experience of humanitarian agencies in the water, sanitation and hygiene sector on the ground is a critical strength in our reports and in our advocacy work during international forums. We must capitalize upon that expertise and knowledge.
- We can lobby governments to support the International Criminal Court as this organization only recently began its work (2002).
- We can raise awareness among all actors dealing with armed conflicts, from States parties and armed groups to NGOs and aid agencies by disseminating relevant information on existing legal provisions that protect water and water facilities during armed conflicts.

89/ «The intentional use of starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions» 90/ Pejic (J.) "The Right to Food in Situations of Armed Conflict: The Legal Framework". In: International Review of the Red Cross, December 2003, Vol. 83, n°844, p. 1100

91/ See the Rome Statute of the International Criminal Court, Article 8.2.b)ii) on international armed conflict

92/ *ibid.*, Article 8.2.b) iv)

93/ United Nations Security Council Resolution 1674, adopted on 28 April 2006

10.5. Conclusion

International Humanitarian Law contains rules aimed at ensuring that populations caught up in armed conflict have access to fresh water. However, contrary to human rights treaties, IHL does not bestow «subjective» rights on individuals. Instead it sets out obligations incumbent upon parties to the conflict. Finally, if IHL does not specifically mention «*the right to water and sanitation*» as we understand it here, it is, in reality, this basic right that is to be protected. In no way should the fact that it is not explicitly mentioned be taken to imply that this right does not exist under IHL - quite the contrary. Furthermore, the following chapter shows that, henceforth, war crimes that relate to water and water facilities can be judged before the International Criminal Court.



In our work we should remember that:

In addition to the «remedial actions» that humanitarian aid agencies and personnel must undertake in time of war and armed conflict, for instance, facilitating access to drinking water, water distribution (with tanker trucks, etc.), repairing supply systems, seeking to purify drinking water and drinking water service providers, it is also our responsibility to take a number of «preventive measures», for example, inter alia:

- Explain and pass on to the humanitarian community, decision-makers and the general public as much information as possible about the international rules protecting water supplies and access to water for civilians. This can help in efforts to provide better protection (material and legal) for water supply systems;
- Improve coordination and cooperation in the exchange of appropriate information, knowledge and expertise in this domain between all stakeholders involved;
- Call on all parties to a conflict to abstain from attacking water treatment facilities and distribution systems for civilian use and the staff employed to repair and maintain them.

CHAPTER 11 - THE RIGHT TO WATER AND SANITATION IN NATIONAL LEGISLATION

This section explains that the right to water and sanitation can be included in national legislation and offers some examples.

National legislation forms the primary legal basis for the right to water and sanitation. However, all States have a responsibility to ensure that their national laws and policies respect and reflect their obligations under international law, including those contained both in human rights law and International Humanitarian Law.

The right to water and sanitation can be expressed in three different ways in national legislation: it can be derived from another basic right recognized within that nation's Constitution, it can stem from an ordinary law, or it can be explicitly recognized in the Constitution as a right per se (See Tables 7 and 8).

Table 7 - The right to water in national legislation

| | |
|---|--|
| <p>Deriving from another basic right recognized in the National Constitution</p> | <p>The right to Water may have its roots in another basic right recognized in a Nation's Constitution. Whereas these laws never explicitly address the right to water, they nonetheless relate to issues and rights closely linked to that right.</p> <ul style="list-style-type: none"> - In India, the right to water originates from the right to life. Article 21 of the Constitution (1997) stipulates that “<i>the right of access to drinking water is fundamental to life and it is a responsibility of the State, by virtue of Article 21, to supply drinking water to its citizens.</i>” - In Niger, the right to water originates from the right to a healthy environment. Article 27 of the country's Constitution stipulates that: “<i>each person has the right to a healthy environment. The State shall be responsible for protecting the environment. Each person shall be required to contribute to the safeguard and improvement of the environment in which he or she lives.</i>” |
| <p>Stemming from specific ordinary legislation on access to water</p> | <p>The right to water may also be a consequence of one or more laws that refer to the access to water as a basic right and can take a number of forms.</p> <ul style="list-style-type: none"> - In Algeria, the Water Code (2005) recognizes “<i>the right to access to water and to sanitation to satisfy basic needs.</i>” - In Mauritania, the Water Code (Article 2) recognizes that “<i>water is part of the Nation's heritage. Water usage constitutes a universally recognized right, in the context of existing laws and regulations.</i>” - In Cameroon, Law No. 98/005 of 14 April 1998 establishing a water scheme states that “<i>water is a common good and part of the national heritage; the State shall ensure its protection and management and shall facilitate access to it by all persons.</i>” <p>Other laws make access to drinking water for domestic and personal use a priority. Thus, whilst the nature of water as a basic element is not explicitly recognized, water usage is made subject to a hierarchy, giving priority to domestic and personal use.</p> |

| | |
|---|---|
| Explicit recognition at the constitutional level | The right to water may be explicitly recognized as a basic right within a country's Constitution. Some States have inscribed the right to water in their Constitutions, acknowledging it and making it a basic right without waiting for the outcome of debates on this subject and/or the adoption of United Nations General Comment 15. Ultimately, implementation is the responsibility and duty of the State that on the one hand needs to encourage the adoption of adequate legislation defining the ways in which constitutional principles will be applied, and on the other to promote the development of basic public services. |
|---|---|

Table 8 shows by continen (Africa, Asia and Latin America) those developing countries that have included the right to water and sanitation in their Constitutions, indicating the country, the year of adoption of the Constitution and the articles referring to this right.

Table 8 - Some examples of the constitutional right to water

| AFRICA | |
|-------------------------------------|---|
| Democratic Republic of Congo | (Draft Constitution, 2005) Art.48: The right to decent housing and the right of access to drinking water and to electrical power are guaranteed. |
| Ethiopia | (1998) Art.90 (1): To the extent that national resources allow, policies should aim to provide all Ethiopians with access ... to clean water. |
| Gambia | (1996) Art.216 (4): The State shall attempt to facilitate access to clean and healthy water. |
| Kenya | (Draft Constitution, 2005), Art. 65: Each person shall have the right to have access to drinking water, of satisfactory quality and in sufficient quantity. Art. 66: Each person shall have the right to basic sanitary facilities. |
| South Africa | (1996), Section 27: (1) (a) Everyone has the right to have access to health care services, including in health care [Sic. However, the Constitution actually reads "including reproductive health care." Translator's note.]; (b) sufficient food and water. (2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights. |
| Uganda | (1995) Art. 14: The State shall make every effort to realise the fundamental rights of all Ugandans to social justice and economic development and shall notably guarantee that ... all Ugandans enjoy rights and opportunities as well as access to education, health services, clean and healthy water, decent shelter, adequate clothing, food, security and pension and retirement benefits. |
| Zambia | (1996) Art. 112: The State shall make every effort to provide clean and healthy water. |

| LATIN AMERICA | |
|--------------------|---|
| Colombia | (1991) The State shall intervene specially to ensure that each person, particularly the most underprivileged, has effective access to basic goods and services. Article 366: the fundamental goal of its activity shall be to find solutions to essential unsatisfied needs in terms of ... sanitation, the environment and drinking water. |
| Ecuador | (1998) Art. 23: Without prejudice to rights established in this constitution and in applicable international law, the State shall recognize and guarantee to individuals the following rights: ... 20. The right to a quality of life that ensures health, food and nutrition, the supply of drinking water, improvement of the environment; education, work, leisure, housing, clothing and other necessary social services. |
| Uruguay | (2004) Art. 47: Access to drinking water and sanitation are basic human rights. |
| ASIA | |
| Philippines | (1987), section 11: The State should adopt an integrated and comprehensive approach to health development and do everything possible to make access to essential goods, health and other social services available to all at an affordable cost. |

The incorporation of the right to water and sanitation into a country's national legislation should grant individuals and communities access to legal redress for violations of this right. There have been a number of cases worldwide in which the right to water has been recognized and enforced through national and local courts.



In our work it is important to understand national legal frameworks and their relevance to protecting the right to water and sanitation, especially for people caught up in emergency situations. In particular, we should:

- Know about national laws and policies that relate to the right to water and issues at the centre of this basic right;
- Ensure that national laws and policies conform to international standards (such as Sphere, WHO, etc.) and rules (international treaties, etc.) by providing technical assistance and advice;
- Understand the extent to which these policies are consistent with the State's obligations under international law (especially IHL and HRL);
- Understand the extent to which these policies are consistent with international minimum standards (Sphere and WHO mainly);
- Raise awareness of populations to national laws and policies related to the protection, realization and fulfilment of their human right to water, and empowering them to advocate for and claim their right;
- Advocate for and monitor the implementation of national laws and policies of particular relevance to the right to water;
- Coordinate with other humanitarian agencies;

- Support the capacity of States, both in emergency preparedness and response, to implement national legislation and policies that would permit the right to water to be fulfilled, including through training, technical assistance, programme support and resource mobilization;
- Provide legal aid to assist people deprived of their right to water to access legal mechanisms (both national and international) to protect their right.

CHAPTER 12 - OPERATIONAL GUIDELINES APPLYING IN EMERGENCY SITUATIONS AND THE HUMAN RIGHT TO WATER AND SANITATION

This section summarizes the recognition of the right to water and sanitation in existing operational guidelines that are applicable in emergency situations and identifies suggested operational approaches that would promote the respect and implementation of this right in emergencies.

12.1. Key message

The Sphere Standards (2004), and the Operational Guidelines on Human Rights and Natural Disasters (IASC, 2006) are guidelines produced by and for humanitarian agencies managing emergency situations, whether natural disasters or armed conflict. Taken together, they represent consensus across a broad spectrum and reflect a continuing determination to ensure that human rights are realized in practice in every kind of emergency.

These texts do not focus on the rights of persons as enshrined in international law, but instead concentrate upon what humanitarian actors should do in order to implement a rights-based approach to humanitarian action in the context of an emergency situation. Indeed, whilst States are directly responsible for respecting, protecting and fulfilling the human rights of their citizens and other persons on their territory or within their jurisdiction, actors other than States also have responsibilities and duties when relevant authorities are unable or unwilling to fulfil their obligations. Moreover, values enshrined in human rights, humanitarian law and refugee law underpin all humanitarian action, even if this fact tends all too often to be forgotten. These two guidelines recognize the right to water and sanitation and propose a number of ways to implement it.

12.2. How is the human right to water included in the Sphere Standards?

➤ *Readers familiar with the Sphere standards can go directly to the section dedicated to the human right to water and sanitation in the Sphere context (see section 12.2.3).*

12.2.1. What is Sphere?

The Sphere Project was launched in 1997 by a group of humanitarian NGOs and the Red Cross and Red Crescent Movement and has had important repercussions on the practice of emergency relief in a wide variety of disaster settings. It also contributes to shaping an operational framework for accountability in disaster assistance efforts⁹⁴. This process led to the publication of the Sphere Handbook⁹⁵. This is the framework within which the Humanitarian Charter and the Minimum Standards to Disaster Response are set out in each of four key sectors: water supply and sanitation; food security, nutrition and food aid; shelter, settlement and non food items; and health services. This handbook is an amalgamation of approved

94/ To date, over 400 organizations in 80 countries worldwide have contributed to the development of the Minimum Standards and Key Indicators.

95/ First Sphere Handbook published in 2000, reviewed and re-edited in 2004.

indicators and constitutes a framework for disaster response in each of the four mentioned areas. Whilst primarily designed for use in disaster response, the Sphere Handbook may also be useful in disaster preparedness and humanitarian advocacy. It is applicable to a range of situations where relief is required, including natural disasters as well as armed conflict. It is intended for use in both slow- and rapid-onset situations, in both rural and urban environments, in developing and developed countries, anywhere in the world. The emphasis throughout is on meeting the urgent survival needs of people affected by disaster, whilst asserting their basic human right to life with dignity.

BOX 16 - Indonesia and the Sphere Standards⁹⁶

The Sphere Standards are constantly referred to by the humanitarian community and are increasingly recognized in more official milieus. This is clearly demonstrated in Indonesia where, for example, the Indonesian Society for Disaster Management (MBPI) adopted them as a frame of reference during advocacy for the country's national disaster management legislative reform. Founded in 2003, the MPBI on the one hand embodies recognition of Indonesia's high risk of disaster rate, and on the other the country's inadequate disaster management system that reveals gaps in coordination largely due to the lack of basic policies. The MPBI led the preparation of and then coordinated advocacy for new national disaster management legislation. The reform sought to promote a shift from intuitive disaster response to a more coherent and "rights-based" disaster management paradigm, encompassing, among others, policy reform, public offices' and private sector's accountability, public awareness-raising and education, and last, but not least, enhancement of managerial competence and technical skills. The Sphere Handbook has been translated into Indonesian and its publication has gone into a third printing. Advocacy missions to government ministries and other relevant agencies are organized. A series of Sphere training and training of trainers programmes have also been organized. The Humanitarian Charter and Sphere Standards have broadly inspired the disaster management legislative reform that resulted in the ratification of a new Disaster Management Law.

12.2.2. The Humanitarian Charter and minimum standards

The cornerstone of the handbook is the Humanitarian Charter, which is based on the principles and provisions of International Humanitarian Law, international human rights law, refugee law and the Code of Conduct⁹⁷. The Charter describes the core principles that govern humanitarian action and reasserts the right of populations affected by disaster, whether natural or man-made (including armed conflict), to protection and assistance. It also reasserts the right of disaster-affected populations to a life with dignity. The Charter calls attention to the legal responsibilities of States and warring parties to guarantee the right to protection and assistance. When the relevant authorities are unable and/or unwilling to fulfil their responsibilities, they are obliged to allow humanitarian organizations to provide humanitarian assistance and protection. According to the Humanitarian Charter, "humanitarian agencies committed to this charter and to the Minimum Standards will aim to achieve defined levels of service for people affected by calamity or armed conflicts and to promote the observance of fundamental humanitarians' principles".⁹⁸ Together with the Humanitarian Charter, some minimum standards and key indicators have been developed with the assistance of a broad network of practitioners in each of the four sectors. Most of the

96/ This box has been prepared with the cooperation and support of Dr. Puji Pujiono, Member of MPBI Governing Board.
 97Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief, 1994
 98/ The Sphere Project, Humanitarian Charter and Minimum Standards in Disaster Response (2004), p. 16

standards and indicators taken as a whole represent a remarkable consensus across a broad spectrum, and reflect a continuing determination to ensure that human rights and humanitarian principles are put into practice. Specific standards have been developed for the water, sanitation and hygiene sector and represent a practical expression of the principles and rights embodied in International law (See Table 9).

Table 9 - Minimum standards in water supply⁹⁹

| MINIMUM STANDARDS | DEFINITION |
|--|---|
| Water Supply Standard 1 - Access and water quantity | "All people have safe and equitable access to a sufficient quantity of water for drinking, cooking and personal and domestic hygiene. Public water points are sufficiently close to households to enable use of the minimum water requirement". |
| Water Supply Standard 2 – Water quality | "Water is palatable, and of sufficient quality to be drunk and used for personal and domestic hygiene without causing significant risk to health". |
| Water Supply Standard 3 – Water use facilities and goods | "People have adequate facilities and supplies to collect, store and use sufficient quantities of water for drinking, cooking and personal hygiene, and to ensure that drinking water remains safe until is consumed". |

12.2.3. The human right to water and sanitation in Sphere¹⁰⁰

The Sphere Standards explicitly recognize that "Everyone has the right to water" and that "Water is essential for life, health and human dignity". Thus, these practical guidelines are intended to help humanitarian actors to achieve the human right to water and sanitation and fulfil their responsibilities. However, it should be noted that "The Minimum Standards (...) are not a full expression of the Right to Water" but "reflect the core content of the Right to Water and contribute to the progressive realization of this right globally".

