



CITIZENS FOR

JUSTICE-(CFJ)

“A Rights Based Approach towards, Governance, Economic,
Environmental and Social Justice in Malawi”

14th May, 2013

TO:

The Executive Secretary
World Bank Inspection Panel
1818 H St NW, Mail Stop: MC10-1007
Washington D.C. 20433
USA

Submitted via email: ipanel@worldbank.org

Dear Sir/Madam

**Re: Submission to the Inspection Panel for the Malawi National Development
Water Project**

I write in regards to the above subject.

Citizens for Justice-(CFJ) on behalf of other Malawian organizations with the affected
and concerned residents hereby submit:

- (1) A request for to the Inspection Panel
- (2) List of Names of affected residents
- (3) Previous communication between the World Bank, the Water Board and CFJ
- (4) Notice from the Water Board advising the installation of prepaid water meters
- (5) The right to water, which extrapolates on the duties of state, non-sate actors and
lending institutions to respect, protect, and fulfill.

I hope that this very urgent matter meets your consideration and please do let me
know if I can be of any help.

I thank you in anticipation,

Sincerely,



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Reinford Mwangonde

CC: Steven Lintner,
World Bank's senior advisor on safeguards
Slintner@worldbank.org



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Copied to:

Steven Lintner,
World Bank's senior advisor on safeguards
Slintner@worldbank.org

Kundhavi Kadiresan
World Bank Country Director, Malawi
Kkadiresan@worldbank.org

Sandra Bloemenkamp
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Michael John Webster
World Bank Team Leader, Second National Water Development Project
mwebster@worldbank.org

Sandram Maweru
Principal Secretary, Ministry of Water Development and Irrigation
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Titus Mtegha
Chief Executive Officer, Northern Region Water Board
tmtegha@yahoo.com

Request for inspection of Malawi National Water Project P124486

Physical Address: Off Lilongwe-Kasungu Highway, Area 47, Sector 4, Plot #: 776, Lilongwe

Postal Address: Post Dot Net, Box 1303, Crossroads, Lilongwe, Malawi.

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Dear Inspection Panel Members:

We are writing in respect to the expected negative social impacts that will arise from the introduction of prepaid water meters under the Malawi National Water Project (P124486, the “Project”) funded by the World Bank. Citizen’s for Justice (“CFJ”) on behalf of other Malawian organizations submits this Request for Inspection with and on behalf of a number of concerned, potential and affected residents in areas where the Northern Region Water Board (NRWB) has and will install pre-paid Water Meters for the pilot introduction of this World Bank-supported project. While one directly affected resident has signed this request, eight others would prefer to be kept anonymous in fear of reprisal. Please see Appendix-A. In furtherance, other affected residents are willing to gladly participate in conversations with the Inspection Panel about harm they have already experienced and fear from this Project. We request that the Inspection Panel-(IP) launch an investigation into the World Bank’s violations of its own policies and procedures with regard to this Project.

Background

Our engagement with the Ministry, the World Bank and the NRW has left us with serious doubts in regards to the due diligence of the sub-project, specifically the introduction of prepaid water meters, which the concerned residents believe will have serious and negative consequences, especially for low-income and poor households. In areas where the meters have been installed, the affected residents are already lamenting of the negative consequences that have so far been experienced. Please see Appendix B being a testimony for one affected person. The World Bank has stated that the Ministry, and the NRW have conducted research, consulted residents and acted in accordance with the accepted procedures of the safeguards, but they have failed to produce evidence to support such claims. Meanwhile, our research, based on the experience in South Africa and the U.K., strongly indicate a negative impact from the introduction of prepaid water meters. We believe the World Bank’s failure to conduct due diligence in accordance with its policies will cause harm by denying access to water, increasing water borne diseases and will slow down the efforts by other donors on water and sanitation.

The World Bank project team has suggested that they think the potential issues could be resolved through an update of an older Poverty and Social Impact Assessment (PSIA). We see this as an inadequate response to serious concerns, and believe that due diligence requires an ex-ante approach. In furtherance, the PSIA will take time as pre-paid water meters have already been installed and people are

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already facing problems. With the time it takes to conduct a PSIA, the consideration to mitigate the negative impacts being faced by the affected residents now will be too late.

The prepaid water meters used in the sub-project will replace current credit meters with the claim that since no other policy is changed, then World Bank obligations are voided. However, the prepaid water meters are significantly different and inferior to the credit meter in that such meters traditionally cut off automatically when credits expire, whereas credit meters allow a user to obtain a credit through the meter. This difference is particularly important and impactful in poor communities. A regular credit meter would allow the essential service to continue for a period in credit mode, whereas a cash poor individual would have to suffer without water with a prepaid meter. Installing prepaid water meters shifts traditional obligations of water utilities to ensure accurate metering and billing, and related complaints procedures, to a technical fix where water users have an automated shut off mechanism. Such technology has been shown to have high failure rates, leading to an increase in unjustified water cut offs (for example, Orange Farm Township in South Africa). In essence, such a technology would have social impacts that ought to have been identified and measures to mitigate them suggested.

The residents are also complaining that **the pilot project has increased the water tariff** as in two ways (1) they are paying a daily meter cost of MK53.00, which is not towards water consumption, and they suspect that it's a meter cost, and (2) the residents who used to pay an average of about \$10 a month are now paying about \$15. In essence, this contravenes the water tariffs that have been set and accepted by the Government of Malawi. It's therefore our opinion that the World Bank is complicit in violating the economic and social rights of Malawians and hence the project is causing harm.

Human rights implications

We are also fear that fundamental rights are at risk here. In its statement to the Board regarding the Chad – Cameroon Petroleum and Pipeline Project (2002), the World Bank Inspection Panel stated that it “finds human rights implicitly embedded in various policies of the Bank” and to that extent human rights “is within the boundaries of the Panels’ jurisdiction.” Further to that, the World Bank also has an obligation to protect and fulfill the right to water under General Comment of “The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights). Please see appendix-I. There are a number issues here which are of

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serious concern to us:

1. Right to Participation and Free and Prior and Informed Consent

As mentioned above, there is no evidence that the project financiers and implementers have exercised due-diligence. The water board did not consult let alone seek resident's consent in piloting the project. Please see Appendix-C, which is just a notice from NRW that a pre-paid water meter will be installed. Residents were returning from work or business only to find a new pre-paid water meter installed at their house. Best practice has it that potentially affected communities should meaningfully participate in consultations and decisions related to such projects, and that full disclosure of any information on all aspects of the project including negative impacts be communicated in advance with adequate notice for consultations. This would allow residents to decide whether they want to be part of the pilot project or not considering that residents are discovering that the project has hidden costs, which are transferred to the consumer.

2. Right to Water

Most Malawians are still in dire poverty and income disparities between the rich and the people are ever increasing. The country is already struggling to meet millennium development goals for instance access to safe and clean water due to its poverty levels. This touches on the right to water, which contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the piloted project stands against the entitlements contained in the right to water, as it will deprive the equality of opportunity for people to enjoy the right to water

On 3 August 2010, the United National General Assembly adopted Resolution 64/292 on the human right to water and sanitation, in which it recognized “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights”. This action was followed by the United National Human Rights Council which adopted resolution 15/9 on 6 October 2010, which expressly tied the right to water and sanitation to specific human rights treaty frameworks including in particular the International Covenant on Economic, Social and Cultural Rights which Malawi ratified on 22nd December, 1993.

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3. Impact on Children

Children will be highly affected by the new water system which is being introduced as Malawi has high rates of child headed households and orphans who have no source of stable income and will have serious challenges adapting to the system. A number of street and public schools going children will suffer the impact as the new system may not support the water and sanitation structures found in most public schools which are tailored towards the current system in the piloted area and across the country. This is likely to spill into the quality of education that children will receive and their future could be affected. It was therefore imperative that a due-diligence be exercised to ascertain that mitigation measures are introduced as safety nets for vulnerable groups like children.

CFJ has pointed to a number of negative social impacts from the use of prepaid water meters, and to our surprise none of these have been caught in the screening process, which is obligatory for sub-projects under the Environmental and Social Management Framework (ESMF). Specifically, the following issues:

- 3.5: Disrupt social fabric
- 3.8: Increase the incidence of communicable diseases
- 3.11: Conflicts over natural resources
- 3.17: Creation of social conflict or inequity

We believe that these concerns should have led the project to either significantly redesign or abandon the installation of prepaid water meters. When poor users are unable to pay, they are suddenly without access to any water and have no recourse in order to obtain water for their and their family's basic needs. Research from South Africa has shown that this disrupts the social fabric as those without water seek water from those who have (often as a 'credit' and for a higher price, at times 'stealing' water and breaking the meters). This has led to increased social conflict, potential for crime and a strong sense of inequity. In the case of Malawi, letting the large consumers who do not pay (i.e. government agencies, military barracks) off the hook while the burden is placed on those least able to pay is unfair and targets the wrong person. It should come as no surprise that when families struggle for water the incidence of diseases go up. A very good case for this was the UK where prepaid water meters were outlawed following dysentery outbreaks amongst low-income families with prepaid water meters. We fear that the exact situation that happened in the UK and Durban, South Africa will happen in Malawi as a result of this World

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Bank Project. Surely this is not the ideal model for development seeking to reach the poor!

