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## Water and sanitation as human rights

Understanding water and sanitation as human rights was central to the 2009 Stockholm Water Week theme of “Accessing Water for the Common Good”. Human rights are aimed at universal access to drinking water and sanitation which is safe, affordable, physically accessible, culturally acceptable and sufficient in quantity. This paper briefly explains the mandate of the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation. It then turns to water and sanitation as human rights, outlining their content, their status as rights, some prevailing misconceptions and the purpose and contribution of human rights in development practice.

**Keywords:** Water and sanitation as human rights, legal dimension, accountability

### The mandate of the Independent Expert

The mandate of Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation was established by a resolution of the Human Rights Council in March 2008 (Human Rights Council, 2008).

The mandate consists of three main tasks:

Firstly, to develop a dialogue with Governments, the relevant United Nations bodies, the private sector, local authorities, national human rights institutions, civil society organisations and academic institutions, to identify, promote and exchange views on best practices related to access to safe drinking water and sanitation, and, in that regard, to prepare a compendium of best practices;

Secondly, to undertake a study, in cooperation with and reflecting the views of Governments and relevant United Nations bodies, and in further cooperation with the private sector, local authorities, national human rights institutions, civil society organisations and academic institutions, on the further clarification of the content of human rights obligations, including non-discrimination obligations, in relation to access to safe drinking water and sanitation;

Thirdly, to make recommendations that could help the realisation of the Millennium Development Goals, in particular of Goal 7.

Prior to the creation of the mandate, the High Commissioner for Human Rights submitted a study to the Human Rights Council in which she concluded that “it is now time to consider access to safe drinking water and sanitation as a human right, defined as the right to equal and non-discriminatory access to a sufficient amount of safe drinking water for personal and domestic uses – drinking, personal sanitation, washing of clothes, food preparation and personal and household hygiene – to sustain life and health.” (OHCHR, 2007: Para. 66). This study also identified a number of areas that require further consideration, such as the normative content of human rights obligations in relation to access to sanitation, obligations in the context of private sector participation in the provision of water and sanitation and obligations in the context of disconnecting services (OHCHR, 2007: Para. 67).

The mandate of the Independent Expert was inter alia created to take this work forward. Like other experts appointed by the Human Rights Council, the Independent Expert undertakes country missions, and sends communications to Governments concerning alleged human rights violations falling within the mandate. Three missions were



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undertaken last year: one to Costa Rica, another one to Egypt and a third mission to Bangladesh. For 2010, additional missions to countries are planned.

## Content of water and sanitation as human rights

In the resolution establishing this mandate, States in the Human Rights Council acknowledged that they have human rights obligations related to access to safe drinking water and sanitation (Human Rights Council, 2008). In September 2009, the Human Rights Council reaffirmed that these obligations exist, focusing specifically on sanitation (Human Rights Council, 2009). Regardless of whether one recognises sanitation and water as distinct human rights, human rights obligations related to access to safe drinking water and sanitation are undeniable because they are so closely linked to other well-recognised human rights including the rights to health, housing and life.

Their normative content can broadly be described under the categories of availability, quality, accessibility, affordability, and acceptability (CESCR, 2003; de Albuquerque, 2009a).

**Availability:** Water supply for each person must be sufficient for personal and domestic uses. The human right to water is limited to these uses and does not cover water for productive uses, etc. Likewise, a sufficient number of sanitation facilities has to be available.

**Quality:** Water has to be safe for consumption and other uses. It has to be of such quality that it does not pose a threat to human health. Sanitation facilities must be hygienically and technically safe to use. To ensure hygiene, access to water for cleansing and hand washing is essential.

**Physical Accessibility:** Water and sanitation services must be accessible to everyone in the household or its vicinity on a continuous basis. Physical security must not be threatened by accessing facilities.

**Affordability:** Services also have to be affordable. Realising access to sanitation and water must not compromise the ability to pay for other essential needs guaranteed by other human rights such as food, housing and health care.

**Acceptability:** Sanitation facilities, in particular, have to be culturally acceptable. This will often require separate male and female facilities. Also, facilities have to be constructed in a way that ensures privacy and dignity.

Breaking down the rights in this manner helps to ensure that access is factually guaranteed. The existence of facilities is not sufficient, for instance, when elderly people or people with disabilities cannot access them. Physical access alone is not sufficient when people cannot afford expensive water and sanitation services. The existence of toilets is not sufficient when women do not use them because they are not sex-separated or do not guarantee their privacy.

