

CONSULTATION ON THE HUMAN RIGHTS OBLIGATIONS RELATED TO SANITATION

**Independent Expert on the issue of human rights obligations related to access to
safe drinking water and sanitation**

**Human rights standards related to sanitation at the international,
regional and domestic levels¹**

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¹ See Annex 1 containing a table with References to Human Rights and Sanitation in International, Regional and Domestic Legislation.

Part A. International standards

A.1. International human rights law

I. International human rights treaties and their interpretation by the competent monitoring bodies

International human rights treaties are sources of law that are legally binding for all the States who have become parties to them (normally through signature and subsequent ratification or through accession) and once they have entered into force. An international treaty as such does not give rise to any rights or obligations for non-parties. International treaties bind States, not only governments, so that a change of government does not have any influence on a State's obligations. The breach of an obligation contained in an international human rights treaty in principle constitutes an international wrongful act, which triggers the international responsibility of the respective State. States cannot rely on their internal law to justify non-compliance with their obligations under international human rights treaties.

When States ratify international human rights treaties, they commit to submitting regular reports to treaty bodies on actions taken to implement the treaties. Through the consideration of States parties reports, the treaty bodies engage in a dialogue with States about implementation of the relevant treaty and they issue Concluding Observations. While the Concluding Observations, in particular suggestions and recommendations, may not carry legally binding status, they are indicative of the opinion of the only UN expert bodies entrusted with and capable of making such pronouncements. Consequently, for States parties to ignore or not act on such views would "be to show bad faith in implementing their Covenant-based obligations,"² give raise to further questioning by the treaty body (or Committee) and also to future "negative" assessments of the progress made by that particular States party in the implementation of the obligations contained in the treaty. "In a number of instances, changes in policy, practice and law have been registered at least partly in response to the Committee's concluding observations."³

The treaty bodies also issue General Comments, which constitute their interpretation of the human rights provisions in the treaties that they are entrusted with monitoring. These General Comments are intended to assist States parties to fulfil their reporting obligations and to provide greater interpretative clarity as to the intent, meaning and content of the treaties concerned. They are not legally binding upon States parties, although they do constitute authoritative interpretations by the body mandated to interpret and monitor implementation of the treaty and as such carry considerable persuasive force.

I.1. International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1965⁴

I.1.A. References in CERD

² Taken from Fact Sheet No.16 (Rev.1), The Committee on Economic, Social and Cultural Rights, at: <http://www.ohchr.org/Documents/Publications/FactSheet16rev.1en.pdf>.

³ Ibid. This statement applies *mutatis mutandis* to the Concluding Observations discussed in this paper that other UN treaty bodies adopted in the framework of their respective State reporting procedures.

⁴ G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195. Entered into force 4 January 1969.

CERD does neither contain any explicit reference to sanitation nor any provision which clearly implies sanitation.

I.1.B. Interpretation by the competent treaty body: CERD Committee

In its 2008 Concluding Observations⁵ on the Dominican Republic, the Committee on the Elimination of Racial Discrimination (CERD Committee) subsumes sanitation under the right to an adequate standard of living, recommending that “the State party take all necessary measures to ensure the right of non-citizens, in particular migrants of Haitian origin, to an adequate standard of living, in particular their access to health services, **sanitation**, drinking water and education.”

In its 2005 Concluding Observations on Venezuela, the CERD Committee explicitly refers to “**the right to health and sanitation services**”.⁶

I.2. International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966⁷

I.2.A. References in the ICESCR

I.2.A.1. The right to an adequate standard of living, article 11 (1) ICESCR

In article 11 (1) ICESCR, the State Parties to the Covenant “recognize 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...”.

While not explicitly referring to sanitation or hygiene, the use of the word “including” indicates that the above list of rights is not meant to be exhaustive, but open to include other elements in addition to food, clothing and housing that are indispensable for, the realization of the right to an adequate standard of living.⁸ Considering the close nexus between lack of sanitation, poverty, ill-health and loss of human dignity, it seems clear that an adequate standard of living cannot be realised without access to sanitation. Therefore, it would seem possible to argue that the right to an adequate standard of living guaranteed under article 11(1) ICESCR could be interpreted as to encompass access to sanitation.