Good Faith Efforts

We have attempted to address our concern in good faith with World Bank project staff but have not received an adequate response. Please refer to letters of inquiry from CFJ of February 4, 2013-(Appendix-D) and February 25, 2013-(Appendix-E). Replies from the World Bank of February 19, 2013-(Appendix-F) and March 19, 2013-(Appendix-G) and Ministry of Water and Irrigation on March 18, 2013-(Appendix-H). Each of these letters is attached. CFJ is seriously concerned with the letter of March 19-(Appendix-G), which appears to suggest that social issues should be considered OUTSIDE the World Bank safeguards. It is surprising to hear from the Project's water team that social issues are not contained within OP 4.01. Our reading of OP 4.01 is that “EA considers natural and social aspects in an integrated way.” In a last attempt, we had a meeting with the World Bank Water team and the country office on Thursday the 9th of May at the World Bank offices in Lilongwe. The meeting outcomes were disappointing and the Water Team refused to provide CFJ and IPI with copies of the studies allegedly done by the Water Board and further affirmed the contents of their communication to CFJ. We are therefore left with no option than to seek an independent assessment and opinion on the project from the IP.

Policy Violations

We believe that the Project violates its own screening policies, the World Bank's safeguard credence of “Do No Harm”, as well as specific provisions of Operational Policy 4.01: Environmental Assessment and others.

OP 1.00 Poverty Reduction: This OP was violated because marginalized groups will face an increased “vulnerability to shocks” as a result of this Project. The Project will make the affected groups more vulnerable and insecure, thus violating the Bank's mandate of supporting poverty reduction through actions to increase opportunity, enhance empowerment, and strengthen security. The fact that residents are being pushed to swallow the costs of meter procurement and installation speaks volumes of how this system will affect their financial positions. Furthermore, the World Bank has evidence that similar water implementation schemes have been detrimental to low-income people and has decreased their quality of life. Such evidence should have been a benchmark for consideration in supporting such kind of project for a country like Malawi;

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OP 4.01 Environmental Assessment: This OP was violated because the World Bank is required to consider “natural and social aspects in an integrated way.” Through this Project, poor communities in our society will be negatively affected by this sub-project because of failure to conduct due diligence that ensures assessment and management of environmental impacts;

OP 4.07 Water Resources Management: This OP was violated because the Project does not support management and provision of potable water and water for productive activities in a manner that is economically viable, environmentally sustainable, and socially equitable. Furthermore, the World Bank advocates the adoption of pricing and incentive policies that achieve cost recovery, water conservation, and better allocation of water resources. Here, the metered-water allocation scheme threatens to create a more significant social disparity by placing greater restrictions on available clean and safe water. This inhibits the equal disbursement of water resources and provides an opportunity for exploitation of lower income citizens by people who can consistently afford the services offered by the meters;

OP 4.02 Environmental Action Plans: This OP was violated because neither the Malawian government nor the World Bank have released the EAP to affected groups.

OP 4.20, Gender and Development: This OP was violated because impacts on women are disproportionately felt due to the role women in gathering water in this region and the impacts were not accounted for or mitigated.

Conclusion

Currently the Prepaid Water Meters have been installed and efforts are in place to install the same meters in other areas without prior notice to residents and we therefore call on the Inspection Panel to immediately investigate and call on the Bank’s Board of Directors to halt the installation to pave way for due diligence to be carried out.

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We trust that the World Bank Inspection Panel, the World Bank project team, the Ministry and the Water Boards will continue the engagement with residents, other stakeholders and CFJ¹ in order to find best possible solutions.

Sincerely,

Reinford Mwangonde (Director, Citizens for Justice-(CFJ))

D.K Botha-affected and concerned resident

¹ Citizens for Justice-(CFJ) is a Malawian based organization and it employs a human rights based approach to ensure that development furthers the realization and principles of equity, participation, empowerment, non-discrimination, accountability, transparency, rule of law and environmental sustainability.

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LIST OF CONFIDENTIAL RESIDENTS ENDORSING THE LETTER TO THE IP

These are the residents who would rather remain anonymous

John Doe1

John Doe2

John Doe3

John Doe4

John Doe5

John Doe6

John Doe.....7

John Doe.....8

TESTIMONY OF AN AFFECTED RESIDENT

My name is Solister Dick Botha Jr, a resident of Mzuzu City, currently on a holiday from my aviation studies that am undergoing in South Africa. Recently I travelled out of town to attend to some businesses, but on my return back, I was dismayed to find out that the Northern Region Water Board had installed a new Prepaid Water Meter system by my house without my consent, a system that I had only heard rumors backed by a letter I had earlier received from them informing me that I was one of the successful people chosen for this so called pilot program. This in itself was disturbing because for starters no one had explained to me how it worked or who to consult for assistance regarding this system should I experience any problems with it before it was installed. I consulted a few of my neighbors if the Board had done the same with their houses and if at all they knew how it worked, but most of them showed ignorance about it and others conferred with me that a few weeks ago the Water Board was patrolling a car around the areas where the pilot program was being implemented informing the people of an upcoming meeting hosted by them to sensitize and educate the people about this new system. Some of my neighbors attended this so called meeting but expressed concerns that it was hard to apprehend. Then two days later whilst I was devising a plan to pay them a visit to better understand the system, I returned home only to find that the system had cut-off my water supply, so I simply collected the credit card they submitted to my house and rushed to the Board to top up on my water credit as well as seek clarification on how it works, but only to find the cashier balancing off the daily sales and admitted that she could not assist since she was about to knock off. Luckily I knew a few of her superiors who I sought help to assist me acquire the credit, otherwise I was going

to spend the night without water thus limiting me from cooking, washing and even using the bathroom. But in amidst of my assistance, they kept referring me from one person to another which was a bit odd as they seemed to have had little knowledge of the system. Finally I came across a lady who was part of the team that's implementing the system and she helped me accordingly. After I topped my credit, I started enquiring from her about how the system worked, but her explanation was quite complicated to grasp so much that to a lay man it would seem gibberish and would take a lot to apprehend but I later understood it.

I feel there were and still are a few loop holes in the way this implementation is being handled; to begin with the means that they took to inform the public about the meeting, they omitted a lot a of useful channels to inform the public such as the TV, Radio or News papers that could have at least reached out to people of all walks of life considering that not everyone pays attention to patrol cars but the radio or papers, and even if some people travelled or not, at least one of the media tools should have reached out to all criteria's of people because a large percentage of the public was and still is not aware that there was a meeting. Secondly, I feel it's expensive than the previous/outgoing system because in the lady's explanation, she pointed out that the meters have a starter pack of 6 cubic milliliters in which the system automatically sets aside 3 cubic milliliters to the reserve for when the credit runs out during off working hours, holidays or weekends. Then I would be left with the 3 cubic milliliters to use which is the value of MK480.00 that I depleted within two days. Meaning in a month I would need credit worth Mk7, 200.00 when I normally only get monthly water bills of an average of Mk4, 000.00 and sometimes even less with this postpaid system, meaning that the new system is more expensive than the previous/outgoing

system. The other problem I have is that, unlike the Northern Region Water Board, the prepaid system being run by the electricity supply of Malawi has a common point where we all access electricity airtime at anytime of the day regardless of a holiday, but the Board excused themselves that their system doesn't cut-off water after working hours, or weekends. My question is what if the prepaid meter cuts my water supply on a Friday during working hours and I am at work attending to meetings and committed to deadlines and can't find time to go and top up my credit card or don't have immediate cash to buy credit, because the new prepaid meter system has no whatsoever warning mechanism of an impending low credit but simply cuts when the credit has depleted and doesn't give me time to sort out my outstanding bills as the previous/outgoing system does. That means I would spend the weekend without access to water, which is very inconveniencing, and it would literally make me vulnerable, as it would bring a lot of implications including sanitary issues. So what more the poor and needy that the Board already has problems supplying water to? These people would resort to unreliable sources of water that they've been using before and this would enhance more outbreaks of water borne diseases that we experience in Malawi.

I am of a belief that am paying for this system, hence I would have required the board to consult and get my consent on whether I want the new metering system or maintain the old one because they claim the new system will better help them collect water revenues, but I have never skipped payment or never have they disconnected water at my house because of an outstanding bill, so it's irrelevant to have them impose this new system at my house as it inconveniences me in a number of ways.

I would have appreciated if the Board took more thought on this matter and at least carried out an assessment on how this new system affects us especially the poor people and maybe come up with other strategic alternatives of how they can better collect their revenue whilst providing a good and reliable service to their customers other than imposing unwarranted systems on us.