So, it is important to note that the *definition* given in Sphere is very close to the one proposed in General Comment 15 which, if taken together, offer a coherent **interpretation** to all those involved in putting this basic right into practice for all populations affected by natural or man-made disasters, including armed conflict. The Sphere Standards also offer considerable clarification on the issue of sanitation and on ways to implement this aspect of the right to water. Table 10 summarizes Sphere's definition of the right to water and sanitation.

99/ Ibid. p. 63 to p. 69
 100/ Ibid, refer to p. 55 to 63 for this part

Table 10 - Definition of the human right to water and sanitation according to Sphere Standards

| | |
|---|---|
| Definition given by Sphere Standards | Sphere adopts the same definition of the right to water as GC 15, describing it as a right that concerns only water for personal and domestic use (defined as water for drinking, cooking and personal and domestic hygiene). As in GC 15, it highlights that <i>“An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water related disease and to provide for consumption, cooking and personal and domestic hygiene requirements”</i> . |
| Recognition in other legal instruments | It is recognized that <i>“This right is recognized in international legal instruments (...)”</i> , such as human rights law and International Humanitarian Law. |
| Relationship between the right to water and other human rights | It is recognized that the right to water is inextricably related to other human rights, such as the right to life, the right to health, the right to housing, and the right to food. |
| Key components of the right to water | As in GC 15, 3 key parameters are defined: availability (sufficient); quality (safe and acceptable); and accessibility (physically accessible and affordable). <i>“This right (...) provides for sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.”</i> |
| Sanitation | Sphere standards accord considerable importance to sanitation by defining three standards and a valuable set of corresponding indicators. However, sanitation is not included in the normative definition of the right to water proposed by Sphere. |

Sphere has also defined some key indicators and guidance notes for use in both humanitarian fieldwork and in advocacy to assess whether the right to water is – or is not – respected and how to put this right into practice. Chapter 2 of the Sphere Standards entitled “Minimum Standards in Water Supply, Sanitation and Hygiene Promotion” should be consulted for more practical guidance.

12.3. How is the human right to water and sanitation included in the Operational Guidelines on Human Rights and Natural Disasters?

The United Nations Inter-Agency Standing Committee (IASC) is the principal inter-agency forum for coordination and decision-making on humanitarian action issues. It brings together a broad spectrum of UN and non-UN international humanitarian, human rights and development actors. The IASC draws up humanitarian policies and tools, advocates for the respect of humanitarian principles, agrees on a division of responsibility for various humanitarian actions, and works to bridge any identified gaps in the overall response. Within that framework, the IASC prepared the Operational Guidelines on Human Rights and Natural Disasters in 2006.

Based on the observation that guidance is lacking on how protect the human rights of individuals affected by natural disasters, the intent of these guidelines is to offer operational advice to humanitarian staff on

how to ensure such protection. In more general terms, it endeavours to provide information that will facilitate the implementation of a rights-based approach as part and parcel of an emergency response and *“call on humanitarian actors to look beyond their core mandate and to have a holistic vision of the needs of the people they have been asked to serve”*¹⁰¹.

Thus, the Operational Guidelines on Human Rights and Natural Disasters address all guarantees (understood to be of a civil and political nature, but also those which are economic, social and cultural) bestowed upon populations affected by natural disasters by both human rights law and International Humanitarian Law. The document sets out key elements and offers practical guidance to humanitarian staff on how to ensure that rights related to the basic necessities of life are put into practice. The right to drinking water and sanitation is specifically built-in.

The IASC Operational Guidelines on Human Rights and Natural Disasters are targeted directly at ensuring the respect, protection and practical implementation of international instruments defending human rights in contexts of natural disaster. In so doing, this document recognizes the right to water when it states that: *“During and after the emergency phase of the disaster, adequate food, water and sanitation (...) should be provided to persons affected by natural disasters who are in need of these goods and services”*¹⁰². Whilst it contains no mention of the right to water as such, the proviso entitled “Protection of Rights Related to Basic Necessities of Life (B.2. Provision of adequate food, water and sanitation, *shelter, clothing* and essential health services)” is directly aimed at ensuring that people affected by natural disasters are not denied water or safe access to it.

Table 11 sets out the key principles that must be adhered to by humanitarian aid personnel when implementing water and sanitation services in emergency situations, as reflected under the above-mentioned Provision B.2.

Table 11 - Guidance for implementing the right to water and sanitation according to the Operational Guidelines on Human Rights and Natural Disasters¹⁰³

| | |
|-----------------------------------|--|
| Non-discrimination (B.2.1) | The principle of non-discrimination (of any kind as to race, colour, sex, language, religion, political opinion, etc.) must be respected when implementing water and sanitation services. |
| Availability (B.2.1) | Water and sanitation services must be made available to the affected population in sufficient quantity and quality. |
| Accessibility (B.2.1) | “Water and sanitation services (a) are granted without discrimination to all in need, (b) are within safe reach and can be physically accessed by everyone, including vulnerable and marginalized groups, and (c) are known to the beneficiaries”. |
| Acceptability (B.2.1) | Water and sanitation services provided are culturally appropriate and sensitive to gender and age. |
| Adaptability (B.2.1) | Water and sanitation services are provided in ways flexible enough to adapt to the change of needs in the different phases of emergency relief, reconstruction and, in the case of displaced persons, return. |

101/ Protecting Persons Affected by Natural Disasters, IASC Operational Guidelines on Human Rights and Natural Disasters, June 2006, p. 9
102/ Ibid. p. 22
103/ Ibid. p. 22 and 23

| | |
|---|--|
| Focus on the most in need and equality (B.2.2 & B.2.3) | <p>“If water and sanitation (...) services are not available in sufficient quantities, they should be provided first to those most in need. The definition of need should be based and assessed on non-discriminatory and objective criteria”.</p> <p>“If the host population, which has not been directly affected by the natural disaster, suffers from similar shortages of water and sanitation (...) services as those affected by the natural disaster, relief should also be provided to it on an equitable basis”.</p> |
| Specific attention to vulnerable groups (B.2.5, 6, 7) | <p>There must be a special focus on women, on victims of sexual and other abuses or on people affected by HIV when implementing water and sanitation services.</p> |

12.4. Conclusion

It is clear from these operational guidelines that the right to water and sanitation is now implicitly recognized and that the resources required to put this right into practice during emergency situations are available to humanitarian aid workers on the ground. In addition to proposing the ways and means of best implementing such action, these guidelines also serve as a reminder that human rights, and especially the right to water and sanitation, are intrinsic to the work of humanitarian aid agencies specialized in the water, sanitation and hygiene sectors.



Thus, in our work, we should:

- Ensure that all actors caught up in an emergency situation (States, NGOs, IGOs, etc.) are familiar with and put these guidelines into practice;
- Advocate on a wide scale for the application of these guidelines;
- Ensure that programme interventions are based on a sound understanding of these resources and of international humanitarian and human rights laws;
- Devise “rights-based” programmes that focus on and consider that people affected by emergency situations are holders of rights rather than victims;
- Devise programmes that take into account special needs groups, such as women or children, whose rights might be subject to abuse.



- PART 3 - ADVOCACY ON THE RIGHT TO WATER AND SANITATION IN EMERGENCIES

CHAPTER 13 - THE PRINCIPLES OF ADVOCACY ON THE RIGHT TO WATER AND SANITATION

This section proposes a definition of advocacy in emergencies, sets out the added value of that approach, the challenges it poses and the opportunities it offers to organizations on the ground. The objective is to help practitioners in the field ensure that advocacy reinforces assistance by contributing to change at appropriate levels.

13.1. Key message

Advocacy is one of the mainstays of humanitarian action. It is hoped that the water-related rights discussed in this handbook will convince humanitarian actors to think about developing rights-based advocacy, rather than advocacy that only takes needs into consideration.

13.2. What exactly is advocacy in emergencies?

Advocacy is a key component in the strategies of most humanitarian agencies and is considered to be part and parcel of any humanitarian response to emergencies¹⁰⁴. The goal of advocacy in humanitarian emergency situations is not to replace the assistance being made available on the ground, but rather to enhance and facilitate that same assistance. Advocacy may well prove to be a powerful tool to improve, support and mobilize additional funds to assist those most in need.

Generally speaking, advocacy in situations of emergency can be defined as: *“Deliberate efforts based on demonstrated evidence, to persuade those in authority to adopt certain policies or actions in order to protect people affected by disasters or by conflicts”*¹⁰⁵.

BOX 17 - Objectives of advocacy in emergency situations

Ordinarily, objectives of advocacy in emergency situations are¹⁰⁶:

- To help protect the rights of anyone caught up in an emergency situation by drawing attention to their rights and needs;
- To promote the rights of populations affected by disaster or by conflict;
- To gain political and social commitment and support for that cause (i.e. the promotion of human rights);
- To boost financial support from donors and the international community;
- To promote observance of international laws and standards.

104/ Issues and Mapping Paper: WASH Cluster Advocacy in Emergencies. Produced by Dr. Sue Cavill and Pierre Robert, p.4

105/ Saving Lives, Protecting Children: Advocacy in Emergencies. Draft Framework and Guidelines for Discussion and Consultation. UNICEF, July 2007, p.3.

106/ Ibid.



In practice, advocacy in emergency situations:

- Draws on factual and up-to-date information, often gained by organizations active on the ground;
- Is focused on specific aspects of the situation, such as a particular geographical location, stakeholders or beneficiaries;
- Establishes a link between the broad policy context (such as a government's human rights commitments) and a particular crisis situation.
- Sends out a clear and relevant message of change, assigning responsibility to the appropriate stakeholders to take specific action.

Despite its undoubted worth, the risk is that advocacy might in some circumstances exacerbate tensions and prove inappropriate to a specific context, for example if and/or where security conditions are volatile. Advocacy activities should never be implemented in any way that would jeopardize the security of the teams on the ground or the assistance and protection afforded to populations caught up in an emergency situation. On the contrary, advocacy must support action being instigated and developed. This being said, situations may arise where change is more likely to be achieved through quiet “diplomatic” approaches to stakeholders such as governments and other authorities. In this case, organizations need to carefully weigh the relative merits of action in the public domain as opposed to rather more discrete action in order to meet the best interests of the beneficiary population. Nonetheless, advocacy is often a potent means of encouraging positive change and its effectiveness should neither be underestimated nor ignored. This chapter and the next provide guidance on how to maximize the positive impact of advocacy.

In emergencies, recourse to the legal framework might prove to be a powerful tool in giving more legitimacy and strength to advocacy campaigns and messages. Impartial and timely information is of the essence in this context.

13.3. Added value of rights-based advocacy in emergencies

“A human rights approach adds value because it provides a normative framework of obligations that has legal power to render governments accountable”¹⁰⁷.

It has been demonstrated that most agencies involved in the WASH Cluster consider that the *“Human Right to Water as an advocacy tool could be used to attract more international attention and funds to emergency anticipation and response”*¹⁰⁸. Agencies agree that using the right to water and sanitation as a focus for advocacy activities may lead to the development of a rights-based WASH approach to advocacy in situations of emergency. However, what exactly do we mean by a rights-based approach to advocacy in emergencies?

Essentially, this approach is based on the internationally recognized right to water and sanitation. It responds to a vision, or to specific values, that in this particular case emphasize the existence of this right in international legislative instruments. A rights-based approach is also based

107/ Mary Robinson, the United Nations High Commissioner for Human Rights, at the World Summit on Sustainable Development, 2002

108/ Issues and Mapping Paper. op.cit. p.16

on a framework of rights and duties and stresses the obligation, especially of States, to respect, apply and protect these rights, even in situations of emergency. In May 2003, the United Nations Development Programme (UNDP) issued a “*Statement of Common Understanding*” in which it explained that: “*in a human rights-based approach, human rights determine the relationship between individuals and groups with valid claims (rights-holders) and State and non-state actors with correlative obligations (duty-bearers). It works towards strengthening the capacities of rights-holders to make their claims, and of duty-bearers to meet their obligations*”¹⁰⁹. Box 18 reflects the main objectives of a rights-based approach.

BOX 18 - Main objectives of a rights-based approach¹¹⁰

- Strengthen the understanding of rights, i.e., understanding the location, forms and perpetrators of rights violations; recognizing who is vulnerable and assessing degrees of vulnerability; and recognizing existing power imbalances in society;
- Ensure accountability and transparency by identifying rights-holders (and their entitlements) and corresponding duty-bearers (and their obligations);
- Build capacities for the realization of rights so that rights-holders can make claims and duty-bearers can meet their obligations;
- Facilitate the active and meaningful participation of multiple stakeholders, including people who directly benefit from projects through access to development processes and institutions, improved information, legal redress, and other positive strategies;
- Create a sense of ownership of development processes through strategies of empowerment that focus on rights-holders both directly and through their advocates and civil society organizations; and
- Encourage the expression of rights through different mediums of communication and interaction with people across regions.

To put this concept into practice in an emergency context requires that a clear distinction be made between “rights” and “needs.” Thus, the basic need for water and sanitation to be able to live in dignity is seen as a fundamental human right, which, in turn, implies that when humanitarian agencies engage with people, for the latter this is not a privilege, not charity, but a right. Another critical feature of a rights-based approach is that it requires a high degree of effective participation of partners in and beneficiaries of programmes. Furthermore, translating people’s water needs into rights involves reforms in law, policies and practices and prepares for the transition from emergency to development by focusing on long-term and sustainable change.

Unlike needs, rights are accompanied by corresponding duties to act. States, as the first duty-bearers in terms of human rights, have a broad range of water and sanitation related obligations. As previously mentioned, they are required to call for assistance from the international community if they are unable to fulfil their obligations. In the same way, the international community has a duty to respond to a state’s call for assistance, which would then clearly show the link to advocacy. In so doing, this approach also provides a valid basis upon which to hold all relevant actors accountable, especially States. National mechanisms,

109/ The Human Rights Based Approach to Development: Towards a Common Understanding Among the UN Agencies, UNDP, New York, 2003

110/ Kapu (A.) and Duvvury (N. A.) Rights-based Approach to Realizing Economic and Social Rights of Poor and Marginalised Women. A synthesis of lessons learned. International Center of Research on Women Report, 2006

such as courts and human rights commissions, and those at the international level, such as treaty monitoring bodies, can serve to identify and adjudicate on deficiencies in the implementation of water policies, and recommend or impose improvements. Different forms of advocacy can also help to render every duty-bearer accountable.

A rights-based approach pays particular attention to issues of discrimination, equality, equity and vulnerability and is first and foremost attached to the realization of the human rights of the most defenceless groups. This means, in effect, that it requires a stringent analysis of vulnerability particularly so far as groups such as women, minorities, indigenous peoples and prisoners are concerned.

