

Key Principles for an International Treaty on the Right to Water

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This document has been prepared and released for wide consultation by the *'Friends of the Right to Water,'* a group of national and international civil society organisations committed to the following objectives:¹

1. Support local and national struggles defending the right to water, based on existing right to water in international law, as recognised in General Comment No. 15 on the Right to Water, including the following objectives:

- Document cases of violations of the right to water
- Document cases of victories defending the right to water
- Communicate with local and national groups on possibilities of legal and other assistance to respond to violations
- Assist local and national groups in efforts to advocate for national legislation on water, based on the General Comment
- Provide information to local and national groups about the right to water and the possibilities to claim their rights

2. Promote stronger recognition of the right to water internationally, including through an international treaty on the right to water. This will involve the following process:

- Advocate for States to formally recognise and implement the right to water, as currently contained in international law
- Carry out a consultation process on a potential treaty on the right to water in the maximum possible number of countries, involving all groups: grassroots movements, social movement, NGOs, unions, and others

¹ The organisations that are members of the 'Friends of the Right to Water' group include: Both Ends, Bread for the World (Germany), Centre on Housing Rights and Evictions, Corporate Accountability International, Council of Canadians, FoodFirst Information and Action Network, Grassroots Africa, IBON, Public Citizen, Swiss Coalition of Development Organisations, Tarun Bharat Sangh and others. The draft principles contained in this document constitute a work in progress that will evolve based on continuous consultations. Therefore, until a final proposed treaty is presented, its current contents should not be understood to represent the official position of the overall group or its individual members.

- Start lobby work towards governments to gain their support for the idea of an international treaty and to consult on the formal process

What does this document contain?

The following are key principles that are put forward for discussion and will be finalised after extensive civil society consultation. Once agreed, the principles will be re-drafted in legal text for an International Treaty on the Right to Water. The key principles can also be used in national laws and policies. **All the text is up for discussion.**

Explanation of Legal Terms

A treaty (also known as a convention or a covenant) is an agreement made by States. Once a State ratifies a treaty, it is legally bound by it and has to reform its national laws to comply. Many States have systems in which international treaties apply directly in their national law, and can be addressed in their national courts.

A General Comment is an authoritative interpretation of a human rights treaty by an independent committee of experts that has a mandate to provide States with these interpretations. The UN Committee on Economic, Social and Cultural Rights is the treaty body for the International Covenant on Economic, Social and Cultural Rights (ICESCR), a human rights treaty ratified by 151 States. In 2002, the Committee released a General Comment on the Right to Water, which indicated that the right to water was contained in Articles 11 (right to an adequate standard of living) and 12 (right to health) of the ICESCR.²

Key Concerns and Goals

Thousands of children a day die due to a lack of adequate water and sanitation. Many women and girls, especially in Africa, face the heavy burdens of collecting water, jeopardizing their health and ability to gain an education. Competition for the world's dwindling freshwater sources is intensifying and many States have allowed water to be exploited unsustainably and abdicated their obligations to respect, protect and fulfil the right to water for all.

The twin threats of water scarcity and inequality in access and control of water constitute one of the most urgent environmental and human rights crises of our time. Inadequate government policies lead in many countries to a loss of access to adequate water and sanitation, failure to address the needs of vulnerable and marginalised groups, pollution and destruction of water resources, discrimination in access to water, privatisation or

² Available at: <http://www.ohchr.org/english/bodies/cescr/comments.htm>.

commercialization of water and sanitation services that effectively destroy access to adequate water and sanitation, and thus violate the right to water. These policies are often supported, financed and/or encouraged by the policies and practices of international financial institutions, notably the International Monetary Fund, the World Bank, regional development banks and bilateral aid donors, working in conjunction with transnational water companies. These institutions give often policy advice or impose conditionalities to aid that negatively influence the capacity of the State to implement its human rights obligations. Current international trade (including services) and investment agreements that encourage commodification and free trade in water, corporate takeover of water resources and the further privatization and de-regulation of water services are contributing to this process of limiting State capacities to comply with their obligations under the right to water.