I strongly believe water is life and it must be treated as such!!!



NORTHERN REGION WATER BOARD

KAWILUWILU HOUSE

Tel.: (265) 1 310 617/254/255
Fax: (265) 1 310 082

Our Ref.:NRWB/CEO/.....
Your Ref.:

Private Bag 94
MZUZU
Malawi

15th February 2013

Dear Sir/Madam,

INSTALLATION OF PREPAID WATER METERS IN MZUZU

New Year Greetings from Northern Region Water Board!

We write to express our thanks to you for being a loyal customer of the Northern Region Water Board and the Board appreciates the support it gets from you our dear customer.

As part of service delivery improvements to you our dear customer, the Board is introducing prepaid water meters in its supply areas to allow you, our valued customer, to control the usage of water and do away with water bills.

For a start, the Board is implementing a pilot prepaid water meter project in some areas in Mzuzu. Once successful, the Board will gradually phase out postpaid meters and install prepaid meters in all its supply areas.

Congratulations! You have been selected to be part of 1,000 customers under the pilot project. Your house will be installed with a prepaid water meter and you will be required to buy water credit (units) in designated places in the City of Mzuzu in order to have access potable water.

All correspondence to be addressed to the Chief Executive Officer.

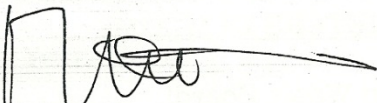
This letter therefore serves to introduce the project to you our dear customer.

The installation process is expected to commence in March 2013 but preliminary works are expected to commence earlier in readiness for the installation. The preliminary works which will start now involve improving water infrastructure in all areas under the pilot.

Our staff will soon visit you to brief you in detail about the project and also assess water infrastructure at your house.

The Board will work closely with you our dear customer on the project.

Yours faithfully

A handwritten signature in black ink, appearing to be 'T.C. Mtegha', written over a horizontal line.

T.C. Mtegha

CHIEF EXECUTIVE OFFICER



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4th February, 2013

TO:

Kundhavi Kadiresan
World Bank Country Director, Malawi
Kkadiresan@worldbank.org

Sandra Bloemenkamp
World Bank Country Manager, Malawi
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Michael John Webster
World Bank Team Leader, Second National Water Development Project
mwebster@worldbank.org

Dear Sir/Madams

Re: Request of disclosure for sub-project assessment under Malawi National Water Project P124486

I write in regard to the above subject. I have noted that the Northern Region Water Board is implementing a pre-paid water meter system, which is a sub-project for the above named project.

I consider the planned introduction of pre-paid water meters of concern for several reasons, in particular for low-income families living in the sub-project area. South Africa has been a front-runner in the use of pre-paid water meters and the introduction in that country has been cause of much conflict over water, despite providing 6KL of water free every month. My particular concern in the application in Malawi is that it will erode the procedural rights of water customers and have significant negative socio-economic impact as has been shown in South Africa.

I am familiar with the World Bank safeguard policies and reviewed the Environmental and Social Management Framework (ESMF) under the project to understand how the negative impacts might be mitigated under the project. I understand that the pre-paid water meter project is a sub-project and thus is not

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specifically assessed as part of the ESMF. However, the ESMF provides a screening process and strong rules to protect the access to drafts and final documents by interested parties such as myself.

I am therefore requesting the disclosure of the related sub-project screening documents and the plan for mitigation measures, perhaps an Environmental and Social Management Plan, that has been produced in compliance with the ESMF and World Bank safeguard guidelines.

If the sub-project assessment is still underway, I request that the project management engage with concerned citizens, CFJ included, to develop appropriate measures under the project.

I look forward to learn more about the project and look forward to future discussions.

Yours faithfully,

Reinford Mwangonde
Executive Director

Citizens For Justice (CFJ) is a Malawi-based NGO, which utilizes a rights-based approach towards Governance, Economic, Environmental and Social Justice in Malawi and the region.

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25th February, 2013

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Sandra Bloemenkamp
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Michael John Webster
World Bank Team Leader, Second
National Water Development Project
mwebster@worldbank.org

Copied to:

Sandram Maweru
Principal Secretary, Ministry of Water
Development and Irrigation

Titus Mtegha
Chief Executive Officer, Northern Region
Water Board

Dear Sirs/Madams

Re: Request of disclosure for sub-project assessment under Malawi National Water Project #: P124486

Thank you for your response dated February 19, 2013.

I write back, as your response confirmed my initial concerns when I learned of the project. There appears to be a complete lack of understanding of the impacts from the use of prepaid water meters that have not been taken into consideration under the sub-project. **Prepaid water meters are significantly different and inferior to typical credit meters** in that such meters cut off automatically when credits expire, whereas credit meters allow a user to obtain a credit through the meter. This difference is particularly important and impactful in poor communities where cash for credits on the meter can be scarce at times. A regular credit meter would allow the essential service to continue for a period in credit mode, whereas a cash poor individual would have to suffer without water with a prepaid meter. The consequences can be particularly dire in emergency situations – because of illness, fire or other reasons – when more water is required for short periods. In sum – the transition of meters from a credit meter to a prepaid meter negatively affects a household's enjoyment of water service vis a vis those with credit meters and it touches on the principle of administrative justice– and for this reason mitigation measures should be required. I request that the project provide strong mitigation measures or refrain from installation of this specific technology.

I therefore **urge the World Bank to ensure that an Environmental and Social Management Plan (ESMP) is procured for this specific sub-project before any replacement of meters take place.** You suggest that you have requested a Poverty and Social Impact Assessment (PSIA), which would be a useful tool if engaged prior to

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implementation, but I am aware that the prepaid meters have been procured and it appears the PSIA would be employed after the project installation. I am also aware that World Bank PSIA's appear to take significant time to undertake and publish. Such delay would mean that the pilot area residents would have to endure damage, which is unnecessary given the evidence from the use of prepaid water meters elsewhere.

Studies by the Centre for Social Concern-(CSC) have revealed that Mzuzu has a majority of lowest income earners in the country compared to the other Central, Southern and Eastern Regions of Malawi. While the proposed pilot would have significant negative impacts for any Malawian household, the sub-project would be particularly harmful to poor households in this specific region.

Let me outline specific concerns that I did not specify in my previous letter, as I was initially under the assumption that both the Ministry and the World Bank would ensure that social impact research had taken place prior to procuring the meters:

Installing prepaid water meters shifts traditional obligations of water utilities to ensure accurate metering and billing, and related complaints procedures, to a technical fix where water users have an automated shut off mechanism. Such technology has been shown to have high failure rates, leading to an increase in unjustified water cut offs (for example, Orange Farm Township in South Africa)

I understand that there is a wish from the utility's side to ensure higher levels of payments on water that is consumed and billed. However, employing prepaid water meters turns the blind eye towards affordability issues, and customer satisfaction that are significant contributors to low levels of payment. Prepaid water meters will do nothing to fix such deficiencies, but instead exacerbate hardships felt by low-income households who cannot afford a sufficient water supply and will now be automatically disconnected without any regards towards affordability, procedural protections or emergency conditions.

In a pre-paid system, access to water requires purchase of credits. Credits are often purchased in small amounts at inconvenient locations, with limited opening hours. This is a serious disadvantage compared to a credit meter. Where such meters have been used, users often report going without needed water because of the inconvenience of buying credits when needed. This cannot be compared to electricity as it has been argued by the Northern Region Water Board's CEO in my initial conversation with him--- electricity is not a fundamental right. On the same note, there have been cases in which electricity credits are not readily available in Malawi and what would happen in the case that they are no water credits at inconvenient locations?

Research has shown that pre-paid water meters mostly hit low-income families and hence girls and women would have to walk long distances to find water (often not safe sources) and this is a huge burden and it makes them more vulnerable. I want to believe that the pre-paid meters don't intend to push poor people further into the poverty trap.



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JUSTICE-(CFJ)

“A Rights Based Approach towards, Governance, Economic, Environmental and Social Justice in Malawi”

That clearly would not be the World Bank's position as it's a step backwards from building projects that increase the benefits for those in most need.

I wonder why it might be that citizens in Malawi might have fewer safeguards within their water supply than for example those living in the United Kingdom where prepaid water meters were outlawed after it was found that it undermined access for low-income families and led to an increased dysentery due to water meter cut-outs. Access to safe and clean water cannot be divorced from access to better sanitation and good hygiene, which mitigates on serious disease outbreaks that would impose a huge bill for the government to foot. The CEO of water in Durban, Neil McCloud, made a similar conclusion after a prepaid project in Madlebe in KwaZulu Natal significantly contributed to the cholera outbreak in the early 2000s (if not originated). Coincidentally, Neil McCloud appears to have a close relationship with the World Bank and perhaps he might be able to share some of his experience and the reasons why Durban Metro no longer engages prepaid meters.

