



## I. Background and justification

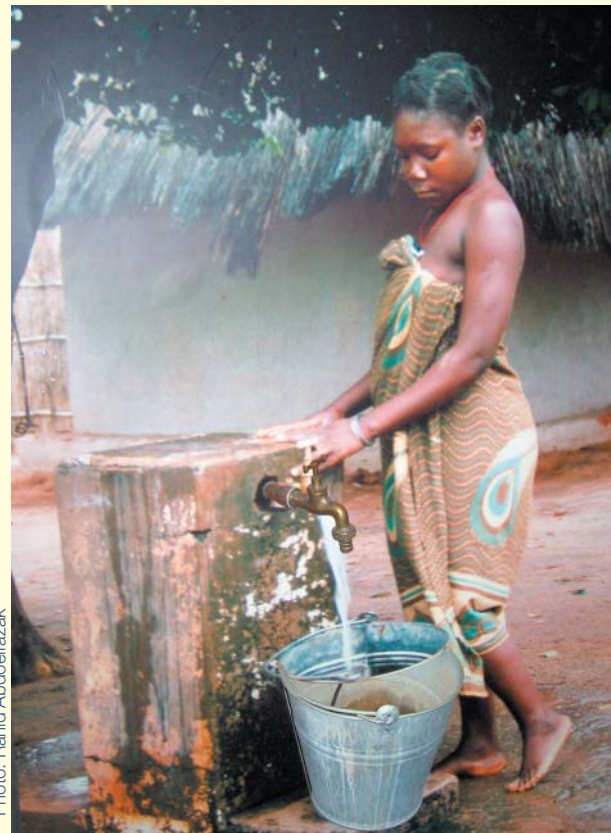
Clean water and sanitation make a significant contribution to health, human dignity and economic prosperity. Yet a billion people have no regular access to safe water and 2.6 billion lack access to basic sanitation, blighting life chances, limiting economic development and threatening the sustainability of ecosystems.

The right to water (RtW) was asserted more than 30 years ago and is today seen as an important lever to improve access. The UNDP Human Development Report for 2006 asserted that, “the scarcity at the heart of the global water crisis is rooted in power, poverty and inequality, not in physical availability”.

In 2002, the UN Committee on Economic, Social and Cultural Rights issued General Comment No. 15, stating: “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.”

In 2007, the UN High Commissioner for Human Rights (UNHCHR), concluded that the right to water was implicit in the rights to life and health, and explicit in some UN treaties. The UNHCHR stated that there is now a human right to equal and non-discriminatory access to sufficient safe drinking water for personal and domestic uses to sustain life and health.

Photo: Rahid Abobeirzak



**“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.”**  
General Comment 15 on the International Covenant on Economic, Social and Cultural Rights (ICESCR), 2002

**“...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.”**  
Report of UNHCHR on human rights obligations related to access to safe drinking water and sanitation, 2007

### International developments

Many NGOs support a human rights approach to the water and sanitation crisis, to empower poor and marginalised people to demand action and to boost political commitment. Several countries, including Algeria, Democratic Republic of Congo, Indonesia, Kenya, Paraguay, Nicaragua and Sri Lanka, have included the right in national legislation or policies.

### Legal basis for the right to water

There is debate about whether the RtW is legally enforceable as a self-standing right or as derived from other human rights. Some argue that international treaties already provide a legally enforceable right to water linked to the rights to life, health, an adequate standard of living and food. However, recognition of the right to water is not explicit in the ICESCR. General Comment 15 is authoritative, but formally non-binding. Guidelines for the realisation of the right issued by the UN Sub-Commission on the Promotion and Protection of Human Rights in 2006 do not have legal authority. Not all countries accept the right in its entirety. In a draft policy paper, the UK said that the right to “a sufficient amount of reasonably affordable

# The Human Right to Water and Sanitation

and accessible water necessary for survival," is to be achieved progressively by States, within available resources. "The right to water is not a free-standing right or a right in customary international law. Nor is it derived from other rights such as the right to life."

## What is the significance of a State recognising the RtW?

When governments officially recognise the RtW, they publicly accept that they are required to adopt necessary measures to facilitate and promote access to safe drinking water for all. National decision makers become more accountable to their populations. Recognition provides a clear basis for civil society to demand fulfilment of the right, and for the judiciary to monitor and enforce State performance.