A United Nations treaty on the right to water, following on the right to water as set out in General Comment 15, would serve as one of the tools that communities around the world struggling for adequate water can use and would be based on the following understanding:

- Water is necessary for all life on earth
- Water is a fundamental human right and requires States to be willing and able to implement their respective obligations to respect, protect and fulfil the right to adequate water and sanitation. As part of their obligations to fulfil the right to water, States have obligations to provide adequate, safe, accessible and affordable water and sanitation for all people within their jurisdiction who currently do not have such access, with preferential treatment and positive action for the poor and marginalised. States must ensure that water allocated in a manner that prioritises people's basic needs and livelihoods
- Water is a public trust and not a commodity and belongs to all humanity and the earth. As such, water should remain in the public domain.
- States have the responsibility to ensure the conservation of freshwater ecosystems, to prevent over-consumption of water and degradation of water systems and to protect of watersheds.
- Sufficient clean water is necessary to protect ecosystems and other species. Healthy ecosystems will ensure the human right to water for future generations
- States have obligations to guarantee the human rights principles of participation and transparency, including that water services must be under democratic public control, in which members of the public fully participate in decisions on water management and the allocation of water resources.
- Water resources contained completely within a State's boundaries are considered part of the national patrimony and should never be subject to foreign exploitation.

The principles of the international treaty will reflect and unite diverse faith-based, cultural and ethnic communities around the world.

The treaty will be applied together with international human rights and environmental treaties. Human rights law is, and must be, paramount when there are conflicts between human rights law and international trade (including services) and investment treaties.

The Preamble to the draft treaty will reflect these key concerns and goals.

Key Principles for the Content of the Treaty

Most of the principles in this document are drawn from the General Comment No. 15 on the Right to Water in paraphrased direct language. The specific paragraph of the General Comment is cited. Items that are NOT directly contained in the General Comment are in italics.

1. Objective

The objective of the treaty is to create a legally binding instrument to:

- *re-affirm the human right to water*
- *strengthen and ensure the implementation of the human right to water*
- *make the right to water fully enforceable under national and international law*
- *ensure management of water as a public trust³ and, where water resources lie completely within the borders of a particular State, as part of that State's national patrimony.*
- *ensure sustainable consumption of water and that sufficient water is left for non-human species, to the greatest extent possible*
- *help prevent conflicts over water resources at the national level*

2. Components of the Right to Water

Each person has the right to water for personal and domestic uses that is:

Sufficient: An adequate quantity must be available for personal and domestic uses.⁴ The first priority in water allocation should be for essential personal and domestic uses.⁵

Safe: Water must be safe for personal and domestic uses.⁶

Physically accessible: Water must be within safe physical reach, in or near the house, school, *workplace or health facility*. Water services must be culturally appropriate and sensitive to gender requirements.⁷

Affordable: Water must be affordable, therefore not reducing a persons' capacity to buy other essential goods.⁸ *Essential amounts of water must be provided free for those without capacity to pay for it.*

Each person has the right to water necessary for securing their basic livelihood. Marginalised and subsistence farmers as well as small-scale fisherfolk, indigenous peoples and other vulnerable

³ It is necessary to investigate the legal meaning of public trust under various legal systems. Alternative terms might include 'heritage.'

⁴ General Comment No. 15, para. 12.a.

⁵ General Comment No. 15, para. 6.

⁶ General Comment No. 15, para. 12.b.

⁷ General Comment No. 15, para. 12.c.i.

⁸ General Comment No. 15, para. 12.c.ii.

social sectors should be given significant priority in terms of access to water resources and appropriate water technologies.⁹ Access to water for reasonable amounts of irrigation by subsistence and marginalised farmers is part of the right to adequate food. Such access should be guaranteed in a way that does not lead to violations of the right to water and sanitation for personal and domestic uses of water.