A rights-based WASH approach also makes it possible to tie traditional assistance to activities that focus on protecting the rights of civilians caught up in conflicts. The experiences of the latter can be analyzed in terms of violations of fundamental human rights, whether civil and political or socio-economic. According to Slim¹¹¹, a rights-based advocacy approach is one of the key protection principles: “*civilians have rights to protection and assistance and these rights impose a corresponding obligations to act or duty-bearers including governments, non states actors and individuals. While some organisations may not use legal language in protection, their actions are reinforced by this legal framework*”.

This approach also offers a strategic advantage to those wishing to engage in advocacy activities because it draws on commitments made by governments themselves in international fora. In this way, a rights-based approach places the onus of realizing rights squarely on the state, which must meet its obligations to citizens and honour the commitments that it has made through formal legal instruments¹¹².

BOX 19 - The rights-based approach in brief

The rights-based approach focuses on:

- **The rights of individuals** and,
- **The obligations of states to uphold, respect, protect and ensure these rights.**

The rights-based approach to advocacy in emergencies draws its legitimacy from:

- **An internationally acknowledged set of values and,**
- **The legislation and policies of individual countries, as well as the commitment of the latter to international treaties and conventions.**

As we have argued throughout this handbook, the legal foundations of a rights-based approach demand familiarity with and basic understanding of the legal framework defined by human rights law, and humanitarian law.

111/ Slim (H.) and Eguren (L.E.) Humanitarian Protection: A Guidance Booklet. ALNAP, 2005

112/ ANANDI-TISS. Rights-Based Development for Women: Moving from Theory to Action. An Engagement with an Empowerment Approach to Sustainable Livelihoods and Food Security, 2005

13.4. Opportunities offered by a rights-based approach to advocacy

Recognition of the right to water as a human right makes it possible to develop an approach that is based on identifying violations of this right coupled with working to remedy them. However, violations of the right to water are not as immediately obvious as the more traditional abuses of human rights, such as torture and suppression of free speech. Indeed, with economic, social and cultural rights, including the right to water and sanitation, the tendency has been to concentrate more on monitoring their progressive realization than on identifying and exposing specific violations. However, the position has evolved in recent years. A rights-based advocacy approach to water issues is effective precisely because it invokes the language of *legal rights* and *legally-binding* state obligations, and *violations*, all of which are concerned with the relationship between individuals and the community as *rights-holders* and the state, or other responsible authorities, as *duty-bearers*. The very fact that governments are accountable for complying with concrete obligations means that the identification of violations that correspond to those obligations plays a vital part in working with a human rights based approach to water issues. Taking steps to observe and monitor whether violations are taking place helps humanitarian agencies to focus their work on potential problem areas and to assess the extent to which the government in question is taking seriously, as a matter of *priority*, the fulfilment of its duties to implement the right to water. For this reason, the identification of common violations is helpful in directing monitoring. The immediate identification and official recognition of specific violations serves a number of important purposes. It draws attention to urgent problem areas, focuses and defines the work of NGOs, and helps target the latter's monitoring activities. Furthermore, a focus on violations emphasizes both government responsibility and accountability. When it is described in the language of *rights* and *violations*, a lack of access to clean water that has been dismissed by the government as a regrettable and inevitable social problem becomes a government failure to meet its human rights obligations and, as such, has much more weight.

However, the reasons for NGOs identifying violations of the right to water should not necessarily be seen as confrontational, i.e. to name and shame governments, as the issue could, in this case, become a sensitive one. On the contrary, NGOs adopting a human rights approach to water have an important role to play, both as the partners of governments, by constructively contributing to the promotion and progressive implementation of the right to water, and as the *watchdogs* of governments, by monitoring their performance. As such, they should exert pressure from the bottom up by identifying violations at individual and at community levels and by educating people about and informing them of their water-related rights. At the same time, they should assist governments in meeting their obligations in a sustainable manner. The position adopted by a humanitarian agency will depend upon its specific mandate.

In practice, this means that advocacy that identifies and denounces violations (or abuses, or neglect) of the right to water and sanitation, may take different approaches depending upon the level of violation and the particular context:

- In the most serious situations that cause immediate harm to the civilian population, the use of language denouncing a violation of the right to water and attributing that violation to a specific named actor may be the most appropriate means to end or obtain a change in circumstances. This may be the case, for example, where there is evidence that government armed forces or armed opposition groups are deliberately targeting water resources with a view to rendering them unusable by civilians.
- In cases where access to water and sanitation is effectively denied to the population, but not neces-

sarily as a direct result of deliberate government (or armed opposition) action, an approach that raises awareness of the matter and suggests ways of mitigating the situation may be more appropriate than a focussed denouncement of a violation, for example if the authorities fail to restore access to water after a battle, or if the power supply is cut in ways that affect a water treatment plant.

- In cases of long-term neglect, leading to deprivation of rights, advocacy may more appropriately include references to the assistance that humanitarian agencies can offer (for example, where the problem is caused by lack of maintenance of a water supply infrastructure). However even in such situations it may be more apposite to raise awareness of the right to water and sanitation in order to highlight government obligations under international standards to ensure the exercise of the right to water.

13.5. Key challenges to rights-based water-related advocacy

If what has been discussed above clearly indicates that using a rights-based approach for the purposes of advocacy can procure more legitimacy and force for the messages developed it would, nonetheless, seem judicious at this juncture to revisit a number of challenges or elements which can hamper this type of approach, especially in the water and sanitation sector.

1. It must be said that, to some extent, those working on water, sanitation and hygiene related issues still resist the idea of incorporating rights language and human rights into discussions about access to water and sanitation, even in terms of advocacy. At times, they perceive the right to water and sanitation as having some “political” resonance. At others, they see it as “ineffective”, or lacking content. Consequently, other groups concerned might also feel ill at ease with rights language, meaning that reticence about accepting its incorporation into the sector persists. Be that as it may, we trust that this handbook will go some way towards enhancing the reader's understanding of and insight into the added value represented by speaking in terms of rights more than in terms of needs so far as access to water and sanitation is concerned. All those working in this sector have a crucial role to play in improving the situation. In future, preference must be given to capitalization and to field studies.

2. It could be further argued that when the right to water and sanitation is flouted, then so will other rights. Theory and the interdependence of human rights have shown this to be true. In turn, in practice, it is very rare that only one human right is violated in isolation from all the others.

3. It is easier to identify cases of violations of political and civil rights than those of an economic, social and political nature. However, in contrast to violations of individual civil and political rights, in which a quasi-judicial level of evidence is often required to prove that a human rights violation has occurred, the level of evidence required of those advocating for economic, social and cultural rights is different. For example:

- Denial of access to potential beneficiaries may constitute evidence of intent to violate rights, even if advocates do not identify individuals who have suffered as a result.
- Damaged or neglected installations can also constitute such evidence, even when lack of access prevents identification of victims.
- Statistical data (on health, for instance) can also constitute evidence, particularly when combined with other factual research.

Moreover, this handbook has reviewed a number of texts, in particular General Comment 15, which demonstrate that, on the basis of the now sufficiently detailed normative content of this right, key indicators and questions can be established whereby cases of violations of human rights can be more precisely identified (see Figure 1) Whilst these preliminary attempts are not definitive and call for improvement, the more they are put into practice, the more effective they will become. Humanitarian aid agencies are thus invited to develop similar initiatives and to share the results.

4. Establishing the responsibility of States in the case of violations of economic, social and cultural rights is much less evident than it is for civil and political rights, and consequently to accuse a State of “violating” a right in the former category is much more problematical. And the same can be said of developing advocacy if no clear-cut responsibility can be identified.

The concept of complicity in respect of the violation of water and sanitation related rights is therefore important, because it means that advocates of these rights can bring this idea into play to draw attention to the responsibilities of a State without necessarily having to prove deliberate intent on their part to violate these same rights. In other words, a State cannot shirk its responsibilities under international standards by blaming other actors (or even parts of the state machinery itself, such as the armed forces) for human rights violations. States have a duty to protect their citizens and other persons on their territory or under their jurisdiction from human rights violations, and failure to do so may be construed as complicity with the perpetrators, even if the latter are not identified. Whilst accusations of complicity should not be made lightly, they can be underpinned by research conducted away from the location where violations are taking place (for example, through legal research demonstrating that no adequate legislation exists to prevent certain violations).

In conclusion, the ultimate objective would be to gain more political support from States and financial backers for this essential right to water and sanitation. A number of organizations are already working to this end. Such an approach, which complements what has been discussed above, could be undertaken by way of:

- Improving what States and donors know about what already exists by demonstrating the legitimacy both of GC 15 and of the various obligations in respect of the right to water and sanitation that are already in force;
- Developing advocacy and awareness-raising at the national level so that States recognize and integrate the right to water and sanitation into their national policies or their policies of aid to the countries concerned.

The following chapter of this Handbook offers practical guidance on the design and implementation of advocacy on the right to water in emergencies.

CHAPTER 14 - DESIGNING AND IMPLEMENTING ADVOCACY ACTION ON THE RIGHT TO WATER IN EMERGENCIES

This section offers advice on identifying violations of water-related rights and guidance on what research is needed to support advocacy. The approach described in the following paragraphs could be beneficial not only for any teams on the ground wishing to incorporate right to water and sanitation advocacy initiatives into their traditional activities, but also for Headquarters staff planning to develop advocacy campaigns of a more general nature. In both cases, it is essential that advocacy messages be based on an accumulation of accurate and well-founded data. This section also provides an overview of the various advocacy modalities available and proposes tools to help design and implement advocacy activities.

14.1. General principles in respect of the identification of violations of economic, social and cultural rights

If the right to water is an acknowledged human right adopted by the ICESCR, the question that immediately springs to mind is what exactly do we mean by a violation of an economic, social and cultural right? The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights¹¹³ state that such a violation “occurs when a State pursues, by action or omission, a policy or practice which deliberately contravenes or ignores obligations of the Covenant”. Thus, it is evident that violations of economic, social and cultural rights can occur by way of two types of action:

- **By commission** - through the direct action of States or other entities insufficiently regulated by States;
- **By omission** - through the omission or failure of States to take necessary measures stemming from legal obligations.

There is said to be violation of human rights when a State omits to act to resolve a situation where that violation has occurred or when it prevents the realization of a right, or permits a third party to prevent such realization. Violations are correlated to all of the obligations incumbent on the State (immediate obligation to act without discrimination, fundamental obligations and obligations to respect, protect or implement the rights)¹¹⁴.

In analysing a situation where a violation of human rights has occurred the first requirement is to determine the nature of the violation. This means deciding whether a violation of the right to water and sanitation is the result of what people do, or on the contrary, the result of what they should do, but do not. However, when rights are not realized because a State is incapable of doing so, then this cannot be considered as a violation. On the other

113/ The Maastricht Guidelines were adopted in Maastricht (Netherlands) on 22-26 January 1997. They are based on The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights [UN doc. E/CN.4/1987/17, Annex; and Human Rights Quarterly, Vol. 9 (1987), pp. 122-135]

114/ These violations correspond to situations in which for example, a State: a) does not respect or protect a right, or does not remove the obstacles preventing its immediate implementation. For example, the absence of adequate regulation of services provided by the private sector; b) does not take fast, concrete and targeted measures permitting the full realization of a right. For example if the State does not make provisions to ensure that the essential services of water and sanitation are accessible to all and at an affordable price; c) does not give priority to the realization of the core of each right, in particular for marginalized, excluded or vulnerable population groups. For example, massively investing in the improvement of services in affluent districts, and doing virtually nothing to improve services in shantytowns or rural areas

hand, measures following a natural disaster must in no way discriminate against marginalized groups¹¹⁵. Indeed, to claim that a violation has taken place, proof must be provided that a given action of the State has prevented the realization of a right and that this situation can be corrected if the said action is abandoned.

In the case of the right to water and sanitation, great care must be taken when assigning responsibility for violations and using terms such as “transgressor” in view of the legal and political implications of assigning such responsibility.

Beyond the need to exercise sensitivity and diplomacy, there are other reasons to be wary of what terms are used when referring to economic and social rights. These reasons include the fact that economic, social and cultural rights may not necessarily be violated under the terms of international human rights standards, even if some people do not exercise them fully. For example, a state that condones, or fails to condemn the use of torture by authorities in just one isolated case can be held accountable under international standards. In contrast, the right to access to water will not necessarily be breached if an individual has no such access if the state concerned can demonstrate that it is working towards broadening access.

There is, however, no doubt about the extreme difficulty involved in monitoring and assessing the progressive realization of economic, social and cultural rights requiring as it does the collection of accurate data, facts, and indicators to follow up progress towards achieving full realization¹¹⁶. Nonetheless, a “violations-based approach”¹¹⁷ developed over the past few years, makes it possible to identify a failure of a State to fulfil its immediate responsibilities or meet its minimum core obligations. The method suggested in the following section is an adaptation of the approach consisting in identifying violations as part of a rights-based advocacy¹¹⁸.

14.2. Identifying violations of the right to water

Research (understood as the collection and analysis of information) is the cornerstone of this approach. Research enhances the legitimacy and strength of the messages, minimizes associated risks and contributes to strengthening the impact of advocacy activities¹¹⁹. For this reason, this section will attempt to develop a method that would permit a precise analysis and assessment to be made of violations of the right to water and sanitation of populations caught up in and affected by humanitarian emergencies.

115/ This kind of problem arose, for example, in the wake of the Indian Ocean tsunami. For an overall picture of the problems of human rights that occurred in the Nanggroe Aceh Darussalam (Aceh) province following the tsunami, see Amnesty International, Indonesia. “The Role of Human Rights in the Wake of the Earthquake and Tsunami” (AI: ASA 21/002/2005)

116/ Chapman (A.R.) A Violations-based Approach for Monitoring the International Covenant on Economic, Social and Cultural Rights In: Human Rights Quarterly, 18(1) 1996, pp 23-66.

117/ Human Rights for Human Dignity: A Primer on Economic, Social and Cultural Rights. Amnesty International, 2005, p. 24

118/ It should be noted that the approach described focuses more specifically on responsive measures. Protection risks is the terminology many protection-mandated agencies would use in that situation

119/ Saving Lives, Protecting Children: Advocacy in Emergencies. Draft Framework and Guidelines for Discussion and Consultation. UNICEF, July 2007, p. 13



Key challenges for humanitarian agencies wishing to develop advocacy and campaigns to improve economic, social and cultural rights, including the right to water and sanitation, consist of:

- 1. Identifying the problem;
- 2. Identifying overall violations and/or aspects of the human right to water that are violated;
- 3. Identifying victims;
- 4. Identifying those responsible;
- 5. And last but not least, identifying solutions on which to focus advocacy.

As a result, any situation analysis will require that the key stages of appraisal and assessment set out below be carried out.

14.2.1. Problem identification

First of all, the general problem needs to be identified, along with any warning signs indicating that a situation exists whereby the human right to water and sanitation could well be put at risk.

14.2.2. Identification of the aspects of the right to water that are being violated

Key question: In what way is the exercise of the human right to water and sanitation being impeded or denied?