States are obliged to respect, protect and fulfil these rights. The duty to respect means that the State must refrain from violating the rights. The duty to protect requires States to ensure that third parties do not

interfere with the enjoyment of the rights. The duty to fulfil includes an obligation to facilitate, or taking positive measures to realise the rights, an obligation to promote the rights through awareness-raising and other measures, and an obligation to provide access when individuals are unable to realise it on their own. Water and sanitation are frequently considered within the ambit of economic, social and cultural rights, which must be realised progressively, to the maximum of available resources of the State. This means that not all components of the rights have to immediately be realised, but that the State must take concrete and deliberate steps towards the full realisation of the rights (CESCR, 1990).

One crucial element is the adoption of a national action plan for sanitation and drinking water, with time-bound targets and a vision for universal access to safe and affordable drinking water and sanitation. Implementing such a plan will require a mix of legislative and policy measures, as well as built-in monitoring mechanisms to ensure continual progress. The steps required to realise the rights to water and sanitation will necessarily be different from country to country – indeed, the measures must be adapted to the local context in order to meet the needs of the people concerned. Human rights do not offer a one size fits all solution but instead a broad legal framework to guide policy and legislative action. The parameters offered by this framework assist in monitoring whether States are living up to their human rights obligations by taking the measures they have opted for.

## Water and sanitation as human rights

While it should be undisputed that there are clear human rights obligations related to water and sanitation, the question remains as to whether water and sanitation are only encompassed by other human rights, or can be perceived as distinct human rights.

The so-called International Bill of Rights – consisting of the Universal Declaration on Human Rights and the first two UN human rights Covenants, on economic, social and cultural rights and on civil and political rights, respectively – does not include any explicit reference to the rights to water or to sanitation. At the time these treaties were drafted, the magnitude of the problem of lack of access to water and sanitation was not well known, understood or prioritised.

In recent years, the Committee on Economic, Social and Cultural Rights, which monitors the implementation of the Covenant on Economic, Social and Cultural Rights, has regularly taken up the issue of lack of access to water. In 2002, it adopted its General Comment N° 15 on The Right to Water (CESCR, 2003). General Comments are considered authoritative interpretations of international law, and this General Comment was particularly important to address the Covenant's (apparent) silence on the issue of water. According to the Committee, the right to water is consecrated in Art. 11 of the Social Covenant "implicitly", since that provision uses an open formulation as it guarantees the "right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions". The preposition "including" means that the catalogue of rights contained in Art. 11 was not intended to be exhaustive. To justify this assertion, the Committee remarks that "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."

Because less attention has been devoted to sanitation than to water it is important to highlight the significance of sanitation for the realisation of other human rights, such as the rights to health, to education and to life. In the 2009 report to the Human Rights Council the human rights obligations related to access to sanitation are emphasised and explained (de Albuquerque, 2009a). The report defines sanitation in human rights terms as "a system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene. States must ensure without discrimination that everyone has physical and economic access to sanitation, in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity." (de Albuquerque, 2009a: Para. 63).

The report reviews how sanitation is linked to many other human rights but concludes that it is not sufficient to only examine sanitation through the lens of other human rights. Sanitation is crucial for a life with human dignity. It is as important as food, clothing and housing for maintaining an adequate standard of living. It can therefore be argued that sanitation – like water – is included as an implicit component of Art. 11 on the right to an adequate standard of living.

Human rights treaties that have been adopted subsequent to the International Bill of Rights support the recognition of sanitation and water as distinct human rights. The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), adopted in 1979 by the General Assembly and ratified by 186 States (as of 9 February 2010), includes sanitation and water supply as components of the right to an adequate standard of living, in its Article 14 dealing specifically with rural women.

The Convention on the Rights of the Child, adopted in 1989 by the General Assembly and ratified by 193 States (as of 9 February 2010), refers to clean drinking water and "environmental sanitation" in the context of guaranteeing the right of the child to the enjoyment of the highest attainable standard of health (Art. 24). More recently, the Convention on the Rights of Persons with Disabilities (CRPD) includes access to clean water services for persons with disabilities as part of the right to social protection and an adequate standard of living (Art. 28(2)(a)). At the regional level, human rights treaties regarding women and children in Africa also refer to the obligation to ensure access to clean drinking water. These treaties are legally binding on the States that ratify them and their implementation is monitored by expert bodies. Moreover, individuals have the possibility, under two optional protocols to CEDAW and to CRPD, to file complaints to these treaty bodies in cases where their rights are allegedly violated by a State Party.