I.2.A.2. The right to the highest attainable standard of physical and mental health, article 12 (1) ICESCR

Article 12 ICESCR recognising the right of everyone to the enjoyment of the highest attainable standard of physical and mental health provides that the steps to be taken by the States Parties to achieve the full realization of this right shall include those necessary for “[t]he improvement of all aspects of **environmental and industrial hygiene**” (article 12 (2)(b)).

I.2.B. Interpretation by the competent treaty body: the Committee on Economic, Social and Cultural Rights (CESCR)

⁵ The statements under I.2.B.1 regarding the legal value of concluding observations of the apply analogously.

⁶ Committee on the Elimination of Racial Discrimination, Concluding Observations: Venezuela, U.N. Doc. CERD/C/VEN/CO/18 (2005), at para 17.

⁷ U.N.G.A. Res. 2200A (XXI), 21 U.N. GAOR, Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3. Reprinted in 6 I.L.M. 360 (1967). Entered into force 3 January 1976.

⁸ The UN Committee on Economic, Social and Cultural Rights (CESCR) underlined this point in its General Comment No. 15 on the right to water. See Committee on Economic, Social and Cultural Rights, General Comment No. 15: The right to water, U.N. Doc. E/C.12/2002/11 (2002), para 3.

I.2.B.1. Concluding Observations on periodic State Reports⁹

In its Concluding Observations on States' Reports, the Committee regularly addresses the issue of sanitation.

In its 2002 Concluding Observations on Georgia, for example, CESCR strongly recommended the State party to take effective measures to improve the situation of internally displaced persons, "including the adoption of a comprehensive programme of action aiming at ensuring more effectively their rights to adequate housing, food and water, health services and sanitation..."¹⁰.

In its 2002 Concluding Observations on the Solomon Islands, CESCR addressed lack of access to proper sanitation facilities in the context of health, urging the State party to seek international cooperation and assistance with a view to ensuring access to safe drinking water and adequate sanitation systems for all rural and urban communities.¹¹

In its 2003 Concluding Observations on Yemen, the CESCR specifically proposed the development of ecological dry sanitation methods in rural settings.¹²

In its 2004 Concluding Observations on Greece, CESCR, addressing the issue of sub-standard living conditions of Roma communities, treated access to adequate sanitation in the context of the right to housing.¹³

I.2.B.2. General Comments of the CESCR

I.2.B.2.1. General Comment No. 4 on the right to housing

General Comment No. 4 on the right to housing stipulates that an "adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, **sanitation** and washing facilities, means of food storage, **refuse disposal, site drainage** and emergency services; ...".¹⁴

I.2.B.2.2. General Comment No. 14 on the right to health

General Comment No. 14 on the right to health includes several references to sanitation. Paragraph 4 lists "access to safe and potable water and adequate sanitation" as one of the underlying determinants of health which the right to health embraces,¹⁵ which is repeated in paragraph 11, where the Committee explicitly states that it "interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health

⁹ In its new reporting guidelines adopted in January 2009, the Committee refers to sanitation under the right to housing (see paragraph 50) and the right to health (see paragraph 57 b).

¹⁰ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Georgia. UN Doc. E/C.12/1/Add.83 (2002), para 31.

¹¹ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Solomon Islands. UN Doc. E/C.12/1/Add.84 (2002), paras 13 and 26.

¹² Concluding Observations of the Committee on Economic, Social and Cultural Rights: Yemen. UN Doc. E/C.12/1/Add.92 (2003), para 38.

¹³ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Greece. UN Doc. E/C.12/1/Add.97 (2004), para 44.

¹⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 4: The right to adequate housing, contained in UN Doc. E/1992/23 annex III at 114 (1991), at para 8 (b).

¹⁵ Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health, U.N. Doc. E/C.12/2000/4 (2000), at para 4.

care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation,”¹⁶

In paragraph 12, the Committee further elaborates on State obligations with regard to health facilities, goods and services. Under footnote 6, the Committee clarifies that every reference in General Comment No. 14 to health facilities, goods and services includes the underlying determinants of health, including adequate sanitation. To summarise the remainder of paragraph 12, the Committee in result states that health facilities, including adequate sanitation, must be available, accessible (including the four dimensions of accessibility namely, non-discrimination;¹⁷ physical accessibility;¹⁸ affordability;¹⁹ and access to information²⁰), acceptable²¹ and of adequate quality²².