A response to this first critical question is needed in order to fully understand the precise nature, pattern and scope of violations or threats of violations that populations caught up in emergencies may face and will require access to a solid documentary base of how the right to water and sanitation is being placed at risk. This, in turn, requires that indicators, accurate statistics and information are available. The following checklist has been drawn up to help humanitarian staff identify and address the main aspects of the rights to water that might be violated in times of emergency. This list is in no way exhaustive and could certainly be improved as the work of the agencies concerned develops¹²⁰. In particular, the checklist is open to adaptation to different local contexts – for example, a water treatment plant may be considered a source of water, just as a well is. This is particularly important in contexts such as armed conflict or internal displacement. It is nevertheless important to bear in mind that any analysis must take the normative content of the right to water and sanitation into account.

120/ It should also be noted that all aspects of this checklist should be disaggregated, e.g. on grounds of age, gender, vulnerability (such as disability, legal status, etc.)

Table 12 - Checklist: Which aspects of the human right to water are affected¹²¹?

Checking quality - *“The water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person’s health¹²²”.*

- What are and where are the water sources?
- Is the water source protected against contamination?
- Is the water visibly contaminated with excrement or waste; is the water source at risk of contamination?
- Do people have to take care of their personal hygiene or wash their clothes directly at the water source?
- Do animals also use the water source? Is there any protection against animals accessing it?
- Is household, agricultural or industrial wastewater discharged into the water source?
- Do people have access to safe sanitation, such as improved latrines or sewerage systems?
- Is the water supply system regularly maintained? Is water quality regularly controlled?
- Is the water treated to make it fit for human consumption? Do people know how to treat the water to make it safe and do they have the means to do so?
- Does water have to be stored, for example because there is no continuous supply? Is the way in which water is stored safe?
- Is assistance given to communities relying on non-piped water sources to help them conserve water quality?
- Is there any national standard for water quality? Is it adhered to?
- Are there any specific issues related to water quality in the country (arsenic, fluoride...)?
- Is there any information at water point level to warn about bad water quality (i.e. in Bangladesh and Cambodia, pumps with arsenic have red warning signs painted on them)?
- Are there any particular beliefs associated to water sources?

Checking acceptability - *“Water should be of an acceptable colour, odour and taste for each personal or domestic use”.*

- Have people complained about the smell, taste or appearance of the water?
- Do people use different water sources for different activities due to colouring at one of the water points?
- Have people returned to their initial water source, due to the smell and taste of chlorine in the treated water source?
- Are there any particular beliefs associated to the colour or taste of water?

Checking availability of sufficient and continuous water supply - *“The water supply for each person must be sufficient and continuous for personal and domestic uses¹²³”*

- Is there a water source in the immediate vicinity of the home?
- How much water is available per person per day?
- Is the available water quantity restricted? Is there enough clean water not only for drinking, but also for cooking and personal hygiene?
- Is water always available or only during certain periods?
- Are people often disconnected? Are there alternative sources of water that can be used if this occurs?
- Are there often breakdowns of the water supply? How long do they last and are they automatically repaired?

Checking physical accessibility - *“Sufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace. (...) Physical security should not be threatened during access to water facilities and services.”*

- Is there a water source within physical reach? Are water collection points close enough to where people live?
- How much time do people spend on collecting water, including waiting time at the source?
- Is it safe to go to the source and to use it, or do people have to fear harassment or physical violence?
- Is it safe for women, children and vulnerable people to collect water alone?

Checking economic accessibility - *“Water, and water facilities and services, must be affordable for all”.*

- What is the cost of water and/or connection fees? Have prices risen a lot recently?
- How much of their income do people spend on water?
- How high are prices compared to the minimum wage?
- Are prices controlled or fixed by public authorities?
- Are there subsidies or similar mechanisms that lower the cost of provision of the basic water supply?
- Is there a free basic supply for those who are unable to pay?
- Is the water point accessible for the handicapped, the elderly, children, pregnant women and, in general, vulnerable people?

Checking non-discrimination - *“Water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds”.*

- Is access to water denied to some groups because of their race, sex, national or social origin, or other reasons?
- Is there discrimination in legislation or in any government policy and practice that violates the human right to water of particular groups or individuals?
- In case of armed conflict, is the right of prisoners and detainees to water guaranteed?
- Are some people discriminated against (e.g. because of HIV/AIDS)?
- Are women discriminated against because of lack of proper consideration of the need for privacy?

^{121/} This list has been adapted from the brochure “ Identifying and Addressing Violations of the Human Right to Water – Applying the Human Rights Approach”, FoodFirst Information and Action Network (FIAN), and Bread for the World
^{122/} All excerpts are taken from General Comment 15, paragraph 12.

^{123/} Ibid.

Checking information on water issues - "Accessibility includes the right to seek, receive and impart information concerning water issues"

- Are people aware of their legal rights? Are people aware of their own and other's responsibilities?
- Is information concerning water issues available to all? How difficult is it to get hold of this information? Is information available in local languages spoken by the communities?
- Do state authorities provide information on water? Do they make sure that private companies provide such information?
- Is the tariff system and the negotiation of tariffs transparent?

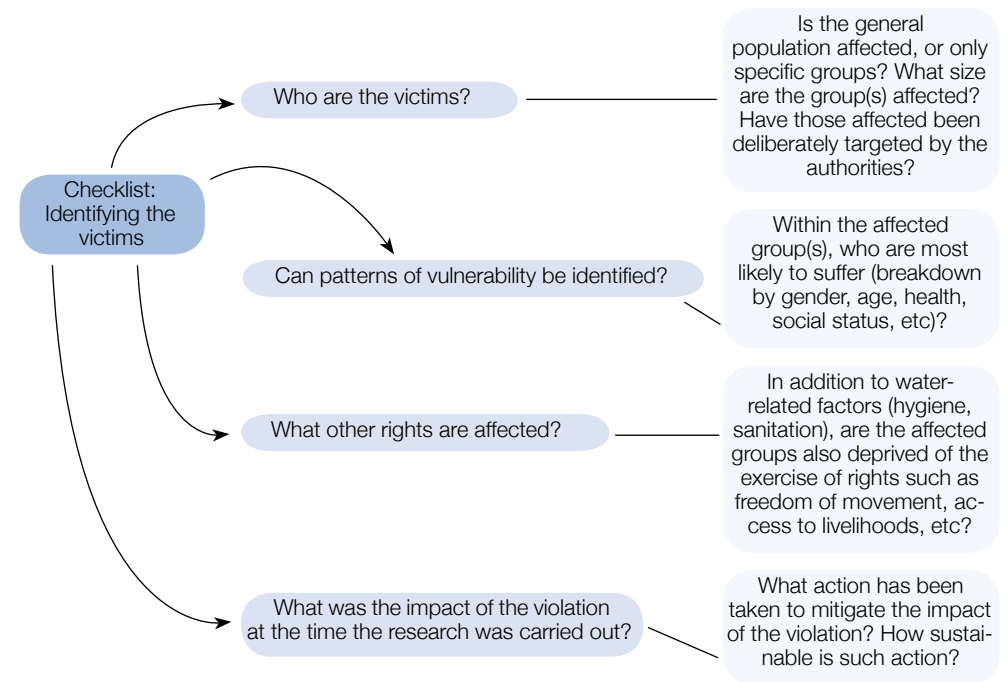
Note that this table highlights the complexity of WASH-related delivery issues. In terms of advocacy, it is important for NGOs to avoid becoming bogged down in minutiae when referring to rights (e.g. for example assessing what level of pricing would constitute, or not, a violation of the right to water) and to remain at an overall analytical level.

14.2.3. Identification of victims

Key question: Which population groups are affected by violations of their right to water?

The victims of a violation of the right to water and sanitation need to be identified. Special attention must be paid to vulnerable groups and to cross-cutting issues such as gender, IDPs, HIV/AIDS, children, elderly people, the disabled, etc. It is also essential to find out how many people are affected by violations of their rights and where they live which means that this stage will call for good background knowledge and familiarity with methods of evaluating the concept of vulnerability. An attempt will also be made to understand the effects of violations of the right to water on groups identified as "affected".

Figure 1 - Checklist: The victims



As far as possible, violations of the right to water should be identified through direct contact with the people concerned, either through interviews or via the medium of focus group or large group discussions¹²⁴. The choice will depend upon the context¹²⁵.

Moreover, both in theory and in practice, all rights are interdependent and interrelated. As a result, individuals rarely suffer neglect or violation of just one single right. Thus, in most — if not all — emergency situations, if the right to water and sanitation is violated, then so are a number of other rights. For example, people deprived of access to water and sanitation services may also be victims of racial, sexual and other forms of discrimination. Therefore, any analysis of the right to water and sanitation should be correlated to the study of other rights such as, for example, the right to food or the right to an adequate standard of living.

124/ Slim (H.) and Eguren (L. E.) Humanitarian Protection: op.cit. p. 32

125/ Large group discussions generally focus on a description of problems, community services, vulnerable groups and institutional mapping. The objective of focus group discussions may be to make a more in-depth analysis of the problems identified by larger groups, determining underlying causes and exploring solutions to problems that vulnerable groups face. Key informant interviews may be semi-formal interviews held with officials from the local administration, WASH staff, and representatives of local NGOs, etc. They may focus on community services, access issues and institutional mapping. Focus group categories may include women, youth, the elderly or any specific population groups and representatives of development committees and associations.

In research and advocacy, it is important to draw a line between a group *being affected* and the *transgressor's intention* (i.e. often the government) to adversely affect the group. The context (in terms of respect for other basic human rights) can help in assessing whether a violation of the right to water is intentionally targeted at a particular group.

In some conditions, such as those of armed conflict, organizations which identify groups whose right to water is being violated may well find themselves accused of bias in favour of those groups: by identifying a group as a victim, organizations may be suspected of supporting the political or other views espoused by the leaders of that group. Approaches that might help mitigate this risk are outlined in the following paragraphs. However, it is a general rule that research must be as impartial as possible, focussing on facts and refraining from ascribing a motive or intention to stakeholders when this is not backed by direct evidence. This is particularly important when addressing question 1 in the box on the previous page.

14.2.4. Identification of transgressors

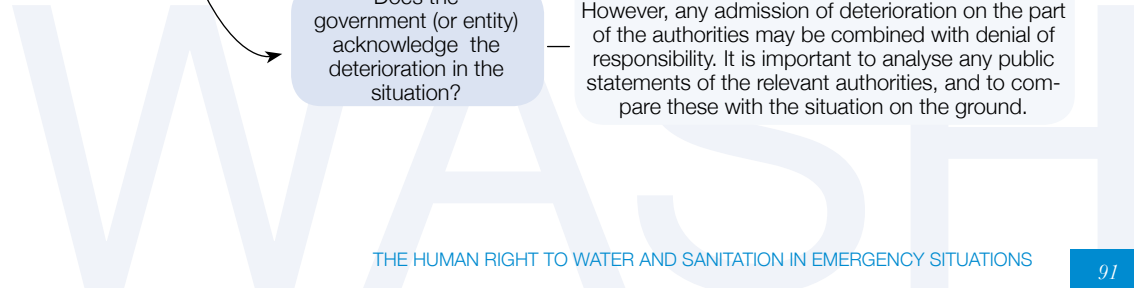
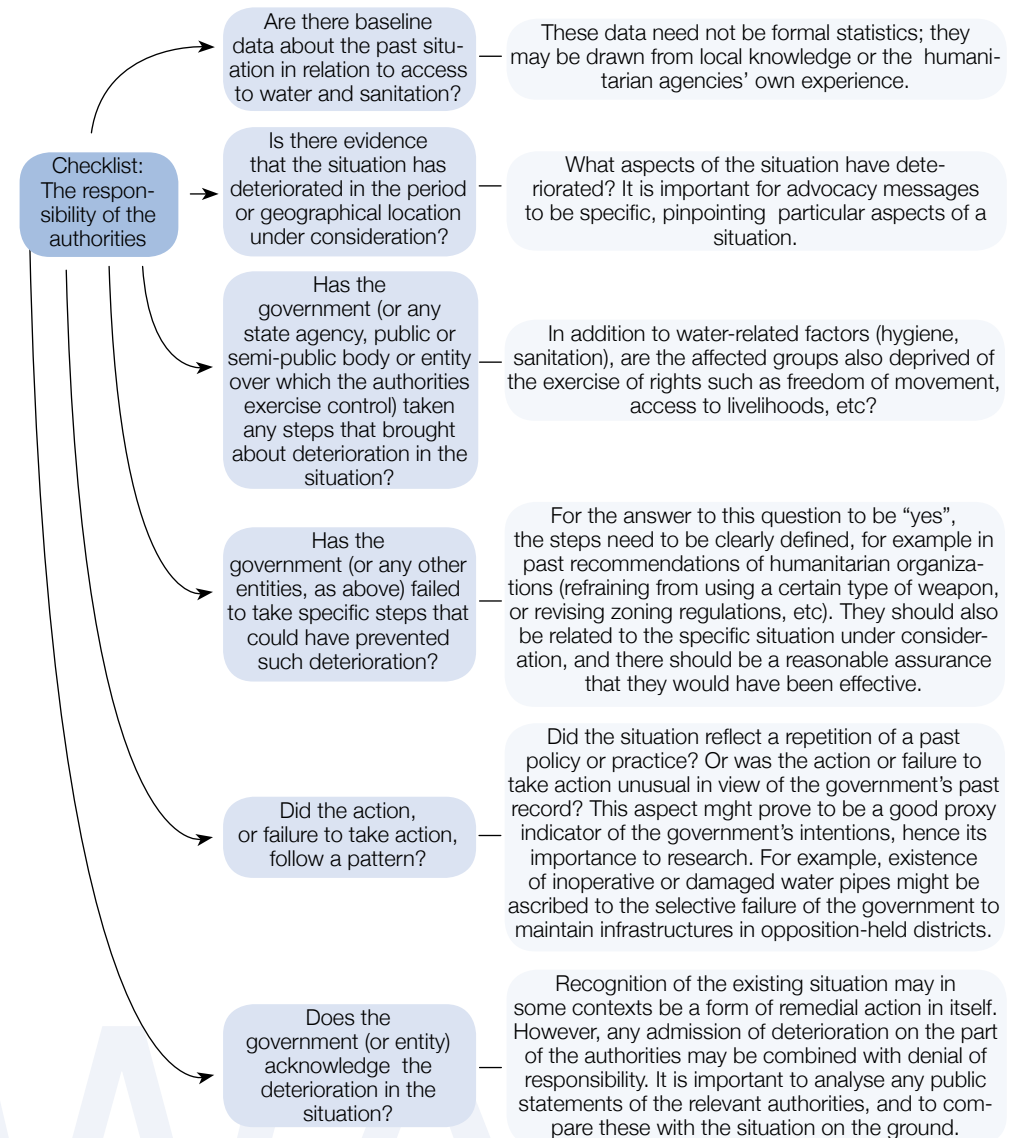
Key question: Which stakeholders are at the root of the cause for concern or violation? What are their capacities and constraints?

Research should include the collection of data that allows, to the extent possible, for the identification of those responsible for the violation – even if for the tactical reasons outlined below it is not always appropriate to publicly name those responsible. As part of this research, an attempt will be made to determine the degree of authority of the groups responsible for the violations, the resources available to them, and any factors facilitating the violations. There is a wide variety of possible transgressors (including states, private companies, armed groups in case of war, etc.) even though governments, as the main subjects of international law, are often ultimately responsible.