*Each person has the right to adequate sanitation. The State must ensure that each person has access to a safe, physically accessible and affordable sanitation facility.*¹⁰

The right to water must be realised in a sustainable way to ensure that the right can be realised for present and future generations.¹¹

3. Nature of State Obligations

In the implementation of the obligations in this treaty, States shall take all the necessary steps to ensure that everyone has access to water as soon as possible. State shall take concrete, targeted and deliberate steps to achieve these rights to the maximum available resources in an expeditious and effective manner.¹²

Within a year after ratification of the treaty, States shall:

- put in place a plan of action, with targets, adequate policies, indicators and time-frames, to achieve the full realisation of the right to water.¹³
- ensure that all actions to implement the Treaty ensure non-discrimination, as contained in the various human rights treaties including the International Covenant on Economic, Social and Cultural Rights.¹⁴
- *recognise the right to water in the Constitution or in a relevant national law and establish effective administrative and judicial procedures so that individuals may make complaints about the actions of any public bodies with regard to the rights and obligations contained in this treaty. States shall also ensure that the implementation of the rights and obligations in this treaty are monitored by an independent human rights commission or Ombudsman.*

States shall report on their progress in implementing the treaty to their citizens and make publicly available all information in this regard.

⁹ General Comment No. 15, para. 7.

¹⁰ General Comment No. 15, para. 11.

¹¹ General Comment No. 15, para. 11.

¹² General Comment No. 15, paras. 17 & 18.

¹³ General Comment No. 15, para. 17 states that these obligations are of immediate application.

¹⁴ General Comment No. 15, paras. 17 & 47. The obligation to develop a plan of action is an immediate obligation under the General Comment.

4. Vulnerable and Marginalised Groups

States shall ensure that they address the requirements of vulnerable and marginalised groups including women, children, indigenous peoples, deprived urban and rural areas, nomadic and traveller communities, refugees, asylum seekers, internally displaced persons and returnees, prisoner and detainees, and groups facing difficulties with physical access to water.¹⁵ *Within a year of ratification of the treaty, States shall put in place specific programmes to assist vulnerable and marginalised groups and to monitor the acts of States and other actors to ensure that they treat all groups in an equitable manner.*

States should protect the access of indigenous peoples to water resources on their ancestral lands, and provide resources for indigenous peoples to design, deliver and control their access to water.¹⁶

5. Obligations to Respect

States shall refrain from interfering with people's access to water.¹⁷ States shall not interfere with any person's water supply when any person is unable to pay. In no circumstances may a person be deprived of the minimum essential amount of water.¹⁸ No household should be denied water on the grounds of their housing or land status.¹⁹

6. Obligations to Protect

States shall safeguard the right of everyone to water from interference by private parties, including domestic and multinational corporations. States must prevent pollution and inequitable extraction of water.²⁰ States must regulate non-State actors that provide water services, such as small-scale vendors and community groups.²¹

In order to ensure accountability to the public, all decisions relating to the management of water and sanitation services shall be made by the relevant State authority. Such decisions include, but are not limited to:

- *levels of investment in infrastructure,*
- *priorities for extending access,*
- *restrictions of access to water,*
- *the level and form of subsidies for low-income groups,*

¹⁵ General Comment No. 15, para. 16.

¹⁶ General Comment No. 15, para. 16.d.

¹⁷ General Comment No. 15, para. 21.

¹⁸ General Comment No. 15, para. 56.

¹⁹ General Comment No. 15, para. 16.c.

²⁰ General Comment No. 15, para. 23.

²¹ General Comment No. 15, para. 24.

- *preferential treatment for vulnerable and marginalised groups,*
- *tariffs and connection costs charged for water and sanitation,*
- *any necessary remedies ordered by the relevant public body in response to complaints by members of the public.*

Any arrangements for private sector participation in water and sanitation services shall stipulate that these arrangements are subject to revision by the relevant public body. Such arrangements shall be governed solely by the State's law and be subject to the country's jurisdiction. Recourse to international investment tribunals shall be excluded. States shall ensure that the public fully participates in the design of any arrangements with private sector providers.

7. Obligations to Fulfil

States shall fulfil all aspects of the right to water, including the following:

- a). States shall guarantee that water is provided to everyone in a sufficient quantity and quality and that access must be affordable to all residents and citizens at all times; and is progressively provided *on a not-for profit basis.*
- b). State shall take all steps necessary to guarantee access to water for all, including equitable pricing policies and programmes to expand access to water and monitoring of programmes.²² *Water tariffs shall not be tied to a foreign currency.*
- c). States shall ensure that everyone has access to adequate sanitation, and progressively extend safe sanitation services.²³

Developing countries may permit small-scale vendors to provide water services on a profit-making basis. They are obliged to take concrete steps towards ensuring the right to water is provided on a not-for-profit basis for everyone.