General Comment 15 indicates that States must prevent discrimination, with special attention to groups who traditionally face difficulty in accessing water and sanitation services. States must ensure that all people have access to relevant information and an opportunity to participate in decision making. Other actors (civil society, decentralised government bodies, the private sector and individuals) also have a role in respecting and promoting the RtW.

## Does the RtW approach add value?

An RtW approach has clear advantages for advocacy. It has the potential to raise the priority of water and sanitation on the development agenda and with respect to national resource allocations. It is argued that a RtW approach facilitates more effective participation by the poor and traditionally deprived groups, leading to better decision taking and more sustainable solutions. The RtW also has the potential to mobilise resources and mechanisms in the United Nations human rights supervision and monitoring system. In summary, a rights perspective:

- ◆ Generates political will
- ◆ Persuades donors and governments to increase resources
- ◆ Encourages participation in decisions on sector policy and performance
- ◆ Helps to target resources on poor, vulnerable and marginalised groups
- ◆ Encourages monitoring of sector performance
- ◆ Empowers communities and derived groups to claim their rights
- ◆ Increases accountability through legal redress and complaints mechanisms

"The scarcity at the heart of the global water crisis is rooted in power, poverty and inequality, not in physical availability. There is more than enough water in the world for domestic purposes, for agriculture and for industry. The problem is that some people—notably the poor—are systematically excluded from access by their poverty, by their limited legal rights or by public policies that limit access to the infrastructures that provide water for life and for livelihoods. In short, scarcity is manufactured through political processes and institutions that disadvantage the poor. When it comes to clean water, the pattern in many countries is that the poor get less, pay more and bear the brunt of the human development costs associated with scarcity."

Human Development Report 2006 *Beyond scarcity: Power, poverty and the global water crisis—Overview*

## Will the RtW approach bring real change?

Acceptance of the RtW does not guarantee a difference in people's lives. As with every policy instrument, it is necessary to support words with actions. Fulfilling the right requires:

- ◆ A political framework with decision makers committed to bring changes that benefit the poor
- ◆ A clear institutional framework that spells out roles and responsibilities in ensuring implementation of the RtW
- ◆ Institutional capacity to empower disadvantaged groups and include representatives of the poor/vulnerable groups in policy dialogue
- ◆ Sufficient finance
- ◆ Access to information and detailed practical advice

The right to water is only powerful if governments and civil society recognise and implement it.

## II. What does a right to water include?

### A sufficient amount of safe drinking water

General Comment 15 states that water must be sufficient and continuous for personal and domestic uses (drinking, washing clothes, food preparation, personal and household hygiene).

There is no consensus on how much is 'sufficient'—it is up to each country to decide on a minimum amount. While 25 litres per capita per day is regarded as the minimum to sustain life, the UNHCHR notes that this is insufficient

to meet basic hygiene and consumption requirements, and cites WHO guidance that 50-100 litres is needed to meet all health concerns. Some advocates fear that to specify a minimum requirement might lower standards in societies where a higher minimum is already in place.

General Comment 15 says that safe water for personal and domestic use must be free from substances constituting a threat to a person's health. The WHO Guidelines on water quality are mentioned as reference point.

### Equal and non-discriminatory access

Water and sanitation facilities have to be close to houses, educational institutions and workplaces, within safe reach for all sectors of the population. The UN defines proximity as access to 20 litres per person per day within 1,000 m or 30 minutes collection time. However, targets need to be set in each country, determined by social, geographical and economic circumstances. Principles of equity and non-discrimination require that no population group is excluded and that priority in allocating limited public resources is given to those who do not have access to safe drinking water and sanitation.

### Does the RtW imply free water?

Both the CESCR and the UNHCHR assert that the minimum water for essential personal and domestic use must be affordable, but not necessarily free. General Comment 15 states that payment systems for water services must ensure that they are affordable for all. The UNHCHR says that nobody should be deprived of access because of an inability to pay. Poorer households should not be disproportionately burdened with costs: 'ability to pay' needs to be taken into account. Governments have to decide how the costs of water will be born. This might mean cross-subsidies to cover the cost of water. For people in extreme poverty, some water may indeed be free, but costs must still be met from other sources.

#### South Africa—some water for all

South Africa provides for the right of access to a basic service of 25 litres of potable water per person per day, within 200 metres of a household. The basic amount is free of charge to poor households: local government receives a national subsidy to cover the cost. However, the right to free basic water is not absolute. The government must take reasonable legislative and other measures, within available resources, to achieve progressive realisation of this right.