However, not every situation in which people do not have full access to adequate water can immediately be termed a human rights violation. Humanitarian staff would have to demonstrate that a State has not met its obligation to respect, protect or fulfil the right to water. Only such a breach of obligation by a State constitutes a violation of human rights.

The following questions might serve as a guide to research on the nature of a state's responsibility to protect the right to water and sanitation.

Figure 2 - Checklist: The responsibility of the authorities



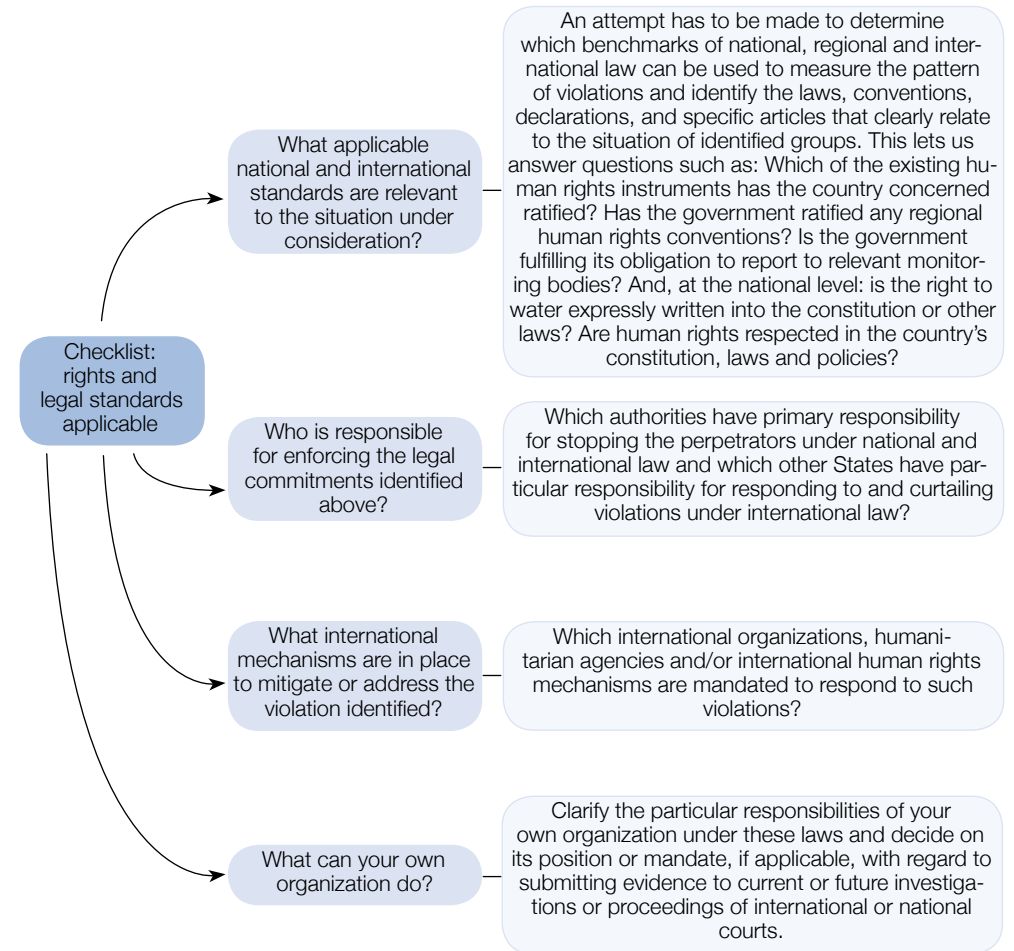
In any situation it is essential to assess whether the State had the means to meet its obligations. Indeed, if a government is not unwilling but truly unable to respect, protect or fulfil the right to water, then this is not a violation. However, this is only true if the State actually attempted to use its resources as efficiently as possible. States especially have to demonstrate that they have effectively used all available resources when they fail to fulfil core obligations. Any measures that deliberately reduce people's access to water are generally prohibited and state authorities have to justify any such retrogressive measures and prove that there was no alternative. Even if no resources are available to proceed with the realization of the right to water, States are at least required to acknowledge the situation and to address it, for example by developing a relief strategy or by requesting international assistance. Finally, it should be noted that even when States are actual transgressors, rights advocates may wish to refrain from labelling them as such, so as not to (further) antagonize the authorities. Furthermore, in many situations, whilst it may be difficult to establish whether a formal transgression has taken place – it may still be clear that the risk exists.

14.2.5. Identification of relevant legal standards: What rights do people have?

Key question: What rights do people have under applicable national law and relevant international human rights standards?

Once the nature of violations and their impact and effect on particular groups has been established, it becomes possible to measure the situation against exact standards in international law with a view to providing a formal description of identified abuses and violations. This can be achieved in the four main stages shown in the following figure.

Figure 3 - Checklist: rights and legal standards



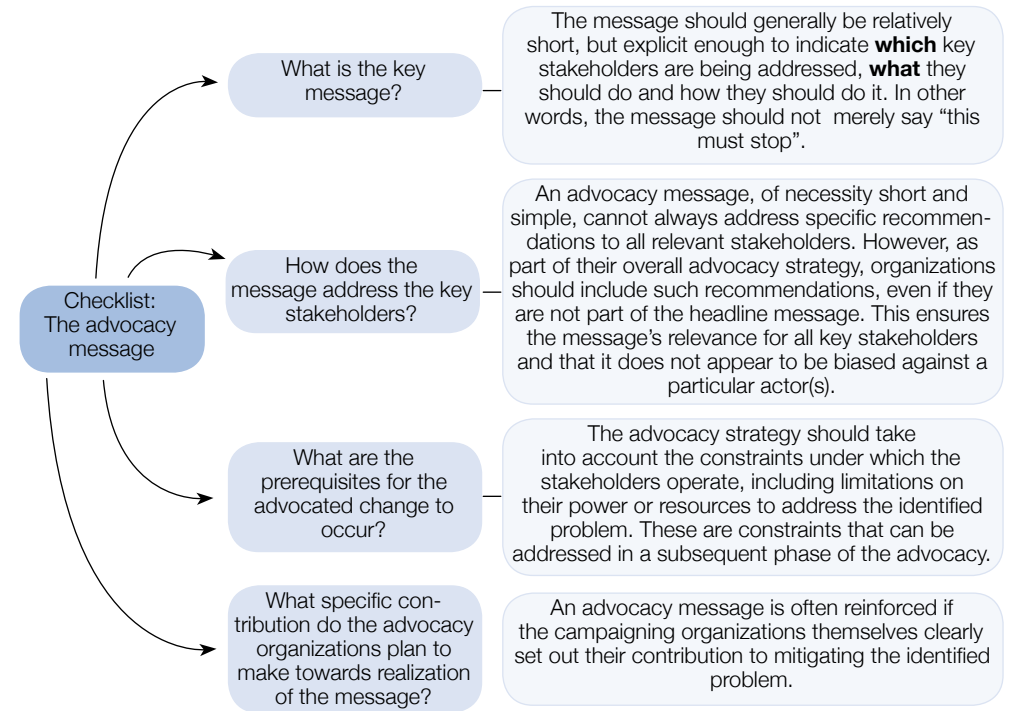
14.2.6. Identification of advocacy priorities: What is the message of change?

Key question: What opportunities exist to enable the full exercise of their rights for all people?

While an advocacy campaign may, for tactical reasons, focus on the plight of victims or on highlighting “good news” stories, it is essential that, irrespective of this focus, those conducting advocacy should **have a clear view of the change they wish to succeed in bringing about in the situation under consideration**. That view may or may not be part of the public message itself, but even if it is not, humanitarian organizations involved in advocacy activities should have a shared vision of the behavioural or factual change(s) they seek to achieve. This may be the elimination or at least mitigation of the immediate cause of a violation of the right to water (for example, sending a police force to patrol in the vicinity of water points, etc) or the remedy may be of a more systemic nature (such building a water treatment facility). In most cases, the research suggested in figures 1 and 2 and the analysis of victims and transgressors along the lines suggested above in paragraph 14.2.4, should yield a number of possible approaches to address this problem.

It is indeed important to note the difference between an advocacy message, and the specific recommendations that may accompany it. The message should be simple, short and readily understandable by both stakeholders and the general public. Recommendations for action, however, can be much more complex and technical. In some cases, it makes sense to develop advocacy in successive phases, addressing different aspects or “layers” of the identified problem. The following figure summarizes the key questions to be addressed when developing an advocacy message.

Figure 4 - Checklist: The advocacy message



14.3. What types of advocacy should be undertaken in support of the right to water and sanitation?

With knowledge of and information about the violations of the right to water and sanitation, humanitarian aid agencies can develop a variety of advocacy initiatives targeted at authorities and other concerned actors in order to ensure protection of and assistance to populations affected by a humanitarian emergency.

The analyses and evaluations already conducted would seem to suggest that advocacy can respond to several aims: prevent violations, call a halt to observed perpetrated violations, attenuate the effects of violations on victims and even take action to expose and penalize those responsible for such violations. The elements discussed above provide suggestions for possible advocacy activities that could usefully be developed to ensure the respect, the protection and the fulfilment of the right to water and sanitation of those affected by emergencies. Of course, options chosen can differ significantly according to the (often very specific) mandate of a humanitarian aid agency, available resources, the context and so on. Consequently, each agency has to develop its own most apposite strategies, taking into account if possible the suggestions offered in the present Handbook.

14.3.1. Speaking out

At international and national levels, aid agencies and personnel can speak out against any abuses of human rights witnessed, and offer evidence of and highlight violations or disregard for the right to water and sanitation. This requires a methodology to pinpoint and document abuse as accurately as possible. The previous chapter provides more detailed information on a suitable methodology, along with a plausible interpretation of it.

On the other hand, an approach that concentrates on denouncing or exposing abuse or violations can sometimes present serious risks for the safety, security and dignity of the affected individuals/communities. It can similarly confront field teams responsible for identifying and collecting evidence of abuse with a real dilemma. In fact, one of the recurring difficulties faced by humanitarian agencies is whether sustainable water, sanitation and hygiene activities should be linked to evidence and exposure of observed infringements of human rights, given that these activities could both limit their ability to provide water and sanitation services to the populations they serve, and jeopardize the safety of their own personnel. Hence, and depending upon both context and situation, it is clear that public exposure of breaches of human rights is not always the best, nor the most sustainable solution, and that, on the contrary, this could gainsay the initial goal of saving lives by ensuring the satisfaction of basic needs.



In our work:

Personnel working in the field are often the first to observe violations of the right to water and sanitation. For this reason, field staff are in a position to:

- Collect accurate data on the populations affected;
- Confirm evidence to the fact that violation(s) of the right to water have indeed taken place;
- Provide detailed reports on the situation to Headquarters and international organizations mandated to protect human rights;
- Determine, in consultation with Headquarters, whom else to inform and cooperate with other local and international organizations working in the field, as well as with donors and governments;
- Consider whenever possible, conducting joint activities with other organizations in order to maximize the effectiveness of action taken to redress violations of the right to water and sanitation of people caught up in any kind of emergency. Here it would seem interesting to reflect upon the opportunity offered by the WASH cluster that is composed of a group of humanitarian agencies having a common core of values and tools in addition to their own proper specificities. This potential for coordination could result in the communication of messages carrying much more weight and the achievement of much better results¹²⁶.
- Build up coalition and networks. Inter-disciplinary alliances involving NGOs working on water and sanitation related issues, grassroots groups and human rights groups, etc. should be encouraged to promote the advancement of water and sanitation rights within and across national borders.
- Develop options, in consultation with Headquarters, including private communications to offending parties, formal representations to national authorities, public statements of concern, and any other activities designed to protect the right to water and sanitation of those affected by emergencies;
- Establish monitoring and reporting systems that document neglect or violations of the right to water and sanitation.

^{126/} It seems important for organizations in the Cluster to speak, as far as possible, with one voice. This does not necessarily mean that all organizations must be heard to say the same things, but that at least the messages should be consistent. Also, the research base should be shared.

14.3.2. Advocate at international forums

At the global level, aid agencies and personnel can advocate at international and regional forums on behalf of those whose right to water and sanitation has been threatened or violated. Events such as the World Water Forum present opportunities to share experiences on and find common solutions to the problematic of the right to water and sanitation of populations affected by humanitarian emergencies.

Case Study 2 - The right to water in emergencies defended at the 5th World Water Forum

The next World Water Forum will be held in Istanbul in March 2009. ACF-France, along with other humanitarian aid NGOs, will organize a session on the right to water and sanitation in emergencies. By bringing together humanitarian agencies, UN organizations, governments and civil society representatives this session will permit key examples of violations of this right in emergencies to be identified, and to highlight the added value of a rights-based approach to emergencies, in terms of field and advocacy practices.

14.3.3. Influence policies of national governments, international donors, and private companies

Again at the global level, aid agencies and personnel can attempt to influence the policies of national governments, international donors, and private companies in order to ensure that people's rights are secured and protected in emergency situations. For instance, they can undertake a number of activities in relation to obligations of international assistance and cooperation:

- Work to ensure that greater attention in donor and lending policies is paid to populations caught up in emergencies of any kind;
- Advocate for priority in the provision of international aid to the most vulnerable groups of the population;
- Campaign against embargoes or similar measures that restrict the supply of adequate water resources or access to water facilities;
- etc.

The following box gives an insight into the stance of two of the main emergency donors, the UK Department for International Development, (DFID) and the Humanitarian Aid Department of the European Commission (ECHO) as regards the right to water and sanitation. In both cases much remains to be done in terms of advocacy if better recognition of this right is to be included in their policies.

WASH

BOX 19 - The position of two main donors in respect of the human right to water and sanitation in emergencies

DFID

DFID is without a doubt currently the most progressive financial backer when it comes to the right to water. In 2006, DFID adopted an official position on the right to water whereby it recognizes the right to water as a component of the right to an adequate standard of living (contained in Article 11 of the ICESCR) and not as a self-standing right per se¹²⁷.

DFID considers the right to water both as a tool to be used to improve access to water in developing countries, as well as a means to fight poverty. More generally speaking, DFID perceives the implementation of human rights as a powerful force towards achieving good governance and compliance with the rule of law. DFID encourages the development of programmes anchored in a "rights-based approach". For that reason, DFID intends to re-examine its strategies in order to incorporate the right to water in them and promote the implementation of basic human rights. Careful attention must therefore be paid to further developments in this domain¹²⁸. This being said, it is, however, important to note that during the seventh session of the Human Rights Council, whilst the United Kingdom expressed its support for the right to water, it stated that it did not recognize the right to sanitation, without however taking any active stance against it.

ECHO

The mandate¹²⁹ conferred on ECHO by the European Union consists in providing assistance and emergency aid to victims of natural disasters or to those caught up in conflicts outside the European Union. This aid is sent directly to populations in distress, regardless of race, religion or political affiliation. In fulfilling its mandate, ECHO considers the right to water to be a fundamental right but believes that the right to water as defined by United Nations General Comment 15 (2002) goes far beyond its own objectives and is more of a development issue germane to other organizations within the European Commission, such as EUROPEAID.

