

## WATERLEX CONTRIBUTION

### General Comment on State Obligations under International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities

WaterLex welcomes the preparations towards a General Comment on State obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business activities.

In the context of this General Comment, WaterLex proposes to include further references to water and sanitation due to their paramount importance. As pointed out by the Committee on Economic, Social and Cultural Rights, water is a prerequisite for the realisation of other human rights.<sup>1</sup> Water is required for a range of different purposes, to realise many of the Covenant rights.<sup>2</sup>

Against this backdrop, WaterLex encourages further consideration for water and sanitation in the General Comment and recommends the following:

#### **Paragraph 9: Non-discrimination**

WaterLex suggest to complement the list provided in the General Comment on non-discrimination by including further groups that traditionally face difficulties in exercising their rights. Therefore, WaterLex suggests to consider adding the following groups into the list related to non-discrimination (para. 9): children, population of informal settlements, populations living in rural and deprived urban areas, refugees, asylum seekers, internally displaced people, groups facing difficulties with physical access to water, such as the elderly, persons with disabilities, victims of natural disasters.<sup>3</sup>

#### **Paragraph 16: Obligation to respect**

WaterLex suggests the inclusion of water and sanitation-related examples into the list concerning State obligations to respect (para. 16). Violation of this obligation could occur with respect to water and sanitation if States fail to adopt and implement effective measures to prevent businesses from violating Covenant rights in the following cases:

- Unjustifiable or discriminatory denial of access to water or sanitation;
- Unjustifiable disconnection from services (including from prepaid water meters), for example when people are unable to pay and are left without access to even basic services;
- Unjustifiable restrictions on access to water or sanitation, such as latrines and toilets being locked at night or fenced-off water sources;
- Unaffordable increases in pricing<sup>4</sup>.

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<sup>1</sup> General Comment 15. para. 1.

<sup>2</sup> Ibid para.6

<sup>3</sup> Ibid para. 16

<sup>4</sup> Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, Common violations of the human rights to water and sanitation (A/HRC/27/55 para 18.)

## Paragraph 24: Obligations to protect

WaterLex suggests to include reference onto water and sanitation into the list of examples of State obligations to protect, taking into account that human rights violations might occur by businesses providing water and sanitation services in addition to violations of the human rights to water and sanitation resulting from all type of business activities. In particular, violations of the obligation to protect in that respect may relate to the following:

1. *Failure to protect in the context of water and sanitation service provision:* Violations may occur when States (a) fail to effectively regulate and control service providers in relation to safety, quantity, conditions of service or disconnections; (b) fail to regulate pricing to ensure that services are affordable for everyone; (c) fail to prevent discrimination by private actors; (d) fail to ensure that service providers extend services to marginalized households or communities; (e) fail to require provision of reasonable accommodation of disability or extenuating circumstances; or (f) fail to ensure that monitoring and complaints procedures are in place.<sup>5</sup>
2. *Failure to protect water resources or infrastructure from pollution or interference:* Violations may relate to issues such as (a) failure to protect water distribution or sanitation infrastructure from interference, damage and destruction; (b) failure to regulate excessive exploitation of water resources by third parties that leads to deprivation of water necessary for personal and domestic uses; and (c) failure to develop and enforce regulation to protect water resources from contamination.<sup>6</sup>

## Paragraph 29: Obligations to fulfil

WaterLex suggests to include water and sanitation-related cases into the list of examples relating to State obligations to fulfil. In particular, the following violations are to be considered in that context:<sup>7</sup>

- Unjustified retrogressive measures;
- Failure to prioritize the necessary steps to ensure minimum essential levels of access to water and sanitation;
- Failure to provide adequate services in public facilities and institutions and in emergency situations.

## Informal provision

Finally, WaterLex would like to underline that in the water and sanitation sector many more people are served by informal small-scale providers, compared to the formal private sector<sup>8</sup>. Informal provision, that is where there has not been an intentional decision to involve non-State service providers, is of particular importance. Therefore, WaterLex would like to encourage further consideration of State obligations with regards to informal provision in the context of the General Comment.

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<sup>5</sup> Ibid para. 27.

<sup>6</sup> Ibid para. 29.

<sup>7</sup> Ibid para. 36.

<sup>8</sup> Report of the independent expert on the issue of human rights obligations to access to safe drinking water and sanitation, Catarina de Albuquerque (A/HRC/15/31 para 11.)