**"Affordability requires that direct and indirect costs related to water and sanitation should not prevent a person from accessing safe drinking water and should not compromise his or her ability to enjoy other rights, such as the right to food, housing, health and education. These costs include both connection and delivery costs. The human rights framework does not imply, therefore, a right to free water and sanitation but highlights the fact that nobody should be deprived of access because of an inability to pay. It therefore contemplates the possibility that safe drinking water and sanitation should be provided for free in certain circumstances but does not set this as a rule. Consequently, the affordability requirement is not incompatible with the principle of cost recovery for water and sanitation services, which is also recognized in several international declarations. However, it defines limits to cost recovery and highlights the fact that it should not become a barrier to access to safe drinking water and sanitation, notably by the poor."**

UNHCHR report on human rights obligations related to water and sanitation, 2007

### Would the RtW prevent privatisation in the water sector?

The RtW does not prohibit privatisation of water supply services. It is the role of the State to ensure that private provision, where it exists, complies with human rights standards. National governments need to establish an effective regulatory system to monitor performance. An increasing number of private water providers themselves recognise access to safe drinking water as a human right.

### Does the RtW entail access to sanitation?

Sanitation is included in the right to water, but only in general terms. General Comment 15 says that States 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. However, the Millennium Development Goals do not define "improved sanitation". Can "basic" or

**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.**

General Comment 15 on the International Covenant on Economic, Social and Cultural Rights (ICESCR)

"improved" sanitation mean public latrines, or does this imply a private facility? Does the right to sanitation include latrine maintenance and wastewater management? The International Year of Sanitation 2008 could become a catalyst to explore these issues, and the Joint Monitoring Programme (JMP), which monitors MDG targets, may be a suitable platform to clarify the indicators.

### III. Topics of ongoing debate

There are other ongoing debates about the nature of the right to water and sanitation and how these rights can be upheld.

#### Who takes responsibility at international level to safeguard implementation?

There is a consensus on the need for an international mechanism for the RtW, but not on what it should be. Some countries consider that a new mandate and mechanism to monitor and report on progress is essential. Others believe this role can be achieved through better coordination of existing UN bodies and mandates. Some countries lobby for an international rapporteur to receive and act on complaints. Others fear this will result in criticism rather than support. They would prefer a proactive body to conduct studies, document best practice, and act as a focal point to advise governments and NGOs.

#### Role of local authorities in implementation

Decentralisation and sector reform transfers responsibility for water and sanitation to sub-national levels in many countries. Municipalities and districts take responsibility for a mix of functions including planning for water, sanitation and hygiene (WASH) services, direct service provision, assistance to community based service providers, supervision, monitoring and regulatory oversight. The level of autonomy of local authorities and their capacity to fulfil their mandates and enable participatory decision taking are important factors in achieving the right to water and sanitation.

#### Sustainability and cost recovery

The right to water must be realised in a sustainable manner for present and future generations. Payment for services is necessary to ensure financial sustainability and as an incentive for sustainable use. There are examples of mechanisms that successfully target subsidies to those who are unable to pay. However, there is still too little information on the real costs of sustained WASH service delivery.

Public policies on sanitation are as relevant to the state of a nation as economic management, defence or trade, yet sanitation is accorded second or third order priority. Even more than water, sanitation suffers from a combination of institutional fragmentation, weak national planning and low political status.

Human Development Report 2006 *Beyond scarcity: Power, poverty and the global water crisis—Overview*

#### Exploring the implications of the right to water and sanitation

There are several areas where further debate is needed, where the right to water is not yet sufficiently detailed, such as:

- ◆ What should the human right to sanitation include?
- ◆ How should a State regulate the private sector in providing safe drinking water and sanitation?
- ◆ What are the criteria to protect the right to safe drinking water and sanitation in the event of disconnection?
- ◆ How does the right to water interact with other areas of international law, including trade and investment?

There is an unresolved question about how the right to water and sanitation interconnects with the need for Integrated Water Resources Management (IWRM). The RtW is stated to cover only essential use of water but IWRM is a critical concept for setting priorities for different uses of water (domestic, agriculture, productive, leisure), for mediating between different users of water and for environmental sustainability. Increased understanding is needed of the links between RtW and IWRM, along with a strategy to combine these concepts at local level.



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