Under the heading “[t]he right to healthy natural and workplace environments”, General Comment No. 14 further explains that “[t]he improvement of all aspects of environmental and industrial hygiene’ (art. 12.2 (b)) comprises, *inter alia*, preventive measures in respect of occupational accidents and diseases; the requirement to ensure an adequate supply of safe and potable water and **basic sanitation**; ...”²³

The General Comment goes on to specify State obligations related to the right to health, including sanitation as an underlying determinant of health. Accordingly, States are obliged to RESPECT the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to adequate sanitation, which as noted above, is included under the Committee’s definition of health services; abstaining from enforcing discriminatory practices as a State policy; and refraining from imposing discriminatory practices relating to women's health status and needs.²⁴ Furthermore, “States should refrain from ... censoring, withholding or intentionally misrepresenting health-related information, ..., as well as from preventing people's participation in health-related matters.”²⁵

At a second level, States are under the obligation to PROTECT the right to health, *inter alia* by adopting legislation or taking other measures ensuring equal access to sanitation services provided by third parties; by ensuring that privatization does not constitute a threat to the

¹⁶ Ibid., para 11.

¹⁷ Sanitation facilities must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.

¹⁸ “... within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS. ... within safe physical reach, including in rural areas. Accessibility further includes adequate access to buildings for persons with disabilities.”

¹⁹ “... including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households.”

²⁰ Access to information would include the right to seek, receive and impart information and ideas concerning sanitation issues.

²¹ “respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned”

²² “As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, *inter alia*, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation”

²³ Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health, U.N. Doc. E/C.12/2000/4 (2000), at para 15.

²⁴ Ibid., para 34.

²⁵ Ibidem.

availability, accessibility, acceptability and quality of sanitation services; and by ensuring that third parties do not limit people's access to sanitation and hygiene information and services.²⁶

The obligation to FULFIL the right to health requires States parties, *inter alia*, to give sufficient recognition to the right to health in the national political and legal systems, preferably by way of legislative implementation, and to adopt a national health policy with a detailed plan for realizing the right to health. States must ensure ... equal access for all to the underlying determinants of health, such as ... potable drinking water, basic sanitation and adequate housing and living conditions.

Paragraph 43 (c) further stipulates that States parties have a core obligation to “ensure access to **basic** shelter, housing and **sanitation**, and an adequate supply of safe and potable water”,²⁷ which is of immediate effect.

I.2.B.2.3. General Comment No. 15 on the right to water

General Comment No. 15 states that “[t]he water supply for each person must be sufficient and continuous for personal and domestic uses. [footnote omitted] These uses ordinarily include drinking, **personal sanitation**, washing of clothes, food preparation, **personal and household hygiene**.”²⁸ The text accompanying footnote 13 explains that “personal sanitation” means disposal of human excreta and “personal and household hygiene” means personal cleanliness and hygiene of the household environment.

General Comment No. 15 further notes that “[e]nsuring 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. [footnote omitted] 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.”²⁹

Furthermore, CESCR explains that “measures to prevent, treat and control diseases linked to water, in particular ensuring access to **adequate sanitation**” are part of the core obligations under the right to water, which is of immediate effect.³⁰

I.2.B.2.4. General Comment No. 19 on the right to social security

General Comment No. 19 states in paragraph 18 that “Family and child benefits, including cash benefits and social services, should be provided to families, without discrimination on prohibited grounds, and would ordinarily cover food, clothing, housing, water and **sanitation**, or other rights as appropriate.” It is noteworthy that the Committee uses the list of elements of the right to an adequate standard of living explicitly in art. 11 (1), but adds both water and sanitation. See also para 59, where CESCR again refers to “basic shelter and housing, water and **sanitation**, foodstuffs...”

²⁶ Ibid., para 35.

²⁷ Ibid., para 43 (c).