Finally, humanitarian aid agencies and personnel can advocate for increased funding and greater focus of the international community on the right to water and sanitation of populations caught up in emergencies. The most recent development at the international level to promote universal access to water and sanitation, along with the obligations of industrialized countries to pledge international assistance, places additional responsibilities on these countries to help nations with more precarious economies to achieve these goals. These responsibilities and obligations can be used as the basis for an effective advocacy strategy.

14.3.4. Work with national and regional enforcement procedures to ensure state accountability

A human rights approach to water and sanitation must emphasize that States are accountable for complying with their international, regional and national obligations arising from this right. Working to establish legal and other appropriate remedies for violations of the right to water and sanitation is therefore critical to its promotion and protection. It is important that NGOs take every opportunity to bring cases of actual or potential violations of this right to national and/or regional courts and other available complaints and

127/ For more details, please consult: <http://www.dfid.gov.uk/pubs/files/human-right-water.pdf>

128/ For a more global insight into DFID's position on human rights, please refer to: Piron (L. H.) and Watkins (F.) DFID Human Rights Review: A Review of how DFID has Integrated Human Rights into its Work. London, ODI, July 2004.

129/ For details of ECHO's humanitarian mandate, please consult <http://eur-lex.europa.eu/>

enforcement mechanisms (such as tribunals), either by invoking the right to water and sanitation directly or indirectly, or another water-related human right that is protected in national and/or regional legislation. Although many NGOs will not have the resources (staff, financial or other) to pursue legal remedies on their own accord, it is important to be aware that opportunities exist to contribute to cases brought by others.

14.3.5. Raising awareness of the rights of affected populations in emergencies

At regional and national levels, humanitarian aid agencies and personnel can raise international awareness to international standards, government obligations and national legislation that protect the right to water and sanitation of people affected by emergencies. This could be done for instance through:

- Dissemination of these guidelines;
- Organization of training and awareness-raising meetings;
- Discussions with competent national authorities to remind them of their duties and responsibilities under the terms of international law and the treaties ratified by their States¹³⁰.

14.3.6. Raising awareness of people affected by emergencies to their rights

At local and regional levels, aid agencies and personnel can raise the awareness of populations affected by emergencies to their rights in emergency situations and provide information on how they can claim their right to water and sanitation. This is a very important phase, even in situations of emergency, and is best achieved through dissemination of information about the rights of populations affected by emergency situations to all concerned. First of all information is needed on how much people involved in an emergency know about their right to water and sanitation and the responsibilities and duties incumbent upon their local authorities. In addition, local initiatives of this nature make it possible to prepare the transition from the emergency situation being lived through when action is taken, and that of rehabilitation/reconstruction/development.

Case Study 3 - UN/Government campaign on the right to water in Haiti¹³¹

In late 2008, the Government of Haiti (Water and Sanitation Cell of the Ministry of Public Works) and a number of UN agencies present in Haiti (OHCHR, UNICEF, UNDP, and the Human Rights Section of the UN Mission in Haiti, MINUSTAH) grouped together to conduct a 2-months awareness-raising campaign on "the right to clean drinkable water". The campaign began in October 2008 and ended with an official ceremony on 10 December, Human Rights Day. Follow-up action is being planned.

The action was prompted in part by the alarming statistics on access to water in Haiti: only 16.5% of the population enjoy access to adequate sanitation, according to 2008 UNDAF figures (less than 10% have running water at home). 45% are deprived of durable access to water, and 50% of households are at 30-minutes walking distance from the nearest water facility. 70% of the water consumed is untreated, according to the same source.

130/ The second phase of this project will consist in training and awareness-raising in the field. Practical tools on the right to water and sanitation will be designed to assist in training, awareness-raising and organization of meetings and placed at the disposal of humanitarian staff

131/ For more information on MINUSTAH activities, refer to www.minustah.org

According to the UN agencies, the objectives of the campaign were to:

- Raise awareness of the population and the Government of Haiti on access to water as a human right (rather than a need);
 - Seek an increased Government of Haiti commitment to enabling the exercise of the right to water, which could be demonstrated, for example, by ratification of the ICESCR, enactment of the Water Sanitation Bill, or an increase in government budgets related to clean drinkable water.
- During its 2-months duration, the campaign participants (UN agencies, local NGOs active in remote locations, government experts, representatives of the official water and sanitation services, etc) conducted awareness-raising activities, including:
- Conferences on economic, social and cultural rights in the 8 regions where the Human Rights Section of MINUSTAH is present – the conference in the capital Port-au-Prince was held in the presence of a member of the Committee on Economic, Social and Cultural Rights (independent experts monitoring the compliance of State Parties with the ICESCR);
 - Sensitization activities in high schools, universities, local government offices and remote villages where access to drinkable water is most problematic;
 - Drafting a document advocating the ratification of the ICESCR;
 - Joint presentations with representatives of the Ministry of Public Works on access to water and the work of the Ministry;
 - Other sensitization activities with NGO partners at local level, including production and dissemination of public information materials (posters, etc) and radio broadcasts.
 - A closing ceremony on 10 December 2008, focusing on the right to water.

According to the UN, the action benefited from the local knowledge and credibility of NGO partners operating in remote locations. It also benefited from the support of local authorities and government experts (even though some of the activities were directed at advocacy towards senior officials on ratification and budgetary allocations). The action will be followed-up with further advocacy, particularly around the adoption of the Water and Sanitation Bill.

14.3.7. Alert the Committee on Economic, Social and Cultural Rights

At the global level, the Committee on Economic, Social and Cultural Rights can be alerted to the fact that the right to water and sanitation has been violated. This Committee is responsible for monitoring the implementation of the ICESCR by States parties. By examining reports submitted by States, the Committee seeks to determine whether the provisions of the Covenant are, or are not, being adequately applied by State parties and how the implementation and enforcement of the Covenant could be improved. The Committee then issues specific legislative, policy and other suggestions and recommendations such that economic, social and cultural rights are more effectively secured. The first report must be presented within 2 years of the entry into force of the Covenant for a particular State party and thereafter once every 5 years. After having completed the analysis of the reports in the presence of the States parties, the Committee draws up “concluding observations” which constitute the decision of the Committee on the status of the Covenant in the given State party. They are made public on the final day of each session. The conclusions of the Committee are not binding. But they do indicate the opinion of the only expert body entrusted with and capable of making such pronouncements. Consequently, for States parties to ignore or not act on such views would be tantamount to showing bad faith in implementing their Covenant-based obligations.

The Committee attaches great importance to cooperation with NGOs at local, national and international levels whether or not they have been accorded advisory status within the Economic and Social Council. It constantly encourages these organizations to take part in its activities with the aim of reinforcing the effectiveness of international follow-up of the implementation of the Covenant.¹³² The Committee recognizes the important contribution that NGOs can make in providing information about the status of the Covenant within States parties. On the first day of each session of the Committee, the afternoon meeting is set aside for NGOs who can present either written or oral declarations. The active participation of NGOs in the work of the Committee has proved essential in ensuring wide distribution of information about the Covenant and the Committee at the national level. However, it is obvious that this process, which only takes place once every five years for the States parties having ratified the Covenant, is not really adapted to emergency situations, which often demand rapid intervention, even in terms of advocacy. Nevertheless, it is important to know that this option is available.

Moreover, if at present there is no procedure allowing individuals or groups to submit a complaint for violation, a number of organizations are recommending that such a procedure be set in place¹³³. But finally, on a more informal basis, whilst the CESCR is free to consider a letter from an individual, it is unlikely to study such a letter formally, except as part of the documents it reviews when gathering evidence about economic, social and cultural rights in a particular State. If serious and widespread abuses of Covenant rights are seen to be occurring in a particular country, an NGO may wish to immediately inform the CESCR, by fax, letter, or e-mail message to its Secretariat. In rare cases the CESCR or its Chair may decide to contact an offending State without waiting for its next periodic review. An NGO is more likely to receive a rapid response to an emergency appeal if it contacts several individuals and organizations. Possibilities include the following: sources inside the country where the violations are occurring (Ministers responsible; Attorney General/Minister of Justice; Foreign Minister; receptive politicians and relevant parliamentary committees; supportive NGO coalitions; the courts (to seek an injunction or other order halting harmful activity); embassies of countries known to champion relevant human rights; print, broadcast and media journalists) and sources outside the country (OHCHR, NGOs such as Amnesty International, etc., which operate urgent action networks or services); human rights supervisory bodies of regional organizations; the foreign ministries of countries known to champion the relevant human rights¹³⁴.

14.3.8. Alert other UN monitoring bodies

Other monitoring bodies, such as the CEDAW or the CRC, can also be alerted, particularly when specific groups such as women or children are being subjected to violations of their right to water and sanitation. The treaties monitored by these two committees provide the most substantial guarantees for the various components of the right to water and sanitation.

132/ With the aim of guaranteeing the most effective and widest possible participation of NGOs in its work, in 1993 the Committee adopted a document entitled “Participation of NGOs in the Activities of the Committee on Economic, Social and Cultural Rights”, which sets out the salient points of such participation

133/ Under the provisions of this Optional Protocol, any State that ratified the Covenant would have the option of taking on extra duties by ratifying the proposed Optional Protocol as well. By doing this, a country would be agreeing that its people have the right to make individual complaints to the UN about human rights violations for which that State Party is responsible. These complaints, known as “petitions”, would be reviewed by the CESCR on a case-by-case basis. An Optional Protocol permitting individual complaints of Covenant violations has been drafted, but not approved

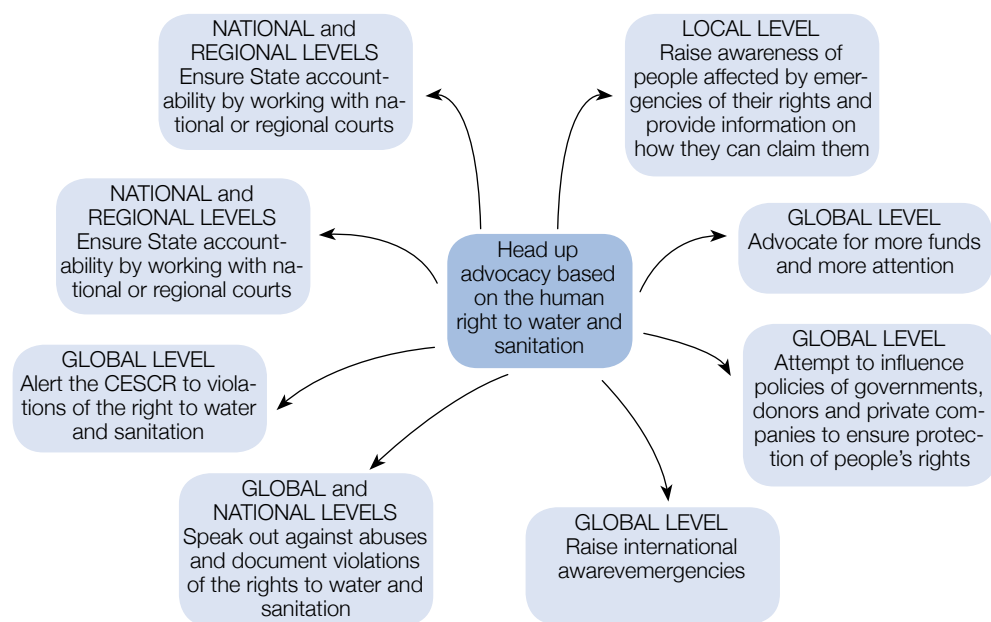
134/ For more information, please refer to: Promoting and Defending Economic, Social and Cultural Rights; available on-line at the following address: <http://shr.aas.org/escr/handbook>

It is also important to note that there are various other international and regional monitoring bodies to which humanitarian agencies can submit evidence on the extent to which governments are implementing and/or violating their right to water and sanitation obligations. They include the monitoring committees of the other international legally enforceable human rights treaties, UN charter-based mechanisms (such as other Special Rapporteur), and regional treaty monitoring bodies and human rights tribunals.

Finally, information to these treaty bodies can be sent confidentially. This possibility can be of the utmost importance in cases where organizations do not want to/are unable to risk public submissions. This can particularly be the case in times of war, for fragile states, during political conflicts, or due to any other sensitive issues humanitarian agencies have to deal with.

The following figure summarizes the different advocacy initiatives that humanitarian agencies can develop.

Figure 5 - Different types of advocacy



14.4. Developing an advocacy strategy

The preceding sections have reviewed the various modalities of advocacy that ultimately all seek to effect practical changes on the ground. Emergency contexts often make it difficult to articulate explicit strategies, particularly where a situation changes rapidly. The following criteria should be met if a sound advocacy base is to be created:

- **Understand the broader context of a particular situation.** Man-made emergencies often result from the convergence of a range of factors, from the local to the global level. This is most palpable in situations of armed conflict where there are clashes of interests, but other crisis situations may also reflect similar aspects. It is important for organizations engaged in advocacy to analysis these factors and the ways in which they need to be taken into account in advocacy. Such analytical work is often done as part of situation reporting, outside emergency contexts – these reports are therefore a useful source of background research for use in planning advocacy work.
- **It is essential, as highlighted above, that advocacy be backed up by impartial, factual research.** Although no-one usually disagrees with this approach in theory, carrying out impartial research is often difficult in the fraught, tense context of emergencies. It is sometimes difficult for organizations that are actively involved in bringing relief in emergencies to simultaneously prepare reports and statements that take a distanced view of events – and such research may require more staff time than organizations can make available in hectic emergency contexts. It therefore often makes sense for organizations to pool their research and advocacy.
- **The advocacy message must be effective.** This usually means that the message must be relatively simple (it should typically be no more than a sentence), and that it should be of relevance for all key stakeholders without compromising their impartiality. This does not necessarily mean that the message cannot be critical of one or another of the stakeholders. In many cases, however, the short message will need to be backed-up by more comprehensive documents on specific aspects of the issue.

One pre-condition for fulfilling these criteria will often be the ability of organizations working on the right to water to form an **advocacy coalition** that is appropriate both to the situation and to the selected strategy. The WASH Cluster may often be a “natural” home for such a coalition, although not all members of the Cluster may wish to be involved in a particular piece of advocacy.

Coalition-based advocacy needs to take account of the respective status and policies of the coalition members. In practice, it is not necessary to obtain the unanimous agreement of all coalition members on all aspects of an advocacy strategy: it is usually more effective to have the coalition agree on a core message, each organization subsequently developing its own advocacy approach in coordination with the others. This allows for diversity, and also takes advantage of the different strengths of the organizations – for example some may be more experienced at advocating in international fora, whilst others may have better access to authorities or other stakeholders.