Instead I believe that customer's access to safe and clean water, satisfaction and affordability (not willingness to pay) should be investigated to uncover the actual issues that causes low bill payments instead of seeking to use prepaid water meters as an easy fix to a complex problem. I have pointed out the many problems that have been found elsewhere, and I believe that such concerns would clearly trigger social screening under the World Bank's Environmental and Social Management Framework (ESMF). **That is why I strongly urge you to ensure, for the sake of the residents in the pilot area, an ESMP prior to the pilot project, and not a PSIA as an afterthought.**

In addition, I also wish to state that the Water Boards were established under the Statutory Corporations Act and their nature of establishment is grounded in protecting and supporting public interests in which Government takes an active role in subsidizing operation costs if any of its statutory corporations fail. ESCOM continues to receive government subsidies and yet it does not offer services that ensure enjoyment of a fundamental right like water, which leads to the realization of the right to health and life. Escom and all the water boards were established under the same Act.

It's therefore imperative that the Ministry of Water should conduct a proper assessment to ascertain that this project is not in violation of fundamental rights as enshrined in the Malawian constitution and relevant international instruments that Malawi has ratified at the regional, continental and international level to guarantee the right to water. It is disappointing to note that my review of such instruments points towards an infringement of such rights, which Malawi has committed to promote and fulfill. A due-diligence by the Ministry of Water and the Northern Region Water ought to be exercised as we are dealing with a matter of life and death here.

Lastly, I wish to point out that Citizens for Justice-(CFJ) has engaged communities and institutions in the area where the pilot project will be implemented and residents do not recollect any project related consultations in relation to this change. In essence, this

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JUSTICE-(CFJ)

“A Rights Based Approach towards, Governance, Economic, Environmental and Social Justice in Malawi”

project is being imposed on the residents and it's in violation of a free, prior and informed consent principle as promoted by the Office of the United Nations Commission for Human Rights.

I am happy to share the research on prepaid water meters on which I base much of my arguments; most of it is easily accessible on the Internet. And I wish to point out that CFJ is prepared to utilize all options available at a local, national and international level but also to fully engage with the World Bank's procedures. As an organization, we strongly believe that development initiatives should further the realization and principles of equity, participation, empowerment, non-discrimination, accountability, transparency and good governance. I'm of the view that the World Bank supports these ideal principles.

I look forward to work with you in a constructive manner in the endeavor to ensure improved water services for Malawians.

Yours faithfully,

Reinford Mwangonde
Executive Director, CFJ

The World Bank

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
INTERNATIONAL DEVELOPMENT ASSOCIATION

Mulanje House, City Center
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February 19, 2013

Mr. Reinford Mwangonde
Executive Director
Citizens for Justice-(CFJ)
Area 47, Plot # 776
Lilongwe

Dear Mr. Mwangonde:

***Re: Request for disclosure of Sub-Project Assessment under
National Water Development Project***

We would like to acknowledge receipt of your letter dated February 4, 2013 on the above-captioned subject. The World Bank is indeed supporting the Government of Malawi to implement the Second National Water Development Project (P096336), under which the Northern Region Water Board (NRWB) is procuring pre-paid water meters and plans to install them in a pilot project in a number of customers' water connections.

The Bank fully appreciates the concern of Citizens for Justice (CFJ) that the pre-paid meters may have an adverse impact on the poor. As the Bank's primary objective is to reduce poverty, we take such concerns very seriously. We have discussed your concerns with the Ministry of Water Development and Irrigation (at the level of the Permanent Secretary and key Directors in the Ministry) and NRW and respond to your concerns and requests as follows:

1. The pre-paid water meters that NRW will install will simply replace the current ordinary water meters. This technology is designed to improve bill collection (as customers are required to pay for the water prior to use) and does not impact the water tariff or the tariff structure (for example, if lower levels of consumption are priced at subsidized rates).
2. With any water supply project, there is always a tension between providing the water utility (NRWB in this case) sufficient revenue to be financially sustainable and providing affordable services, particularly to the poor. It is the view of NRW that pre-paid meters can actually assist in addressing these two objectives by enabling water consumers to use the quantity of water that they can afford. This may reduce the number of disconnections that are currently being done with non-paying customers, improve the revenues for NRW (which in turn can allow more connections to be made) and improve the efficiency of the company. NRW has assured the Bank that they will be more than happy to discuss these issues further with CFJ to clarify any remaining issue you may have in this regard.

3. This change in technology – from post-paid to pre-paid water meters – does not trigger any World Bank safeguard policy. None of our current environmental and social safeguard policies (see <http://go.worldbank.org/WTa1ODE7T0> for details) are triggered by this change hence the Environmental and Social Safeguard Screening Forms have not picked up this issue.
4. However, the Bank is concerned about the distributional impact of any project we support, and thus share CFJ's concern that this should be monitored and assessed. In addition, the investment by NRW is a pilot for the country, and if successful, may be replicated by other Water Boards.
5. To address the issue above, the Bank is in discussions with the Government of Malawi to conduct Poverty and Social Impact Analysis (PSIA) of the impacts of the project on the poor, including the introduction of pre-paid water meters. This will provide a more sound analytical basis for these issues and would provide a more informed platform for further discussion. We fully anticipate that consultations will take place as part of the proposed PSIA with stakeholders including CFJ.

The above presents our understanding of the issue. However, should there be need for further clarification, do not hesitate to contact us or the NRW.

Sincerely,



Sandra Bloemenkamp
Country Manager for Malawi
Africa Region

Cc: Mr. Sandram Maweru, Principal Secretary, Ministry of Water Development and Irrigation

Mr. Titus Mtegha, Chief Executive Officer, Northern Region Water Board

The World Bank

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March 19, 2013

Mr. Reinford Mwangonde
Citizens for Justice (CFJ)
P.O. Box 1303
Lilongwe

Dear Mr. Mwangonde:

**Request for disclosure of Sub-Project Assessment under
National Water Development Project**

In reference to your letter of February 25, 2013 (and the two exchanges prior to this letter) on the above-captioned subject, we have the following responses:

1. As stated in our letter of February 19, 2013, the Bank appreciates the concern CFJ has for the poor households in the NRW service area, and as an institution whose primary objective is to reduce poverty, we take your concerns seriously. The objective of the Malawi National Water Development Project is to improve the access to water services for Malawians, with particular attention to poor customers, so indeed, we would not support the pre-paid water meter sub-project, if it adversely impacted the poor.
2. We since referred your letter to the Ministry of Water Development and Irrigation and the Northern Region Water Board (NRWB). We have seen their response to you dated March 18, and we believe they have captured key issues clearly.
3. On our part, we have confirmed with the Africa Region's Regional Safeguards Advisor that as suggested in our earlier letter, this issue does not trigger any World Bank safeguards as they are currently defined. The Environmental Assessment process can identify social issues, including vulnerability, but economic and poverty alleviation issues need to be assessed and mitigated in other ways (analysis of ERR, PSIA, and subsequent measures to help the most vulnerable). Therefore, even if an Environmental and Social Management Plan were done, any recommended social measures would have to be based on a concrete assessment as to whether or not people are better off with the pre-paid meters -- an assessment that would be done outside the safeguards framework. Similarly, if the meters involved the acquisition of land leading to a loss of livelihood, there may be a safeguard issue under the "Involuntary Resettlement" policy, but the meters are attached to households.

4. While this is not an issue covered by the Bank's safeguard policies, we do take your point that more analysis may be needed to better understand the impact of the meters on the poor. Therefore, we are following up the updating of the 2007 Poverty and Social Impact Assessment to include this issue, and we believe this would be the most appropriate vehicle to address your concerns. As before, we would consult with a range of civil society organizations such as CFJ in this process. We would also be prepared to participate, or indeed help organize, a public seminar on this topic, if this would be useful.
5. We believe all written correspondence so far has provided adequate information to bring this matter to an amicable closure. But should you still need further clarification, we would agree with the Ministry's offer of a face to face meeting.

Once again, thank you for your concern for the poor, which we mutually share.

Sincerely,

A handwritten signature in dark ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Sandra Bloemenkamp
Country Manager for Malawi
Africa Region

Cc: Mr. Sandram Maweru, Principal Secretary, Ministry of Water Development and Irrigation

Mr. Titus Mtegha, Chief Executive Officer, Northern Region Water Board

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Private Bag 390
Lilongwe 3
MALAWI

**MINISTRY OF WATER DEVELOPMENT AND IRRIGATION
NATIONAL WATER DEVELOPMENT PROGRAMME**

Ref. No. IWD/Conf/9/111

18th March 2013.

The Executive Director
Citizens for Justice – (CFJ)
P.O. Box 1303
LILONGWE

Kasomvera
0999915194

Dear Sir,

**RE: REQUEST OF DISCLOSURE FOR SUB-PROJECT
ASSESSMENT UNDER MALAWI NATIONAL WATER PROJECT#:
P124486**

Further to your letter to the World Bank, dated 25th February 2013, seeking further clarification on the implementation of the pilot prepaid water meter project by Northern Region Water Board, the World Bank has requested the Ministry to respond.