Moreover, declarations and resolutions by the UN and by other organisations recognise safe drinking water and sanitation as human rights. While these are not legally binding, they show a strong political commitment to the recognition of water and sanitation as human rights and can also be used in the interpretation of legally binding treaties. For instance, the Mar de la Plata Action Plan (United Nations, 1977: 66) adopted by the United Nations Water Conference, the Dublin Statement on Water and Sustainable Development (International Conference on Water and the Environment, 1992: 2), the Cairo Programme of Action adopted by the United Nations International Conference on Population and Development (United Nations, 1994: Principle 2)



and the Istanbul Habitat Agenda of the UN on Human Settlements (Habitat II) (United Nations, 1996: Para. 11) all recognise water as a human right, the latter two also encompassing sanitation. Additionally, other General Assembly and Commission on Human Rights Resolutions refer to clean water as a human right. Also, in 2006, the former Sub-Commission on the Promotion and Protection of Human Rights adopted Draft Guidelines for the Realization of the Right to Drinking Water Supply and Sanitation.

A human right to water and, in some cases, sanitation has also been recognised in several national Constitutions. Since the mid-1990s, an increasing number of States have included such provisions including Uganda, South Africa, Ecuador, Uruguay, the Democratic Republic of the Congo, the Maldives and most recently, Bolivia.

These numerous and ever increasing references to the right to water at the international, regional and national levels, in both binding treaties and non-binding political declarations indicate widespread acceptance of water as a human right. Concerning the right to sanitation, it has been less frequently recognised than the right to water; however, recent developments in human rights law show a clear trend towards recognition of this right also.

## Misconceptions about water and sanitation as human rights

Although water has been widely recognised as a human right, and sanitation is increasingly recognised, there is still resistance towards recognising these rights. This hesitance frequently stems from misconceptions about human rights generally, and water and sanitation as human rights specifically. The following section aims to provide some clarification to common misunderstandings.

**Is there sufficient water to ensure enjoyment of the human right to water in all countries?** Yes. The right to water only covers water for personal and domestic uses, which accounts for a very small percentage of all water used. Agriculture and industry are the largest water users. Human rights require that personal and domestic uses be prioritised over other uses to ensure that all people have access to safe drinking water.

**Is 20 litres per capita per day sufficient for the full realisation of the right to water?** No. Twenty litres per capita per day is a minimum quantity required for basic human survival. Human rights have a focus on the individual – for example, a pregnant woman or someone living with HIV/AIDS, will require more water than other people, and human rights require that their needs be taken into account. Furthermore, geography and climate will affect the amount of water required per day for personal and domestic uses. Some have estimated that States should aim for at least 50 to 100 litres per person per day (Howard and Bartram, 2003) for full realisation of the right but this numerical value should not replace a contextual analysis.

**Are the costs of achieving universal water and sanitation coverage prohibitive?** No. Investments are costly, but the costs of not ensuring access to drinking water and sanitation are even higher in terms of public health and lost work and school days. Recent estimates

show that for each dollar invested in water and sanitation, on average there is a return of 8 dollars in costs averted and productivity gained (Hutton et al., 2007: 20).

**Do States have to provide access directly?** No. Human rights do not require that States directly provide individuals with water and sanitation. States' primary obligation is to create an environment conducive to the realisation of human rights. Individuals are expected to contribute with their own means. Only in certain conditions, such as extreme poverty or natural disasters, when people, for reasons beyond their control, are genuinely unable to access water and sanitation through their own means, is the State obliged to actually provide services.

**Is everyone – even those living in remote areas – entitled to piped water and a flush toilet connected to a sewerage network?** No. States have to ensure that everyone has access to services that comply with the standards explained earlier, but different settings require different and flexible water and sanitation solutions. States have a margin of appreciation to adopt the measures most suited to the specific circumstances including low-cost technologies.

**Do States have to provide services free of charge?** No. Human rights do not require States to provide access to water and sanitation free of charge. Services have to be affordable and must not compromise the realisation of other human rights such as food, housing and health. Those who are able to must contribute financially or in kind. However, for those who are unable to pay, the State is under a duty to provide, meaning that no one can be deprived of access to safe drinking water and sanitation because of lack of financial resources. Subsidies or the provision of minimum essential levels of services free of charge can be suitable measures in that regard.

**Do human rights prohibit private provision of water and sanitation services?** No. Human rights do not require or favour a particular model of service provision. They do not exclude private provision. Yet, States must ensure – through adequate oversight and regulation, including effective monitoring and complaint procedures – that the actions of all actors do not result in human rights violations (OHCHR, 2007). Regarding this last question, the topic dominates the discourse on water, and for this reason, my thematic focus in 2010 is on the private sector, including State obligations in the context of private sector provision, and the responsibilities of private sector actors themselves.