14.5. Conclusion

The right to water and sanitation is increasingly recognized as a human right and thus provides humanitarian actors and agencies with the wherewithal to develop advocacy campaigns that are not only “needs-based”, but also, and more to the point, “rights-based”. It is hoped that this handbook has given impetus to the reality that, when water and sanitation policy-makers and practitioners working to advance humani-

tarian ideals ignore this fundamental right, they are failing to use the very powerful tool that is advocacy that could help them realize the objective of access to water and sanitation for all, even in emergency situations. However, if the right to water is not a magic solution to complex water and sanitation issues, it nonetheless has a crucial and constructive role to play, especially in terms of advocacy. Emergencies are prone to exposing a population to human rights violations, and especially violations of the right to water and sanitation. For this reason advocacy work should be:

- **Rights-based:** Emergency action should protect and promote the human rights of those affected;
- **Evidence-based:** Build on reports, surveys, accurate data and information, and discussions with communities affected. Advocacy must be objective, based on real violations and target those whose rights are denied, bearing in mind that this is a sensitive issue within the framework of the right to water and sanitation, which is a right recognized only as a right which is a component of one or several other human rights.
- Always based on **recognized legal and ethical principles.**
- Undertaken only after ensuring the **safety of people affected by emergencies and local and expatriate personnel** on the ground. Questions raised can be of a political nature and thus endanger the security of staff, and a fortiori humanitarian assistance in the field for populations caught up in an emergency.



Finally, to facilitate the achievement of “rights-based advocacy”, we recommend that the following steps be taken:

- Provide humanitarian staff with training that will inform them about and make them conversant with international legal standards;
- Provide humanitarian staff with training on how to incorporate human rights principles into their work by, for example, widely distributing this handbook;
- Develop existing relationships with the research community and create and develop a research agenda to improve understanding of the links between the right to water, the right to sanitation and other human rights. In all likelihood, the future role of the research community may include the identification of best practices on the ground and the analysis of the effectiveness of different forms of advocacy.

Case Study 4 - How is the right to water and sanitation of the Palestinian population being denied? Some examples of advocacy initiatives¹³⁵

Situation:

Israel's imposition of severe restrictions on the movement of people and goods at Gaza's border crossings and its reduction of supplies of fuel and electricity triggered a humanitarian crisis in the Gaza Strip unseen since the Israeli occupation in 1967. Despite the fact that these measures were largely taken as a response to indiscriminate rocket attacks on Israeli communities, they were widely condemned as constituting collective punishment of the 1.5 million civilian population both in intention and effect, leading to the widespread denial of economic and social rights including severe retrogression in realization of the right to water and sanitation. These measures exacerbate

ted the already dire situation caused by economic and financial sanctions imposed on the Gaza administration by both Israel and Western states when Hamas came to power in 2006. Sanctions eroded the ability of Gaza's authorities to provide adequate services to the population and led to the withdrawal of much needed donor investment in the water and sanitation sectors causing the suspension or cancellation of a number of projects.

Facts:

- Lack of access for equipment and supplies necessary to repair and upgrade old and badly damaged water and sanitation infrastructure, as well as frequent shortages of fuel and power cuts led to the periodic paralysis of water and waste-water services. In April 2008 around 95% of Gaza's water wells and sewage pumping stations were non-operational.
- Intermittent water availability forced many residents to buy from more expensive and less safe sources such as water tankers, turn to untreated agricultural wells for domestic use, compromise on hygiene and in extreme cases reduced water use to a mere 14 litres per person per day.
- Gaza's water utility was forced to release some 50,000 cubic metres of raw or partially treated sewage into the Mediterranean Sea to prevent flooding of residential neighbourhoods as happened in Zeitoun district in January and May 2008. Wastewater treatment plants were in a critical state of disrepair.
- In March 2007, a small lake created by overflow into a natural depression next to the filtration basin at Beit Lahia burst its banks and flooded the village of Um Al-Nasser with partially treated sewage causing the death of five people and displacing 1,000. Signs of structural deterioration have raised concerns that the adjacent larger lake may similarly burst its banks sending 1.5 million cubic litres of sewage upon Beit Lahia town and surrounding areas threatening the life and property of up to 50,000 people and possibly contaminating the ground water supplies of up to 300,000 people.
- Further, Israeli Defence Forces have deliberately targeted water and sewage infrastructures. Between 27 February 2008 and 4 March 2008, damage to electrical transformers and voltage lines affected 10 water wells leaving 230,000 Gazans without water for nearly two days. Gaza's municipal workers have been fired upon at times, preventing them from carrying out work related to water and wastewater services.

Analysis in terms of rights:

- As an occupying power maintaining effective control over Gaza, Israel is legally responsible for ensuring the realization of the right to water and sanitation for the occupied population.
- Israel is in violation of the International Covenant on Economic, Social and Cultural Rights through taking deliberate actions which have undermined the provision of adequate and safe water and sanitation; reduced the quantity of water for personal and domestic needs; reduced the accessibility of water and sanitation services which are intermittent and in some cases non-functional; and compromised affordability of safe water in cases where people have had to rely on tanker provision.
- The International Covenant on Economic, Social and Cultural Rights requires that economic sanctions may not be applied in a manner which imposes disproportionate suffering to the civilian population and sanctions may not be imposed on goods and services necessary for the right to water. States that are party to the economic sanctions on the Gaza administration are obliged to do all in their power to protect the economic, social and cultural rights of the affected population. In

135/ The author of this case study is Ms Lara El-Jazairi, Legal Officer, Right to Water Programme, Centre on Housing Rights and Evictions (COHRE) – for more information on COHRE activities, refer to www.cohre.org

addition, States that have withdrawn funding for water and sanitation services in Gaza have undermined the ICESCR which requires all States to engage in international assistance and cooperation for the realization of economic, social and cultural rights. Any measure which causes retrogression in the realization of the right to water and sanitation is a clear violation of the ICESCR.

- Further, as an occupying power, Israel is obliged to comply with International Humanitarian Law, including the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and customary international law. In particular, Israel must ensure that civilians are guaranteed access to drinking water, water for personal hygiene and sanitation; ensure that public health and hygiene is maintained in the occupied territory; comply with the prohibition on attacks to civilian infrastructure, including drinking water installations; respect the principle of proportionality which requires that any reaction to an attack is not excessive by causing harm to civilians or civilian property which outweighs the expected military advantage; refrain from punishing persons for offences that they have not personally committed; and, permit and facilitate the delivery humanitarian relief to the occupied territory.

Advocacy initiatives:

- On 28 October 2007, ten Israeli and Palestinian human rights organizations petitioned the Israeli Supreme Court, seeking an injunction against fuel and electricity sanctions. The petitioners argued that the reduction of fuel and electricity supplies would cause widespread damage to essential services in Gaza including health systems, water wells and sewage treatment facilities. Moreover, they stated that the disruptions caused to the supply of essential goods and services amounts to the collective punishment of the civilian population, since Israel is preventing the people of Gaza from obtaining these goods and services from an alternative source. In its final ruling on 30 January 2008, the Supreme Court rejected the petition and upheld the Government of Israel's decision to reduce fuel and electricity supplies to Gaza. The Supreme Court erroneously argued that as Israel's occupation of Gaza had come to an end Israel holds no obligations under International Humanitarian Law towards Gaza's population. This goes against the widely held view that as Israel maintains «effective control» over Gaza it continues to hold legal responsibility to ensure the welfare of Gaza's civilian population. Numerous United Nations Treaty Bodies and the International Court of Justice have asserted that Israel is bound by the provisions of both International Human Rights Law and International Humanitarian Law in the Occupied Territories.

- As efforts to hold Israel responsible for violations of human rights law and humanitarian law in Gaza have largely failed, an increasing number of human rights and humanitarian organizations have been placing pressure on other actors including the European Union to address the deteriorating situation in the Gaza Strip. On 11 June 2008, eighteen organizations signed a letter calling upon the European Union to place human rights conditionalities on Israel within the framework of the EU-Israel Association Agreement including to ensure that Israel ends the blockade on the Gaza Strip which has undermined the economic and social rights of Gazans. Further, the organizations called upon the EU to access the extent to which its own external actions breached fundamental principles of the European Union, including a respect for human rights.



- ANNEXES -

ANNEXE 1

30 YEARS OF WASH INTERNATIONAL POLITICAL PROGRESS IN BRIEF

Over the last thirty years a number of international conferences have marked the significant progress made in the development of water and sanitation issues.

The **International Drinking Water Supply and Sanitation Decade** (1980/1990), which was declared during the United Nations Conference on Water in Mar del Plata in Argentina¹³⁶ (1977), marked the beginning of thirty years of international action on the topic of water. During this period, it was established that: *“All people, whatever their state of development and their economic and social situation, have the right to access to clean drinking water of an adequate quantity and quality for their basic needs”*.

The **1986 Declaration on the Right to Development**, adopted by the UN General Assembly, includes a commitment that States shall ensure equality of opportunity for all in their access to basic resources. The Declaration implicitly includes water as a basic resource in that it states that the persistent conditions of underdevelopment in which millions of humans are *“denied access to such essentials as food, water, clothing, housing and medicine in adequate measure”* represent a *“mass violation of human rights”*.

The **International Conference on Water and the Environment** (ICWE, Dublin, 1992), a preparatory conference for the first Earth Summit in Rio, laid down four basic principles:

- Water is a finite and vulnerable resource which is essential to sustain life;
- Water development and management should be based on a participatory approach, involving all stakeholders and users;
- Women play a vital role in the provision, management and safeguarding of water;
- Water should be seen as an economic good which has an economic value for all its competing users (agriculture, industry). However, this first conference does not deny the fact that water is a social good: *“The basic right of all human beings to have access to clean water and sanitation at an affordable price”*

The **first United Nations Conference on Environment and Development (UNCED 1, Rio de Janeiro, 1992)**¹³⁷, the second big gathering of the international community after the Stockholm Conference¹³⁸, was marked by the launch of **Agenda 21**¹³⁹, a programme of action that devotes a whole chapter (Chapter 18) to the question of freshwater. It calls for the global management of freshwater and for the integration of sectoral water plans and programmes within the framework of national economic and social policy. For the first time, development and the environment were linked at the heart of the debate, but water still did not figure among the priorities on the international agenda.

136/ The Mar Del Plata Conference was the first international event to sound the alarm on the global water crisis. The 150 Nations present at this Conference declared 1980-1990 the International Drinking Water Supply and Sanitation Decade. This fixed an ambitious target: to supply accessible drinking water of adequate quantity and quality and set up basic structures to the entire world's population by the end of the decade

137/ The informal name of this conference is “Earth Summit”

138/ The Stockholm Conference (1972) was the first United Nations Conference to put the environment at the heart of the debates and which discussed the water issue. The conference also marked the establishment of the United Nations Environment Programme (UNEP)

139/ For more details on this matter, refer to Agenda 21's web site: <http://www.un.org/french/ga/special/sids/agenda21/>

The **World Water Council**¹⁴⁰ (WWC) was created in 1996 at the initiative of international organizations and water specialists. Its mission is to find solutions to water-related problems worldwide. Steered by the World Commission on Water, the WWC is responsible for organizing World Water Forums (WWF) every three years. These forums are an opportunity for all water stakeholders to meet and debate global water and sanitation policies.

The **1st World Water Forum** (Marrakech, 1997) adopted the “World Water Vision” project. Its purpose was to prepare a long-term vision of water, life and the environment through a series of meetings and conferences. The document was prepared for presentation to the second World Water Forum in The Hague in 2000.

The **2nd World Water Forum (The Hague, 17 to 22 March 2000)** was an opportunity for the international community to discuss in more depth the question of the economic and social value of water¹⁴¹. The idea of solving the world water crisis by private sector investment and cost pricing water (the principle of “full cost recovery”¹⁴² was highlighted during the conference) were at the heart of debates, which gave rise to a number of new global strategies. The World Commission on Water highlighted problems of investments as well as problems of management and planning from States. Given the levels of investment required, unsustainable behaviour and water wastage, the Commission advocated the privatization of water and sanitation services. Even if this forum emphasized that attention should be given to the poorest sectors, **water was not considered as a right but rather as a need**.

In 2000, the General Assembly of the United Nations recognized that *“in the full realization of the right to development, (...) 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”*¹⁴³.

In September 2000, the Heads of State of 189 nations adopted the **Millennium Declaration** marking a clear political commitment and objective on the part of the international community to reduce poverty.

Goal 7, target 10 commits the signatories *“to halve the proportion of people without sustainable access to safe drinking water by 2015”*.

The **European Ministerial Conference**¹⁴⁴ (Bonn, 2001) extended Millennium Development Goal No. 7 by proposing to halve the proportion of people without access to sanitation by 2015. This Conference considered that the Second Earth Summit to be held in Johannesburg would be an occasion to officially reinstate the question of access to basic sanitation in the MDG.

The **Second Earth Summit** (Johannesburg, 28th August to 3rd September 2002)¹⁴⁵, “Rio + 10”, was an occasion to disseminate Public Private Partnerships rather than reflect upon the adoption of concrete action plans to reach the targets set in the Millennium Goals concerning water and sanitation. Sanitation was added to the MDG No. 7 on safe drinking water: *“By 2015, we agree to reduce by half the proportion*

140/ For more details, refer to the World Water Council's website: <http://www.worldwatercouncil.org/>

141/ The report entitled “Making Water everybody's Business: Practice and Policy of Water Harvesting” prepared at The Hague Forum indicates a willingness to involve the private sector in water management

142/ The principle of “Full Cost Recovery” means that all the investment costs are covered by users.

143/ A/ RES/ 54/175 (15/2/2000)

144/ The Ministerial Conference in Bonn on freshwater (3rd to 7th December 2001) was organised in preparation for the second Earth Summit (Rio+10) which took place in Johannesburg (2002)

145/ See the Johannesburg Declaration

of people who do not have access to safe drinking water or have no means to obtain it (as stated in the main points in the Millennium Declaration) and the proportion of people who do not have access to basic sanitation services.”

In November 2002, the CESCR adopted **General Comment 15**¹⁴⁶ on the Human Right to Water interpreting articles 11 and 12 of the ICESCR, which defines the standard-setting content of this right, as well as the obligations of States Parties. With its adoption, General Comment 15 has become a powerful tool for inducing debate on the possibility of recognising the right to Water as a human right.

During the **3rd World Water Forum** (Kyoto, 2003), the Report of the World Panel on Financing Water Infrastructure, the so called “Camdessus Report”, proposing a financing plan for attaining Goal 7, Target 10 on water and sanitation, was first presented. The report stated that Public Private Partnerships “would make water more attractive in the eyes of investors; they require an adapted regulation and legal framework, transparent contracting procedures, reliable cost recovery systems and public acceptance”. This report also confirms that “**access to water is a right and a basic necessity**” and that “*water and sanitation must be accessible to all at an affordable price*”. However, the Kyoto policy statement contains no mention of the right to Water.

In 2003, “**UN-Water**” was set up to monitor progress during the period following UNCED 2 and to establish **World Water Days (WWD)**, which would be celebrated on 22 March each year as of 2005. They would provide the occasion for multiple activities on a global scale to focus attention on water and sanitation issues. UNESCO then proclaimed 2003 as **International Year of Freshwater**¹⁴⁷. The role of UN-Water was to coordinate all activities of the 23 UN agencies working on water issues, though in fact it had no real power.

During its 58th General Assembly¹⁴⁸, the UN proclaimed **2005/2015 as the International Decade for Action, “Water for Life”** as well as the 22nd of March 2005, as **World Water Day**. Coordinated by UN-Water, its main purpose was to support and coordinate action towards meeting the MDGs on water and sanitation. The first World Water Day on 22 March 2005 officially launched the Decade for Action. These events concern all civil society, international organisations and governments, who were invited to take action to promote and attain the MDGs.