It is important to note that before Northern Region Water Board embarked on this project, it carried out studies on the viability of the project. *leg 045*

Northern Region Water Board is in partnership with several Water Boards in the sub-Saharan Africa who are already implementing the prepaid metering concept on full scale. These include Water and Sewerage Company of the Kingdom of Lesotho, and Nkana Water and Sewerage Authority of Zambia. The Board used this partnership to learn more about implementation of prepaid water meters and to draw lessons from cases of these countries. In addition, the Board also studied cases of prepaid meters in Uganda, and South Africa (Johannesburg and Durban). This was done to learn more about the successes and failures of prepaid meters in these countries and draw lessons on how best the Board can

implement its project. We have to confirm here that the Board has a very clear picture of how to implement the prepaid water meters to ensure satisfactory and sustainable water supply to the consumers.

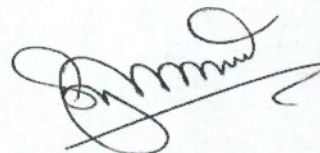
Here are some issues that help clarify your concerns:

- 1) For a start, any institution has a right to pilot any project; that is how technical institutions evolve. The lessons learnt are necessary in the strategic development of the Board. The Board's pilot project is **not targeting the poor communities** (traditional housing area and Communal Water Points) but **rather medium and low density areas which are in the affluent consumer categories** that would like to plan their expenditure on utilities. We believe that the prepaid system shall enable them plan their expenditure on water usage. The pilot areas are Chimaliro, Fairclough, Old and New Katoto including Upper and Lower Chasefu.
- 2) The Board **has written individual customers** in these pilot areas and so far, **no one has complained about this project**. On the contrary, the feedback has been positive with customers wondering why the Board has taken so long with this project. As such expectations from the consumers are high. In addition, the Board has further lined up other **meetings with customers** to fully explain the project and to **enhance ownership** of the project before meters are installed.
- 3) As explained in the previous response to you, this project is just a **replacement of a meter at the same site**. Therefore the project can not trigger environmental issues as it cannot be picked by our national screening form. The issue of ESMP, therefore, does not arise. This being the case that there is **no displacement of people**, the project can not trigger the Bank's operational Safeguard Policies either.
- 4) The tariff structure in the pilot area will not be different from the current tariff structure. Actually a prepaid customer is advantaged because he will not be disconnected and pay reconnection and management fees. Presently all customers that are 30 days in arrears are disconnected immediately and reconnection is only done upon settling the full bill and reconnection fee which on average is K1500.00

- 5) As one way of protecting customers, these meters have been customized such that **all holidays, weekends and off working hours have been programmed into the meter.** This means that **water supply will not stop during these times** until the following working day. The pay points are also well within reach of the targeted areas so the issue of inconveniencing the customers does not arise at all.
- 6) The system will use smart cards. Each meter will have its own card which the customer will use to purchase water credit; so the question of credit unavailability does not arise as this will be controlled by the Board itself here in Mzuzu.

We hope this helps to clarify the concerns that you have. You have also been contacted by the Programme Manager of the National Water Development Programme to seek your indulgence in a face-to-face meeting at your convenience. The Ministry and the Northern Region Water Board will be ready to meet with you should still need further clarifications on this matter.

Yours faithfully,



S.C.Y. Maweru

SECRETARY FOR WATER DEVELOPMENT AND IRRIGATION

Copies: Titus Mtegha, CE, Northern Region Water Board
Kundhavi Kadiresan, World Bank Country Director, Malawi
Sandra Bloemenkamp, World Bank Country Manager, Malawi
Michael Webster, World Bank TTL, Zimbabwe



**Economic and Social
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Agenda item 3

**SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE
INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL
RIGHTS**

General Comment No. 15 (2002)

**The right to water (arts. 11 and 12 of the International Covenant
on Economic, Social and Cultural Rights)**

I. INTRODUCTION

1. Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights. The Committee has been confronted continually with the widespread denial of the right to water in developing as well as developed countries. Over one billion persons lack access to a basic water supply, while several billion do not have access to adequate sanitation, which is the primary cause of water contamination and diseases linked to water.¹ The

¹ In 2000, the World Health Organization estimated that 1.1 billion persons did not have access to an improved water supply (80 per cent of them rural dwellers) able to provide at least 20 litres of safe water per person a day; 2.4 billion persons were estimated to be without sanitation. (See WHO, *The Global Water Supply and Sanitation Assessment 2000*, Geneva, 2000, p.1.) Further, 2.3 billion persons each year suffer from diseases linked to water: see United Nations, Commission on Sustainable Development, *Comprehensive Assessment of the Freshwater Resources of the World*, New York, 1997, p. 39.

continuing contamination, depletion and unequal distribution of water is exacerbating existing poverty. States parties have to adopt effective measures to realize, without discrimination, the right to water, as set out in this general comment.

The legal bases of the right to water

2. The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. 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 requirements.

3. Article 11, paragraph 1, of the Covenant specifies a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living “including adequate food, clothing and housing”. The use of the word “including” indicates that this catalogue of rights was not intended to be exhaustive. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival. Moreover, the Committee has previously recognized that water is a human right contained in article 11, paragraph 1, (see General Comment No. 6 (1995)).² The right to water is also inextricably related to the right to the highest attainable standard of health (art. 12, para. 1)³ and the rights to adequate housing and adequate food (art. 11, para. 1).⁴ The right should also be seen in conjunction with other rights enshrined in the International Bill of Human Rights, foremost amongst them the right to life and human dignity.

4. The right to water has been recognized in a wide range of international documents, including treaties, declarations and other standards.⁵ For instance, Article

² See paras. 5 and 32 of the Committee’s General Comment No. 6 (1995) on the economic, social and cultural rights of older persons.

³ See General Comment No. 14 (2000) on the right to the highest attainable standard of health, paragraphs 11, 12 (a), (b) and (d), 15, 34, 36, 40, 43 and 51.

⁴ See para. 8 (b) of General Comment No. 4 (1991). See also the report by Commission on Human Rights’ Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr. Miloon Kothari (E.CN.4/2002/59), submitted in accordance with Commission resolution 2001/28 of 20 April 2001. In relation to the right to adequate food, see the report by the Special Rapporteur of the Commission on the right to food, Mr. Jean Ziegler (E/CN.4/2002/58), submitted in accordance with Commission resolution 2001/25 of 20 April 2001.

⁵ See art. 14, para. 2 (h), Convention on the Elimination of All Forms of Discrimination Against Women; art. 24, para. 2 (c), Convention on the Rights of the Child; arts. 20, 26, 29 and 46 of the Geneva Convention relative to the Treatment of Prisoners of War, of 1949; arts. 85, 89 and 127 of the Geneva Convention relative to the Treatment of Civilian Persons in Time of War, of 1949; arts. 54 and 55 of Additional Protocol I thereto of 1977; arts. 5 and 14 Additional Protocol II of 1977; preamble, Mar Del

14, paragraph 2, of the Convention on the Elimination of All Forms of Discrimination Against Women stipulates that States parties shall ensure to women the right to “enjoy adequate living conditions, particularly in relation to [...] water supply”. Article 24, paragraph 2, of the Convention on the Rights of the Child requires States parties to combat disease and malnutrition “through the provision of adequate nutritious foods and clean drinking-water”.

5. The right to water has been consistently addressed by the Committee during its consideration of States parties’ reports, in accordance with its revised general guidelines regarding the form and content of reports to be submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, and its general comments.

6. Water is required for a range of different purposes, besides personal and domestic uses, to realize many of the Covenant rights. For instance, water is necessary to produce food (right to adequate food) and ensure environmental hygiene (right to health). Water is essential for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take part in cultural life). Nevertheless, priority in the allocation of water must be given to the right to water for personal and domestic uses. Priority should also be given to the water resources required to prevent starvation and disease, as well as water required to meet the core obligations of each of the Covenant rights.⁶

Water and Covenant rights

7. The Committee notes the importance of ensuring sustainable access to water resources for agriculture to realize the right to adequate food (see General Comment

Plata Action Plan of the United Nations Water Conference; see para. 18.47 of Agenda 21, *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (A/CONF.151/26/Rev.1 (Vol. I and Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1) (United Nations publication, Sales No. E.93.I.8), vol. I: *Resolutions adopted by the Conference*, resolution 1, annex II; Principle No. 3, The Dublin Statement on Water and Sustainable Development, International Conference on Water and the Environment (A/CONF.151/PC/112); Principle No. 2, Programme of Action, *Report of the United Nations International Conference on Population and Development, Cairo, 5-13 September 1994* (United Nations publication, Sales No. E.95.XIII.18), chap. I, resolution 1, annex; paras. 5 and 19, Recommendation (2001) 14 of the Committee of Ministers to Member States on the European Charter on Water Resources; resolution 2002/6 of the United Nations Sub-Commission on the Promotion and Protection of Human Rights on the promotion of the realization of the right to drinking water. See also the report on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation (E/CN.4/Sub.2/2002/10) submitted by the Special Rapporteur of the Sub-Commission on the right to drinking water supply and sanitation, Mr. El Hadji Guissé.