Definition of 'not-for-profit: This provision precludes the provision of essential water services where profits are provided to private shareholders. This provision not intended to prevent situations in which a publicly owned water utility makes a profit which is then paid to a public shareholder such a municipal government. This provision does not preclude the provision of non-essential water services, such as bottled water, or riparian rights.

8. Environmental Aspects

States shall adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations, *and for non-human species, in accordance with the precautionary principles and polluter-pays principles.*²⁴

²² General Comment No. 15, paras. 25-27.

²³ General Comment No. 15, para. 29.

²⁴ General Comment No. 15, para. 28.

States shall ensure that the right to water is realised in a manner that does not unnecessarily deplete water resources required by future generations *and by non-human species*. Once essential human needs are met, States shall ensure that sufficient water is left for the use of non-human species.

States must put in place measures to prevent over-consumption of water. Such measures may include, for example, public education²⁵ and increasing charges for water after consumption of a reasonable amount.

Each individual, corporation and other organised group has a duty to avoid over-use of water.

(Input is specially requested on the specific environmental and IWRM-related obligations required to meet environmental goals).

9. International Obligations

States shall respect the right to water by refraining from cutting off access to water sources that satisfy vital human needs in other countries.²⁶ States shall protect the right to water by ensuring that their own citizens and companies do not violate the right to water of people in other countries.²⁷ *States shall provide a remedy in their own jurisdiction for complaints by affected people about the actions of their citizens or corporations.*

State must fulfil the right to water by providing sufficient and appropriately directed international financial and technical assistance. *States shall establish a multilateral fund with a specific mandate to assist the poorest, based on the principle of country ownership of the design of development programmes.*

10. International Organisations

States must ensure that their actions as members of international organisations, including the international financial, trade and investment agencies, comply with the right to water.²⁸ International organisations *are obliged to implement the right to water in all their actions.*²⁹ *In the case of conflict with other treaties, the obligations of this treaty shall prevail.*

11. Participation

²⁵ General Comment No. 15, para. 25. See also para. 28, which lists conservation as one way to ensure water for future generations.

²⁶ General Comment No. 15, para. 31-34. The treaty should specifically state that it does not address the issue of international watercourses, which is covered by other treaties (with the potential exception of not cutting over vital flows of water). It only addresses freshwater and not marine areas.

²⁷ General Comment No. 15, para. 17.

²⁸ General Comment No. 15, para. 35.

²⁹ General Comment No. 15, para. 60.

Each individual and community has the right to participate in decision-making processes that affect their right to water. *Communities have the right to a significant role in management of water and sanitation services that serve them, and the right to reasonable assistance from the State.*

Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties.³⁰

Note: Communities are defined as democratically-elected local government units or neighbourhood cooperatives or organisations.

12. Implementation

States shall ensure that domestic law is consistent with the treaty. States will take all necessary steps to ensure compliance by sub-national governments and non-State actors with the rights and duties in this treaty.

The treaty shall have a system for individual complaints to a treaty body.

The treaty body shall monitor State implementation of the treaty, and the States shall report on progress to this treaty body.

There shall also be conferences of the parties to cooperate on further implementation.

13. Relationships with other Instruments

This treaty may not be seen as taking away from human rights contained in other human rights treaties. This treaty and the Conventions on Biological Diversity, the Desertification Convention and the Framework Convention on Climate Change (and its Protocols) should be applied in a manner ensures that the objectives of each treaty can be met.

The obligations in this treaty take precedence over obligations in trade and investment agreements.

States shall protect and promote the goals of this treaty in all international instruments that could negatively affect the right to water, *and if necessary, shall seek to amend those instruments to accord with the principles and requirements of this treaty.*

States shall take steps to ensure that the principles and requirements of this treaty are reflected in the policies and practices of international organizations, in particular

³⁰ General Comment No. 15, para. 48.

international financial institutions, including the International Monetary Fund, the World Bank and the regional development banks.