The purpose of the United Nations Commission on Sustainable Development (UNCSD, 11 to 22 April 2005, New York) was to draw up a policy document proposing a series of concrete measures to tackle the lack of progress in reaching the MDGs concerning access to water and sanitation. Certain misunderstandings of the concept of the right to water by stakeholders resulted in its being excluded from the final text: sometimes wrongly assimilated with exemption from payment for water by some developing countries, who considered that it would represent too heavy a financial burden at the time of its implementation; some developed countries, the USA and certain members of G77 found the concept to be too restrictive. Civil society and private enterprise, however, called for recognition of the right to water.

146/ Adoption of Comment No.15 during the 29th session of the United Nations General Assembly

147/ <http://www.wateryear2003.org/fr>

148/ Resolution A/RES/58/217

149/ During the Mexico Forum, 3 official sessions were held on the right to water: FT3.35 “Securing the right to water, from the local to the global, civil society perspectives”; FT 3.36 “The right to water: what does it mean and how to implement it”, FT 3.47 “Human right to water”

The 4th World Water Forum (Mexico, March 2006) was the first world forum to fully debate the issue of the right to Water¹⁴⁹. These debates made it possible to clarify the definition of the right to Water and clarify some misunderstandings. The Mexico WWF made considerable headway on the right to Water by raising the awareness to what the concept really involves. Discussions were particularly focused thanks to a committed civil society. The Ministerial Declaration still made no mention of the right to water, even if 4 States (Cuba, Bolivia, Venezuela and Uruguay). These four same States, besides approving the final Ministerial Declaration with a few reservations, adopted two annexed declarations, which clearly mention that the right to water is a basic human right.

The Mediterranean Bar Association of Lawyers held a conference on “The Right to Water and Water Law” (23 and 24 March 2007, Marrakech) which was gathered together lawyers, engineers, architects and politicians from Morocco, Tunisia, Algeria, Italy, Spain and France. They proposed the drawing up of a Mediterranean Convention that would assert the right to water for all. In addition to the Convention, there was a proposal to create a website dedicated to the right to water and water law and it was decided that each member of the Mediterranean Bar would organise a conference on the right to water in 2008.

On 20 December 2006, the United Nations General Assembly declared 2008 the **International Year of Sanitation (IYS)**. The Year whose official launch has been set for **November 21st 2007** aims to create a favourable context for political leadership and government commitments to allocate greater resources to sanitation for the poor, stressing the positive impact on health. It was the first and a unique opportunity to place sanitation in the spotlight.

In December 2007, at the 1st Asia Pacific Water Summit, 37 countries from the region endorsed the “**Message from Beppu**”¹⁵⁰, which recognises “**the people’s right to safe drinking water and basic sanitation as a basic human right and a fundamental aspect of human security**”.



150/ The Message from Beppu was unanimously endorsed by the participants of the 1st Asia-Pacific Water Summit, which was held in Japan (3-4th December 2007) and attended by ten Heads of State and Government, 31 Ministers, and representatives from over 36 Asia-Pacific countries and regions

ANNEXE 2

ORIGIN OF THE GENERAL COMMENT 15

UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)

A resolution from the UN General Assembly, not binding as such.

International Covenant on Civil and Political Rights (1966)

A treaty binding for 80 % of States - those who signed and ratified it.

International Covenant on Economic, Social and Cultural Rights (1966)

A treaty binding for about 80 % of States - those who signed and ratified it.

International Convention on the Rights of the Child (1989)

A treaty binding for almost all States - those who signed and ratified it.

Convention on the elimination of all forms of discrimination against women (1979)

A treaty binding for 185 States.

Article 11 - 1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. (...)

Article 12 -

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- The improvement of all aspects of environmental and industrial hygiene;
- The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

General Comment 15 (2002)

Not binding, but helps interpreting articles 11 and 12 of the Covenant on ESC rights.

ANNEXE 3

SUMMARY OF THE KEY INTERNATIONAL HUMAN RIGHTS INSTRUMENTS OF LAW THAT ARE RELEVANT TO THE RIGHT TO WATER

| International Human Rights Instruments | Wording | Nature (Legally binding or not) | Responsible Human Rights Treaty Bodies |
|--|--|---|---|
| Implicit references – International Bill of Human Rights | | | |
| Universal Declaration of Human Rights – UDHR (1948) | Art 1. Everyone has the right to life, liberty and security of person. Art 25. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. | Legally non-binding on signatory States (but is arguably customary law) | ECOSOC (Economic and Social Council) – (OHCHR) |
| International Covenant on Civil and Political Rights – ICCPR (1966) | Art 6. 1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. | Legally binding | Human Rights Committee |
| International Covenant on Cultural, Economic, and Social Rights – ICESCR (1966) | Art 11. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to continuous improvement of living conditions. [...] Art 12. 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; b) The improvement of all aspects of environmental and industrial hygiene; c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases. | Legally binding | CESCR (Committee on Economic, Social and Cultural Rights) |

| Explicit references – International and regional HR treaties | | | |
|---|--|----------------------------|---|
| The Convention on the Rights of the Child – CRC (1989) | Art 24 - States Parties recognize the right of children to the enjoyment of the highest standard of health possible and to have access to medical services and rehabilitation services. They must strive to ensure that no child is deprived of his or her right of access to these services... (2) The States Parties shall pursue full implementation of this above right and, in particular, take appropriate measures to: (...) (c) To combat disease and malnutrition including within the framework of primary health care, through inter alia the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution [...] | Legally binding | Committee on the Rights of the Child - CRC |
| The Convention on the Elimination of All Forms of Discrimination against Women – CEDAW (1979) | Art 14 - "States Parties take all appropriate measures to eliminate discrimination against women in rural areas so as to ensure, respecting equality between men and women, their participation in rural development and its advantages and, in particular, it assures them the right: to benefit from adequate living conditions, in particular regarding housing, sanitation, the supply of water and electricity, transport and communications." | Legally binding | Committee on the Elimination of All Forms of Discrimination against Women – CEDAW |
| The African Charter on the Rights and Welfare of the Child (1990) | Art. 14: Health and Health Services 1. Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health. 2. States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures: (c) to ensure the provision of adequate nutrition and safe drinking water; | Legally binding (Regional) | African Committee of Experts on the Rights and Welfare of the Child |
| International Convention on the Rights of Persons with Disabilities (2006) | Art 28 - 2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures: a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs (...) | Legally binding | Committee on the Rights of Persons with Disabilities |
| Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (1995) | Art 15 – Right to food security a) provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food; b) establish adequate systems of supply and storage to ensure food security. | Legally binding (Regional) | African Commission on Human's and People Rights |

| | | | |
|---|--|---------------------|--|
| UN Standard Minimum Rules for the Treatment of Prisoners (1955) | Personal hygiene Art 15 - Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness. Food Art. 20 - (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. | Not legally binding | |
| UN Rules for the Protection of Juveniles Deprived of their Liberty (1990) | Art 34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner. Art 37. Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time. | Not legally binding | |
| UN Principles for Older Persons (1991) | Art 1. Older Persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help. | Not legally binding | |
| UN Guiding Principles on Internal Displacement (1998) | Art 18.1. All internally displaced persons have the right to an adequate standard of living. Art 18. 2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: (a) Essential food and potable water; | Not legally binding | |
| The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food (2004) | GUIDELINE 8C- Water 8.11 Bearing in mind that access to water in sufficient quantity and quality for all is fundamental for life and health, States should strive to improve access to, and promote sustainable use of, water resources and their allocation among users giving due regard to efficiency and the satisfaction of basic human needs in an equitable manner and that balances the requirement of preserving or restoring the functioning of ecosystems with domestic, industrial and agricultural needs, including safeguarding drinking-water quality. | Not legally binding | |

ANNEXE 4

KEY EXTRACTS FROM THE GENEVA CONVENTIONS AND THE TWO ADDITIONAL PROTOCOLS THAT ARE RELEVANT FOR WATER PROTECTION

The Geneva Conventions and their Additional Protocols. What protection for water?

Geneva Convention III – Treatment of Prisoners of War

| | |
|----------------|--|
| Art 20. | The evacuation of prisoners of war shall always be effected humanely and in conditions similar to those for the forces of the Detaining Power in their changes of station. The Detaining Power shall supply prisoners of war who are being evacuated with sufficient food and potable water , and with the necessary clothing and medical attention. (...) |
| Art 26. | (...) Sufficient drinking water shall be supplied to prisoners of war. The use of tobacco shall be permitted. (...) |
| Art 29. | (...) Also, apart from the baths and showers with which the camps shall be furnished prisoners of war shall be provided with sufficient water and soap for their personal toilet and for washing their personal laundry ; the necessary installations, facilities and time shall be granted them for that purpose. |
| Art 46. | (...) The Detaining Power shall supply prisoners of war during transfer with sufficient food and drinking water to keep them in good health , likewise with the necessary clothing, shelter and medical attention. The Detaining Power shall take adequate precautions especially in case of transport by sea or by air, to ensure their safety during transfer, and shall draw up a complete list of all transferred prisoners before their departure. |

Geneva Convention IV – Protection of Civilian Persons in Times of War

| | |
|------------------|--|
| Art. 85. | (...) Internees shall have for their use, day and night, sanitary conveniences which conform to the rules of hygiene , and are constantly maintained in a state of cleanliness. They shall be provided with sufficient water and soap for their daily personal toilet and for washing their personal laundry ; installations and facilities necessary for this purpose shall be granted to them. Showers or baths shall also be available. The necessary time shall be set aside for washing and for cleaning. (...) |
| Art. 89. | (...) Sufficient drinking water shall be supplied to internees. The use of tobacco shall be permitted. |
| Art. 127. | (...) The Detaining Power shall supply internees during transfer with drinking water and food sufficient in quantity, quality and variety to maintain them in good health , and also with the necessary clothing, adequate shelter and the necessary medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during transfer, and shall establish before their departure a complete list of all internees transferred. (...) |
| Art. 127. | (...) The Detaining Power shall supply internees during transfer with drinking water and food sufficient in quantity, quality and variety to maintain them in good health, and also with the necessary clothing, adequate shelter and the necessary medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during transfer, and shall establish before their departure a complete list of all internees transferred. (...) |

Additional Protocol I – Protection of Victims of International Armed Conflicts

| | |
|----------------|---|
| Art 54. | <p>1. Starvation of civilians as a method of warfare is prohibited.</p> <p>2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.</p> <p>3. The prohibitions in paragraph 2 shall not apply to such of the objects covered by it as are used by an adverse Party:</p> <p>(a) as sustenance solely for the members of its armed forces; or</p> <p>(b) if not as sustenance, then in direct support of military action, provided, however, that in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement.</p> <p>4. These objects shall not be made the object of reprisals.</p> <p>5. In recognition of the vital requirements of any Party to the conflict in the defence of its national territory against invasion, derogation from the prohibitions contained in paragraph 2 may be made by a Party to the conflict within such territory under its own control where required by imperative military necessity.</p> |
| Art 55. | 1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population. (...) |

Additional Protocol II – Protection of Victims of Non-International Armed Conflict

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|----------------|---|
| Art 5. | <p>1. In addition to the provisions of Article 4 the following provisions shall be respected as a minimum with regard to persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained;</p> <p>(a) the wounded and the sick shall be treated in accordance with Article 7;</p> <p>(b) the persons referred to in this paragraph shall, to the same extent as the local civilian population, be provided with food and drinking water and be afforded safeguards as regards health and hygiene and protection against the rigours of the climate and the dangers of the armed conflict;</p> <p>(c) they shall be allowed to receive individual or collective relief;</p> <p>(d) they shall be allowed to practise their religion and, if requested and appropriate, to receive spiritual assistance from persons, such as chaplains, performing religious functions;</p> <p>(e) they shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population.</p> <p>(...)</p> |
| Art 14. | Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless for that purpose, objects indispensable to the survival of the civilian population such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works . |

ANNEXE 5

SOME COMMON MISUNDERSTANDINGS ABOUT THE RIGHT TO WATER AND SANITATION

| | |
|---|---|
| Does the right to water signify individual connection for each person? | The right to water does not mean that each household or each habitation must be individually connected. Moreover, there is a difference between the right to water in urban areas and in rural settings. In rural areas, it means that each person has access to drinking water in the vicinity of his or her dwelling, which does not necessarily mean that each rural dwelling must be connected to a distribution network. |
| Does the right to water mean water for free? | The right to water does not mean exemption from payment for water. On the contrary, as a consequence of water having been defined as an economic good, it is clear that water now has an economic value (the resource does not have a price, but services do). However, governments are obligated to make water affordable and no one should be deprived of the minimum essential levels of water (so people can not be deprived of this for reasons of money - state may have option to subsidise or provide). |
| Does the right to water mean public management of water? | The right to water does not mean a return to public management of water and sanitation services. It means that public authorities must exercise a regulatory role and effectively monitor access to water and sanitation services. Moreover, this does not mean that free trade in the water sector will be tampered with; it simply means that the obligations of public water services will require clear definition and have to be respected in order to guarantee the right to water for all. |
| Does the right to water call into question State sovereignty? | The right to water, as defined by General Comment 15, does not mean that States lose any of their sovereign rights over their water resources. In fact, in accordance with the principles of international law set out in Principle 21 of the Stockholm Declaration ¹⁵¹ (1972) "States have the sovereign right to utilise their own resources pursuant to their own environmental and development policies." Ultimately, the right to water means that, subject to its international engagements, each State may authorize or not export of drinking water and consent or not to supplying water to neighbouring populations. |

151/ Declaration of the United Nations Conference on the Human Environment, Stockholm, Sweden 5-16 June 1972

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- Proclamation of the International Drinking Water and Sanitation Decade, G.A. Res. 35/18, U.N. Doc.A/RES/35/18 (Nov. 10, 1980)
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Key Websites

- WaterAid (website dedicated to the right to water) - www.worldwatercouncil.org
- World Water Council - www.righttowater.org.uk
- Office of the High Commissioner for Human Rights - www.ohchr.org
- Centre on Housing Rights and Evictions - www.cohre.org

On behalf of the Global WASH Cluster, **ACF-France** has led a project to explore the human right to water and sanitation in emergencies. Through collaborative efforts with GWC and key actors on the issue of the right to water, the project has developed a series of inter-related tools intended to improve the knowledge and effective usage of the concept of HRTW by global, regional and national expressions of the WASH Cluster, and by the major institutional, it has been coordinated/written by Ms Julie Aubriot (ACF) and non-governmental stakeholders, in all humanitarian responses to emergencies.

This handbook can be used in complement to the self-training CD-Rom « **The Human Right to Water and Sanitation in Emergencies** ». Within this Cd-Rom you will find:

- elements on the content of the RTWS in times of war by exploring how the HRTW is protected in International Humanitarian Laws;
- elements on the content of the RTWS in other emergencies by exploring Human Right Law and operational guidelines such as the Sphere Standards
- some elements on how to use RTWS in advocacy activities
- finally, the tutor CD contains some key resources to understand the RTWS

The project has been led by ACF-France on behalf of the Global Wash Cluster, with the support of the following Steering Group agencies: Oxfam, Tearfund, Unicef