⁶ See also World Summit on Sustainable Development, Plan of Implementation 2002, paragraph 25 (c).

No.12 (1999)).⁷ Attention should be given to ensuring that disadvantaged and marginalized farmers, including women farmers, have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology. Taking note of the duty in article 1, paragraph 2, of the Covenant, which provides that a people may not “be deprived of its means of subsistence”, States parties should ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples.⁸

8. Environmental hygiene, as an aspect of the right to health under article 12, paragraph 2 (b), of the Covenant, encompasses taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions.⁹ For example, States parties should ensure that natural water resources are protected from contamination by harmful substances and pathogenic microbes. Likewise, States parties should monitor and combat situations where aquatic eco-systems serve as a habitat for vectors of diseases wherever they pose a risk to human living environments.¹⁰

9. With a view to assisting States parties' implementation of the Covenant and the fulfilment of their reporting obligations, this General Comment focuses in Part II on the normative content of the right to water in articles 11, paragraph 1, and 12, on States parties' obligations (Part III), on violations (Part IV) and on implementation at the national level (Part V), while the obligations of actors other than States parties are addressed in Part VI.

II. NORMATIVE CONTENT OF THE RIGHT TO WATER

10. The right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.

⁷ This relates to both *availability* and to *accessibility* of the right to adequate food (see General Comment No. 12 (1999), paras. 12 and 13).

⁸ See also the Statement of Understanding accompanying the United Nations Convention on the Law of Non-Navigational Uses of Watercourses (A/51/869 of 11 April 1997), which declared that, in determining vital human needs in the event of conflicts over the use of watercourses “special attention is to be paid to providing sufficient water to sustain human life, including both drinking water and water required for production of food in order to prevent starvation”..

⁹ See also para. 15, General Comment No. 14.

¹⁰ According to the WHO definition, vector-borne diseases include diseases transmitted by insects (malaria, filariasis, dengue, Japanese encephalitis and yellow fever), diseases for which aquatic snails serve as intermediate hosts (schistosomiasis) and zoonoses with vertebrates as reservoir hosts.

11. The elements of the right to water must be *adequate* for human dignity, life and health, in accordance with articles 11, paragraph 1, and 12. The adequacy of water should not be interpreted narrowly, by mere reference to volumetric quantities and technologies. Water should be treated as a social and cultural good, and not primarily as an economic good. The manner of the realization of the right to water must also be sustainable, ensuring that the right can be realized for present and future generations.¹¹

12. While the adequacy of water required for the right to water may vary according to different conditions, the following factors apply in all circumstances:

(a) *Availability*. The water supply for each person must be sufficient and continuous for personal and domestic uses.¹² These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.¹³ The quantity of water available for each person should correspond to World Health Organization (WHO) guidelines.¹⁴ Some individuals and groups may also require additional water due to health, climate, and work conditions;

(b) *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 health.¹⁵ Furthermore, water should be of an acceptable colour, odour and taste for each personal or domestic use.

¹¹ For a definition of sustainability, see the *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 1992*, Declaration on Environment and Development, principles 1, 8, 9, 10, 12 and 15; and Agenda 21, in particular principles 5.3, 7.27, 7.28, 7.35, 7.39, 7.41, 18.3, 18.8, 18.35, 18.40, 18.48, 18.50, 18.59 and 18.68.

¹² "Continuous" means that the regularity of the water supply is sufficient for personal and domestic uses.

¹³ In this context, "drinking" means water for consumption through beverages and foodstuffs. "Personal sanitation" means disposal of human excreta. Water is necessary for personal sanitation where water-based means are adopted. "Food preparation" includes food hygiene and preparation of food stuffs, whether water is incorporated into, or comes into contact with, food. "Personal and household hygiene" means personal cleanliness and hygiene of the household environment.

¹⁴ See J. Bartram and G. Howard, "Domestic water quantity, service level and health: what should be the goal for water and health sectors", WHO, 2002. See also P.H. Gleick, (1996) "Basic water requirements for human activities: meeting basic needs", *Water International*, 21, pp. 83-92.

¹⁵ The Committee refers States parties to WHO, *Guidelines for drinking-water quality*, 2nd edition, vols. 1-3 (Geneva, 1993) that are "intended to be used as a basis for the development of national standards that, if properly implemented, will ensure the safety of drinking water supplies through the elimination of, or reduction to a

(c) *Accessibility*. Water and water facilities and services have to be accessible to *everyone* without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

(i) *Physical accessibility*: water, and adequate water facilities and services, must be within safe physical reach for all sections of the population. Sufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace.¹⁶ All water facilities and services must be of sufficient quality, culturally appropriate and sensitive to gender, life-cycle and privacy requirements. Physical security should not be threatened during access to water facilities and services;

(ii) *Economic accessibility*: Water, and water facilities and services, must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realization of other Covenant rights;

(iii) *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; and

(iv) *Information accessibility*: accessibility includes the right to seek, receive and impart information concerning water issues.¹⁷

Special topics of broad application

Non-discrimination and equality

13. The obligation of States parties to guarantee that the right to water is enjoyed without discrimination (art. 2, para. 2), and equally between men and women (art. 3), pervades all of the Covenant obligations. The Covenant thus proscribes any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to water. The Committee recalls paragraph 12 of General Comment No. 3 (1990), which states that even in times of severe resource

minimum concentration, of constituents of water that are known to be hazardous to health.”

¹⁶ See also General Comment No. 4 (1991), para. 8 (b), General Comment No. 13 (1999) para. 6 (a) and General Comment No. 14 (2000) paras. 8 (a) and (b). Household includes a permanent or semi-permanent dwelling, or a temporary halting site.

¹⁷ See para. 48 of this General Comment.

constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes.

14. States parties should take steps to remove de facto discrimination on prohibited grounds, where individuals and groups are deprived of the means or entitlements necessary for achieving the right to water. States parties should ensure that the allocation of water resources, and investments in water, facilitate access to water for all members of society. Inappropriate resource allocation can lead to discrimination that may not be overt. For example, investments should not disproportionately favour expensive water supply services and facilities that are often accessible only to a small, privileged fraction of the population, rather than investing in services and facilities that benefit a far larger part of the population.

15. With respect to the right to water, States parties have a special obligation to provide those who do not have sufficient means with the necessary water and water facilities and to prevent any discrimination on internationally prohibited grounds in the provision of water and water services.

16. Whereas the right to water applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, indigenous peoples, refugees, asylum seekers, internally displaced persons, migrant workers, prisoners and detainees. In particular, States parties should take steps to ensure that:

(a) Women are not excluded from decision-making processes concerning water resources and entitlements. The disproportionate burden women bear in the collection of water should be alleviated;

(b) Children are not prevented from enjoying their human rights due to the lack of adequate water in educational institutions and households or through the burden of collecting water. Provision of adequate water to educational institutions currently without adequate drinking water should be addressed as a matter of urgency;

(c) Rural and deprived urban areas have access to properly maintained water facilities. Access to traditional water sources in rural areas should be protected from unlawful encroachment and pollution. Deprived urban areas, including informal human settlements, and homeless persons, should have access to properly maintained water facilities. No household should be denied the right to water on the grounds of their housing or land status;

(d) Indigenous peoples' access to water resources on their ancestral lands is protected from encroachment and unlawful pollution. States should provide resources for indigenous peoples to design, deliver and control their access to water;

(e) Nomadic and traveller communities have access to adequate water at traditional and designated halting sites;

(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;¹⁸

(h) Groups facing difficulties with physical access to water, such as older persons, persons with disabilities, victims of natural disasters, persons living in disaster-prone areas, and those living in arid and semi-arid areas, or on small islands are provided with safe and sufficient water.

III. STATES PARTIES' OBLIGATIONS

General legal obligations

17. While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect. States parties have immediate obligations in relation to the right to water, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2, para. 2) and the obligation to take steps (art. 2, para.1) towards the full realization of articles 11, paragraph 1, and 12. Such steps must be deliberate, concrete and targeted towards the full realization of the right to water.

18. States parties have a constant and continuing duty under the Covenant to move as expeditiously and effectively as possible towards the full realization of the right to water. Realization of the right should be feasible and practicable, since all States parties exercise control over a broad range of resources, including water, technology, financial resources and international assistance, as with all other rights in the Covenant.

19. There is a strong presumption that retrogressive measures taken in relation to the right to water are prohibited under the Covenant.¹⁹ If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party's maximum available resources.

¹⁸ See arts. 20, 26, 29 and 46 of the third Geneva Convention of 12 August 1949; arts. 85, 89 and 127 of the fourth Geneva Convention of 12 August 1949; arts. 15 and 20, para. 2, United Nations Standard Minimum Rules for the Treatment of Prisoners, in *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.88.XIV.1).