## Purpose and contribution of human rights in development practice

Understanding water and sanitation as human rights is particularly relevant in the context of development and poverty alleviation. The majority of organisations and programmes working on these issues are development organisations rather than human rights organisations. In this regard, it is crucial that we build bridges between the two sectors and see that development and human rights are complementary frameworks. We should all aim towards the same goal of ensuring that everyone has access to sanitation and water.



Photo: Anna Norström

Human rights place a particular emphasis on participation, non-discrimination and accountability. Good programming principles commonly applied in development practice overlap to a considerable degree with human rights principles. Meaningful participation and non-discrimination are crucial elements for a sustainable project, and thus have become central considerations in development programming.

## The legal dimension

The added contribution of human rights stems from their legally binding nature. As objective legal standards, they provide a non-negotiable normative basis and a source of authority and legitimacy. Providing access to sanitation and water is no longer left to the States' discretion, but constitutes a human rights obligation. It becomes a matter of legal entitlements and claims, not of charitable benevolence of governments or development agencies.

The emphasis in human rights on participation is a crucial part of empowering people to claim their rights. Human rights also impose participation in decision-making. Participation has to be active, free and meaningful and thus has to go beyond mere consultation and information. It requires a genuine opportunity to express demands and concerns and influence decisions. Also, it is crucial to include all individuals and groups concerned. Capacity building and training is also required so that people are able to engage meaningfully. Only when existing policies are understood, can they be challenged and transformed into practice. Such activities show a close link to civil and political rights such as the freedom of expression and assembly.

Socio-economic rights further enhance participatory democracy by empowering marginalised segments of society to insist that institutions pay due attention to their needs, leading in the long term to structural transformation of discriminatory and exclusionary societal norms. Some countries have made important steps towards introducing participation in the water and sanitation sectors at the national level. For instance, Ghana's 2007 National Water Policy aims to ensure participation at the most local level on water-related issues (COHRE, 2009). In Kenya, participation is ensured through representation of all stakeholders on the boards and the involvement of community-based organisations and user groups in delivering services and determining sites of facilities. Additionally, the Water Services Regulatory Board specifically empowers people to organise Water Action Groups, which can include consumers and unserved populations, to negotiate directly with service providers and address their concerns to relevant institutions (Levin et al., 2009).

With human rights, non-discrimination is important, not because it will lead to more sustainable impact, although that is a laudable outcome, but because it is illegal to discriminate against people on certain grounds – non-discrimination is a right. More fundamentally, the recognition of socio-economic rights in general, and of the rights to water and to sanitation in particular, compel societal awareness of and political sensitivity to the needs and experiences of society's vulnerable and marginalised segments of people, who otherwise tend to be overlooked or denied in everyday social and political discourse. Human rights do not allow access to be extended only to those who are relatively easy to reach, but help to focus interventions on those who are normally excluded, for instance the extreme poor and people living in slums. Ensuring



ing that the needs of all groups are included will also contribute to the sustainability of gains achieved through development interventions

## Accountability mechanisms

Human rights require that accountability mechanisms be in place to hold the Government and other actors accountable for ensuring that these rights are not violated and for providing remedies in cases of alleged violations. Such mechanisms consist of administrative as well as judicial mechanisms including courts, national human rights institutions, informal justice systems and international courts, tribunals and quasi-judicial bodies. Explicitly recognising the rights to water and to sanitation in the Constitution and legislation is an important first step towards ensuring accountability, but efforts must extend beyond recognition to implementation. In Costa Rica, the Constitutional Court and the Ombudsman play a specific role in ensuring the enforcement of the rights to water and sanitation, and affirm the right of the community to participate in decisions affecting their access to water supply (de Albuquerque, 2009b).

However, accountability is not just about being able to go to court to claim one's right, as is sometimes assumed. It is also about empowering rights-holders to claim their rights and giving them a voice, particularly to the poor and excluded segments of the society in the local water and sanitation decision-making processes, and foster a dialogue with the relevant duty bearers. An enabling environment is crucial to ensuring that people are empowered to claim their rights, and demand that their rights be respected and fulfilled.

## Conclusion

Human rights have a powerful and valuable contribution to make to discussions on water and sanitation. Human rights are not the solution to all problems, but with human rights, a special focus on those who are normally forgotten is guaranteed, accountability for State failures to ensure access to water and sanitation is maintained, and the issues are dealt with holistically, not only in terms of quantity and quality, but also accessibility, affordability and acceptability. These attributes of human rights are fundamental for moving towards our common goal of universal access. ■

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