²⁸ Committee on Economic, Social and Cultural Rights, General Comment No. 15: The right to water, U.N. Doc. E/C.12/2002/11 (2002), at para 12 (a).

²⁹ Ibid., para 29.

³⁰ Ibid., at para 37.

I.3. International Covenant on Civil and Political Rights (ICCPR), 1966³¹

I.3.A. References in the ICCPR

The ICCPR does not explicitly refer to sanitation and hygiene.

However, article 6 (I) ICCPR provides that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

Furthermore, 7 ICCPR stipulates that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. ...” and article 10 (I) ICCPR states that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

I.3.B.1 Interpretation by the competent treaty body: Human Rights Committee

The Human Rights Committee in its Concluding Observations on periodic State reports has regularly addressed conditions of detention that were unsatisfactory with regard to sanitation under articles 7 and 10 ICCPR³² and called upon States to adhere to the United Nations Standard Minimum Rules for the Treatment of Prisoners (referred to below).

I.3.B.2 General Comments by the Human Rights Committee

In its General Comment Nr 6 on the Right to Life, the Human Rights Committee stated that “Moreover, the Committee has noted that the right to life has been too often narrowly interpreted. The expression ‘inherent right to life’ cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”³³ Although this General Comment suggests a very broad interpretation of the right to life, the practice of the Committee to date has not been to follow such a broad approach in its findings.

I.4. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979³⁴

I.4.A. References in CEDAW

³¹ G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171. Entered into force Mar. 23, 1976.

³² See, for example, Concluding observations of the Human Rights Committee: Honduras, U.N. Doc. CCPR/C/HND/CO/1 (2006), at para 15; Concluding observations of the Human Rights Committee: Thailand, U.N. Doc. CCPR/CO/84/THA (2005), para 16; Concluding observations of the Human Rights Committee: Ukraine, U.N. Doc. CCPR/C/UKR/CO/6 (2006), para 11; Concluding observations of the Human Rights Committee: Benin, U.N. Doc. CCPR/CO/82/BEN (2004), para 17; Concluding observations of the Human Rights Committee: Mongolia, U.N. Doc. CCPR/C/79/Add.120 (2000), para 12; Concluding observations of the Human Rights Committee: Kenya, U.N. Doc. CCPR/CO/83/KEN (2005), para 19; Concluding observations of the Human Rights Committee: Democratic Republic of the Congo, U.N. Doc. CCPR/C/COD/CO/3 (2006), para 20; Concluding observations of the Human Rights Committee: Guyana, UN. Doc. CCPR/C/79/Add.121 (2000), para 17; Human Rights Committee, Concluding Observations: Jamaica. U.N. Doc. CCPR/C/79/Add.83 (1997), para 13.

³³ Human Rights Committee, General Comment No. 6, The right to life (art. 6), UN Doc, CCPR/C/21/Rev.1, para 5 (1982).

³⁴ U.N.G.A. Res. 34/180 (1979), 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force 3 September 1981. Available at: <http://www2.ohchr.org/english/law/cedaw.htm>.

Article 14 (2)(h) CEDAW addressing the specific situation of rural women provides that States parties shall take all appropriate measures to ensure to women the right to enjoy adequate living conditions, particularly in relation to housing, **sanitation**, electricity and water supply, transport and communication.

I.4.B. Interpretation by the competent treaty body: CEDAW Committee

I.4.B.1. Concluding Observations on periodic State Reports³⁵

The first Concluding Observations of the CEDAW Committee elaborating on the issue of sanitation was in 2003 concerning Brazil, where the Committee expresses concern “about the impact of poverty on Brazilian women of African descent, indigenous women, female heads of household and other socially excluded or marginalized groups of women and about their disadvantaged position with respect to access to education, health, **basic sanitation**, employment, information and justice.”³⁶ The fact that sanitation - although explicitly included in article 14(2)(h) - was not even mentioned in earlier Concluding Observations on reports of countries such as Bangladesh (1997, 2004), Nepal (1999, 2004), India (2000), which even today still are home to the vast majority of people forced to practice open defecation, again underlines the extent of neglect of this issue - including within the UN Human Rights machinery – in the past.