¹⁹ See General Comment No. 3 (1990), para. 9.

Specific legal obligations

20. The right to water, like any human right, imposes three types of obligations on States parties: obligations to *respect*, obligations to *protect* and obligations to *fulfil*.

(a) Obligations to respect

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, inter alia, refraining from engaging in any practice or activity that denies or limits equal access to adequate water; arbitrarily interfering with customary or traditional arrangements for water allocation; unlawfully diminishing or polluting water, for example through waste from State-owned facilities or through use and testing of weapons; and limiting access to, or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts in violation of international humanitarian law.

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.²⁰ 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.²¹

(b) Obligations to protect

23. The obligation to *protect* requires State parties to prevent third parties from interfering in any way with the enjoyment of the right to water. Third parties include individuals, groups, corporations and other entities as well as agents acting under their authority. The obligation includes, inter alia, adopting the necessary and effective legislative and other measures to restrain, for example, third parties from denying equal access to adequate water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems.

24. Where water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable, and physical access to sufficient, safe and acceptable water. To prevent such abuses an effective regulatory system must be established, in conformity with the Covenant and this General Comment, which

²⁰ For the interrelationship of human rights law and humanitarian law, the Committee notes the conclusions of the International Court of Justice in *Legality of the Threat or Use of Nuclear Weapons (Request by the General Assembly)*, ICJ Reports (1996) p. 226, para. 25.

²¹ See arts. 54 and 56, Additional Protocol I to the Geneva Conventions (1977), art. 54, Additional Protocol II (1977), arts. 20 and 46 of the third Geneva Convention of 12 August 1949, and common article 3 of the Geneva Conventions of 12 August 1949.

includes independent monitoring, genuine public participation and imposition of penalties for non-compliance.

(c) Obligations to fulfil

25. The obligation to *fulfil* can be disaggregated into the obligations to facilitate, promote and provide. The obligation to facilitate requires the State to take positive measures to assist individuals and communities to enjoy the right. The obligation to promote obliges the State party to take steps to ensure that there is appropriate education concerning the hygienic use of water, protection of water sources and methods to minimize water wastage. States parties are also obliged to fulfil (provide) the right when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal.

26. The obligation to fulfil requires States parties to adopt the necessary measures directed towards the full realization of the right to water. The obligation includes, inter alia, according sufficient recognition of this right within the national political and legal systems, preferably by way of legislative implementation; adopting a national water strategy and plan of action to realize this right; ensuring that water is affordable for everyone; and facilitating improved and sustainable access to water, particularly in rural and deprived urban areas.

27. To ensure that water is affordable, States parties must adopt the necessary measures that may include, inter alia: (a) use of a range of appropriate low-cost techniques and technologies; (b) appropriate pricing policies such as free or low-cost water; and (c) income supplements. Any payment for water services has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with water expenses as compared to richer households.

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.²² Such strategies and programmes may include: (a) reducing depletion of water resources through unsustainable extraction, diversion and damming; (b) reducing and eliminating contamination of watersheds and water-related eco-systems by substances such as radiation, harmful chemicals and human excreta; (c) monitoring water reserves; (d) ensuring that proposed developments do not interfere with access to adequate water; (e) assessing the impacts of actions that may impinge upon water availability and natural-ecosystems watersheds, such as climate changes, desertification and increased soil salinity, deforestation and loss of biodiversity;²³ (f)

²² See footnote 5 above, Agenda 21, chaps. 5, 7 and 18; and the World Summit on Sustainable Development, Plan of Implementation (2002), paras. 6 (a), (l) and (m), 7, 36 and 38.

²³ See the Convention on Biological Diversity, the Convention to Combat Desertification, the United Nations Framework Convention on Climate Change, and subsequent protocols.

increasing the efficient use of water by end-users; (g) reducing water wastage in its distribution; (h) response mechanisms for emergency situations; (i) and establishing competent institutions and appropriate institutional arrangements to carry out the strategies and programmes.

29. 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.²⁴ 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.

International obligations

30. Article 2, paragraph 1, and articles 11, paragraph 1, and 23 of the Covenant require that States parties recognize the essential role of international cooperation and assistance and take joint and separate action to achieve the full realization of the right to water.

31. To comply with their international obligations in relation to the right to water, States parties have to respect the enjoyment of the right in other countries. International cooperation requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries. Any activities undertaken within the State party's jurisdiction should not deprive another country of the ability to realize the right to water for persons in its jurisdiction.²⁵

32. States parties should refrain at all times from imposing embargoes or similar measures, that prevent the supply of water, as well as goods and services essential for securing the right to water.²⁶ Water should never be used as an instrument of political

²⁴ Article 14, para. 2, of the Convention on the Elimination of All Forms of Discrimination Against Women stipulates States parties shall ensure to women the right to "adequate living conditions, particularly in relation to [...] sanitation". Article 24, para. 2, of the Convention on the Rights of the Child requires States parties to "To ensure that all segments of society [...] have access to education and are supported in the use of basic knowledge of [...] the advantages of [...] hygiene and environmental sanitation."

²⁵ The Committee notes that the United Nations Convention on the Law of Non-Navigational Uses of Watercourses requires that social and human needs be taken into account in determining the equitable utilization of watercourses, that States parties take measures to prevent significant harm being caused, and, in the event of conflict, special regard must be given to the requirements of vital human needs: see arts. 5, 7 and 10 of the Convention.

²⁶ In General Comment No. 8 (1997), the Committee noted the disruptive effect of sanctions upon sanitation supplies and clean drinking water, and that sanctions regimes should provide for repairs to infrastructure essential to provide clean water.

and economic pressure. In this regard, the Committee recalls its position, stated in its General Comment No. 8 (1997), on the relationship between economic sanctions and respect for economic, social and cultural rights.

33. Steps should be taken by States parties to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries. Where States parties can take steps to influence other third parties to respect the right, through legal or political means, such steps should be taken in accordance with the Charter of the United Nations and applicable international law.

34. Depending on the availability of resources, States should facilitate realization of the right to water in other countries, for example through provision of water resources, financial and technical assistance, and provide the necessary aid when required. 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.

35. States parties should ensure that the right to water is given due attention in international agreements and, to that end, should consider the development of further legal instruments. With regard to the conclusion and implementation of other international and regional agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to water. Agreements concerning trade liberalization should not curtail or inhibit a country's capacity to ensure the full realization of the right to water.

36. States parties should ensure that their actions as members of international organizations take due account of the right to water. Accordingly, States parties that are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should take steps to ensure that the right to water is taken into account in their lending policies, credit agreements and other international measures.

Core obligations

37. In General Comment No. 3 (1990), the Committee confirms that States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant. In the Committee's view, at least a number of core obligations in relation to the right to water can be identified, which are of immediate effect:

(a) To ensure access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease;

(b) To ensure the right of access to water and water facilities and services on a non-discriminatory basis, especially for disadvantaged or marginalized groups;

(c) To 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;

(d) To ensure personal security is not threatened when having to physically access to water;

(e) To ensure equitable distribution of all available water facilities and services;

(f) To 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; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all disadvantaged or marginalized groups;

(g) To monitor the extent of the realization, or the non-realization, of the right to water;

(h) To adopt relatively low-cost targeted water programmes to protect vulnerable and marginalized groups;

(i) To take measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation;

38. For the avoidance of any doubt, the Committee wishes to emphasize that it is particularly incumbent on States parties, and other actors in a position to assist, to provide international assistance and cooperation, especially economic and technical which enables developing countries to fulfil their core obligations indicated in paragraph 37 above.

IV. VIOLATIONS

39. When the normative content of the right to water (see Part II) is applied to the obligations of States parties (Part III), a process is set in motion, which facilitates identification of violations of the right to water. The following paragraphs provide illustrations of violations of the right to water.

40. To demonstrate compliance with their general and specific obligations, States parties must establish that they have taken the necessary and feasible steps towards the realization of the right to water. In accordance with international law, a failure to act in good faith to take such steps amounts to a violation of the right. It should be stressed that a State party cannot justify its non-compliance with the core obligations set out in paragraph 37 above, which are non-derogable.

41. In determining which actions or omissions amount to a violation of the right to water, it is important to distinguish the inability from the unwillingness of a State party to comply with its obligations in relation to the right to water. This follows from articles 11, paragraph 1, and 12, which speak of the right to an adequate standard of living and the right to health, as well as from article 2, paragraph 1, of the Covenant, which obliges each State party to take the necessary steps to the maximum of its available resources. A State which is unwilling to use the maximum of its available resources for the realization of the right to water is in violation of its obligations under the Covenant. If resource constraints render it impossible for a State party to comply fully with its Covenant obligations, it has the burden of justifying that every effort has nevertheless been made to use all available resources at its disposal in order to satisfy, as a matter of priority, the obligations outlined above.

42. Violations of the right to water can occur through *acts of commission*, the direct actions of States parties or other entities insufficiently regulated by States. Violations include, for example, the adoption of retrogressive measures incompatible with the core obligations (outlined in para. 37 above), the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to water, or the adoption of legislation or policies which are manifestly incompatible with pre-existing domestic or international legal obligations in relation to the right to water.

43. Violations through *acts of omission* include the failure to take appropriate steps towards the full realization of everyone's right to water, the failure to have a national policy on water, and the failure to enforce relevant laws.

44. While it is not possible to specify a complete list of violations in advance, a number of typical examples relating to the levels of obligations, emanating from the Committee's work, may be identified:

(a) Violations of the obligation to respect follow from the 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.²⁸ 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; (iv) 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 includes, inter alia: (i) failure to adopt or implement a national water policy designed to ensure the right to water for everyone; (ii) insufficient expenditure or misallocation of public resources which results in the non-enjoyment of the right to

²⁸ See para. 23 for a definition of "third parties".

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.

V. IMPLEMENTATION AT THE NATIONAL LEVEL

45. In accordance with article 2, paragraph 1, of the Covenant, States parties are required to utilize “all appropriate means, including particularly the adoption of legislative measures” in the implementation of their Covenant obligations. Every State party has a margin of discretion in assessing which measures are most suitable to meet its specific circumstances. The Covenant, however, clearly imposes a duty on each State party to take whatever steps are necessary to ensure that everyone enjoys the right to water, as soon as possible. Any national measures designed to realize the right to water should not interfere with the enjoyment of other human rights.

Legislation, strategies and policies

46. Existing legislation, strategies and policies should be reviewed to ensure that they are compatible with obligations arising from the right to water, and should be repealed, amended or changed if inconsistent with Covenant requirements.

47. The duty to take steps clearly imposes on States parties an obligation to adopt a national strategy or plan of action to realize the right to water. The strategy must: (a) be based upon human rights law and principles; (b) cover all aspects of the right to water and the corresponding obligations of States parties; (c) define clear objectives; (d) set targets or goals to be achieved and the time-frame for their achievement; (e) formulate adequate policies and corresponding benchmarks and indicators. The strategy should also establish institutional responsibility for the process; identify resources available to attain the objectives, targets and goals; allocate resources appropriately according to institutional responsibility; and establish accountability mechanisms to ensure the implementation of the strategy. When formulating and implementing their right to water national strategies, States parties should avail themselves of technical assistance and cooperation of the United Nations specialized agencies (see Part VI below).

48. The formulation and implementation of national water strategies and plans of action should respect, inter alia, the principles of non-discrimination and people's participation. The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, programme or strategy concerning water. 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.

49. The national water strategy and plan of action should also be based on the principles of accountability, transparency and independence of the judiciary, since

good governance is essential to the effective implementation of all human rights, including the realization of the right to water. In order to create a favourable climate for the realization of the right, States parties should take appropriate steps to ensure that the private business sector and civil society are aware of, and consider the importance of, the right to water in pursuing their activities.

50. States parties may find it advantageous to adopt framework legislation to operationalize their right to water strategy. Such legislation should include: (a) targets or goals to be attained and the time-frame for their achievement; (b) the means by which the purpose could be achieved; (c) the intended collaboration with civil society, private sector and international organizations; (d) institutional responsibility for the process; (e) national mechanisms for its monitoring; and (f) remedies and recourse procedures.

51. Steps should be taken to ensure there is sufficient coordination between the national ministries, regional and local authorities in order to reconcile water-related policies. Where implementation of the right to water has been delegated to regional or local authorities, the State party still retains the responsibility to comply with its Covenant obligations, and therefore should ensure that these authorities have at their disposal sufficient resources to maintain and extend the necessary water services and facilities. The States parties must further ensure that such authorities do not deny access to services on a discriminatory basis.

52. States parties are obliged to monitor effectively the realization of the right to water. In monitoring progress towards the realization of the right to water, States parties should identify the factors and difficulties affecting implementation of their obligations.

Indicators and benchmarks

53. To assist the monitoring process, right to water indicators should be identified in the national water strategies or plans of action. The indicators should be designed to monitor, at the national and international levels, the State party's obligations under articles 11, paragraph 1, and 12. Indicators should address the different components of adequate water (such as sufficiency, safety and acceptability, affordability and physical accessibility), be disaggregated by the prohibited grounds of discrimination, and cover all persons residing in the State party's territorial jurisdiction or under their control. States parties may obtain guidance on appropriate indicators from the ongoing work of WHO, the Food and Agriculture Organization of the United Nations (FAO), the United Nations Centre for Human Settlements (Habitat), the International Labour Organization (ILO), the United Nations Children's Fund (UNICEF), the United Nations Environment Programme (UNEP), the United Nations Development Programme (UNDP) and the United Nations Commission on Human Rights.

54. Having identified appropriate right to water indicators, States parties are invited to set appropriate national benchmarks in relation to each indicator.²⁹ During the periodic reporting procedure, the Committee will engage in a process of “scoping” with the State party. Scoping involves the joint consideration by the State party and the Committee of the indicators and national benchmarks which will then provide the targets to be achieved during the next reporting period. In the following five years, the State party will use these national benchmarks to help monitor its implementation of the right to water. Thereafter, in the subsequent reporting process, the State party and the Committee will consider whether or not the benchmarks have been achieved, and the reasons for any difficulties that may have been encountered (see General Comment No.14 (2000), para. 58). Further, when setting benchmarks and preparing their reports, States parties should utilize the extensive information and advisory services of specialized agencies with regard to data collection and disaggregation.

Remedies and accountability

55. Any persons or groups who have been denied their right to water should have access to effective judicial or other appropriate remedies at both national and international levels (see General Comment No. 9 (1998), para. 4, and Principle 10 of the Rio Declaration on Environment and Development).³⁰ The Committee notes that the right has been constitutionally entrenched by a number of States and has been subject to litigation before national courts. All victims of violations of the right to water should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition. National ombudsmen, human rights commissions, and similar institutions should be permitted to address violations of the right.

56. Before any action that interferes with an individual’s right to water is carried out by the State party, or by any other third party, the relevant authorities must ensure that such actions are performed in a manner warranted by law, compatible with the Covenant, and that comprises: (a) opportunity for genuine consultation with those affected; (b) timely and full disclosure of information on the proposed measures; (c) reasonable notice of proposed actions; (d) legal recourse and remedies for those affected; and (e) legal assistance for obtaining legal remedies (see also General

²⁹ See E. Riedel, “New bearings to the State reporting procedure: practical ways to operationalize economic, social and cultural rights – The example of the right to health”, in S. von Schorlemer (ed.), *Praxishandbuch UNO*, 2002, pp. 345-358. The Committee notes, for example, the commitment in the 2002 World Summit on Sustainable Development Plan of Implementation to halve, by the year 2015, the proportion of people who are unable to reach or to afford safe drinking water (as outlined in the Millennium Declaration) and the proportion of people who do not have access to basic sanitation.

³⁰ Principle 10 of the Rio Declaration on Environment and Development (*Report of the United Nations Conference on Environment and Development*, see footnote 5 above), states with respect to environmental issues that “effective access to judicial and administrative proceedings, including remedy and redress, shall be provided”.

Comments No. 4 (1991) and No. 7 (1997)). Where such action is based on a person's failure to pay for water their capacity to pay must be taken into account. Under no circumstances shall an individual be deprived of the minimum essential level of water.

57. The incorporation in the domestic legal order of international instruments recognizing the right to water can significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases. Incorporation enables courts to adjudicate violations of the right to water, or at least the core obligations, by direct reference to the Covenant.

58. Judges, adjudicators and members of the legal profession should be encouraged by States parties to pay greater attention to violations of the right to water in the exercise of their functions.

59. States parties should respect, protect, facilitate and promote the work of human rights advocates and other members of civil society with a view to assisting vulnerable or marginalized groups in the realization of their right to water.

VI. OBLIGATIONS OF ACTORS OTHER THAN STATES

60. 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 such as the World Trade Organization (WTO), should cooperate effectively with States parties, building on their respective expertise, in relation to the implementation of the right to water at the national level. The international financial institutions, notably the International Monetary Fund and the World Bank, should take into account the right to water in their lending policies, credit agreements, structural adjustment programmes and other development projects (see General Comment No. 2 (1990)), so that the enjoyment of the right to water is promoted. When examining the reports of States parties and their ability to meet the obligations to realize the right to water, the Committee will consider the effects of the assistance provided by all other actors. The incorporation of human rights law and principles in the programmes and policies by international organizations will greatly facilitate implementation of the right to water. The role of the International Federation of the Red Cross and Red Crescent Societies, International Committee of the Red Cross, the Office of the United Nations High Commissioner for Refugees (UNHCR), WHO and UNICEF, as well as non-governmental organizations and other associations, is of particular importance in relation to disaster relief and humanitarian assistance in times of emergencies. 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.