In its 2007 Concluding Observations on Pakistan, the Committee urged “the State party to pay special attention to the needs of rural women, ensuring that they are empowered in participating in decision-making processes and have access to health care, education, **clean water and sanitation services** and the means and opportunities for economic survival, including access to land”.³⁷ The formulation “clean water and sanitation services” seems to have become the standard formulation used by the CEDAW Committee with regard to State obligations under article 14(2)(h) CEDAW.³⁸

In its 2006 Concluding Observations on Thailand, the CEDAW Committee requested the State party to address “the needs of rural and hill tribe women in an urgent and comprehensive manner and to implement measures to ensure that rural and hill tribe women have **full access to adequate** nutrition, **sanitation**, ...”.³⁹

In its recent Concluding Observations on India, the CEDAW Committee urged “the State party to study the health implications of manual scavenging on Dalits engaged in this profession and on the community as a whole, and to address all the impediments to eradicating this practice, including by putting in place **modern sanitation facilities** and providing the Dalit women engaged in this practice with vocational training and alternative means of livelihood.”⁴⁰ In the same

³⁵ The Reporting Guidelines of the Committee on the Elimination of All Forms of Discrimination against Women does not contain specific mention of sanitation.

³⁶ Concluding Comments of the Committee on the Elimination of Discrimination against Women: Brazil, Part of U.N. Doc. A/58/38, at para 110.

³⁷ Concluding Comments of the Committee on the Elimination of Discrimination against Women: Pakistan, U.N. Doc. CEDAW/C/PAK/CO/3 (2007), para 43.

³⁸ See also Concluding Comments of the CEDAW Committee on Suriname (U.N. Doc. CEDAW/C/SUR/CO/3 (2007), para 32), Philippines (UN Doc. CEDAW/C/PHI/CO/6 (2006), para 30(r)); Mozambique (UN Doc. CEDAW/C/MOZ/CO/2 (2007), para 41(r)); Mali (UN Doc. CEDAW/C/MLI/CO/5 (2006), para 36(r)); Mongolia (Un Doc. CEDAW/C/MNG/CO/7 (2008), para 35(c);

³⁹ Concluding Comments of the Committee on the Elimination of Discrimination against Women: Thailand (UN Doc. CEDAW/C/THA/CO/5 (2006)), para 34.

⁴⁰ Concluding Comments of the Committee on the Elimination of Discrimination against Women: India, U.N. Doc. CEDAW/C/IND/CO/3 (2007), para 29.

Concluding Observations, the Committee also urged “the State party to pay increased attention to female health throughout the life cycle, including in key areas of pregnancy and non-pregnancy-related morbidity and mortality” and called upon the State party to strengthen food security, primary health care and **adequate sanitation**, especially in rural areas; ...”⁴¹

I.4.B.2. General Recommendations of the CEDAW Committee

General Recommendation No. 24 on women and health reiterates that article 12 (h) “obliges States parties to take all appropriate measures to ensure adequate living conditions, particularly housing, **sanitation**, electricity and water supply, transport and communications, all of which are critical for the prevention of disease and the promotion of good health care...”⁴²

I.5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984⁴³

I.5.A. References in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 16 (I) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) provides that “[e]ach State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

I.5.B. Interpretation by the competent treaty body: Committee against Torture (CAT)

In recent Concluding Observations,⁴⁴ such as its 2005 Concluding Observations on Nepal⁴⁵ and the 2006 Concluding Observations on Tajikistan,⁴⁶ the Committee against Torture addressed poor conditions of detention, including poor sanitation, as ill-treatment under article 16 of the Convention.

In its 2004 Concluding Observations on the UK and Northern Ireland, CAT expressed concern about “reports of unsatisfactory conditions in the State party’s detention facilities including ... overcrowding and continued use of “slopping out”^[47] sanitation facilities, as well as reports of

⁴¹ Concluding Comments of the Committee on the Elimination of Discrimination against Women: India, U.N. Doc. CEDAW/C/IND/CO/3 (2007), para 41. The Committee also refers to “adequate sanitation” in its 2005 Concluding Comments on Gabon (UN Doc. CEDAW/C/GAB/CC/2-5 (2005), para 39) and Burkina Faso (UN Doc. CEDAW/C/BFA/CO/4-5 (2005), para 33).

⁴² General Recommendation No. 24 (20th session, 1999) (article 12 : Women and health), para 28. At: <http://www2.ohchr.org/english/bodies/cedaw/comments.htm>.

⁴³ G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)]. Entry into force 26 June 1987.

⁴⁴ For the legal status of Concluding Observations, see Fn. 6.

⁴⁵ Committee against Torture, Conclusions and recommendations of the Committee against Torture: Nepal, U.N. Doc. CAT/C/NPL/CO/2 (2005), at para 31.

⁴⁶ Committee against Torture, Conclusions and recommendations of the Committee against Torture: Tajikistan. U.N. Doc. CAT/C/TJK/CO/1 (2006), at para 20.

⁴⁷ Slopping out is the emptying of buckets of human waste when the cells are unlocked in prisons in the morning. Inmates without a toilet in the cell have to use a bucket or chamber pot while locked in during the night. The reasons that some cells do not have toilets is that they are easily smashed; to prevent this metal toilets have to be installed, but they are expensive. (source: WIKIPEDIA).

unacceptable conditions for female detainees in the Hydebank Wood prison, including a lack of gender sensitive facilities..”⁴⁸

I.6. Convention on the Rights of the Child, 1989 (CRC)⁴⁹

I.6.A. References in CRC

Article 24 CRC guaranteeing right of the child to the enjoyment of the highest attainable standard of health stipulates in para (2)(e) that States Parties shall pursue the full implementation of this right and, in particular, shall take appropriate measures ... “[t]o ensure that **all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of** basic knowledge of child health and nutrition, the advantages of breastfeeding, **hygiene and environmental sanitation...**” thus stipulating clear State obligations with regard to sanitation and hygiene education and promotion.⁵⁰

I.6.B. Interpretation by the competent monitoring body: CRC Committee⁵¹

I.6.B.1. Concluding Observations on periodic State Reports⁵²

The CRC Committee confirms such an understanding in its recent Concluding Observations⁵³ on Georgia, where it urges the State party to “allocate increased resources to address the high rates

⁴⁸ Committee against Torture, Conclusions and recommendations of the Committee against Torture: United Kingdom of Great Britain and Northern Ireland, Crown Dependencies and Overseas Territories, U.N. Doc. CAT/C/CR/33/3 (2004), para 4 (g).

⁴⁹ Convention on the Rights of the Child, U.N.G.A. Res. 44/25, 44 U.N. GAOR, Supp. (No. 49), U.N. Doc. A/44/49, at 166 (1989). Reprinted in 28 I.L.M. 1448 (1989). Entered into force 2/9/1990.

⁵⁰ At its 1985 session, the open-ended Working Group had two texts for consideration: a Polish proposal and a revised text of a Canadian proposal originally submitted to the Working Group’s session in 1983. The Working Group agreed that the Canadian text would be used as a basis for discussion. The Canadian text proposed as follows: “The States Parties to the present Convention shall pursue full implementation of this right and in particular, shall take appropriate measures to: ...

(d) ensure the provision of information to and training for parents and children in basic health care, *sanitation* and safety.” (see J. Doek and N. Cantwell, *The United Nations Convention on the Rights of the Child – A guide to the “Travaux Préparatoires”* (Martinus Nijhoff Publishers, Dordrecht – Boston - London, 1992, p. 345-346). When discussing the relevant sub-paragraph, the Working Group decided to replace the word “safety” with the phrase “prevention of accidents” as proposed by the representative of the UK. The approved text for what had now become subparagraph (e) read as follows: “ensure the provision of information to and training for parents and children in basic health care, *sanitation* and prevention of accidents”. (see *ibid.*, p. 348). India then submitted a proposal for revision of art. 12 *bis* to the 1988 session of the Working Group, which proposed to change article subparagraph (e) as follows: To ensure that all segments of society, in particular parents and children, are informed, and supported in the use, of basic knowledge of child health and nutrition, the advantages of breast-feeding, *hygiene and environmental sanitation* and the prevention of accidents;” (see *ibid.*, p. 353). This amendment was accepted by the Working Group, apparently without discussion of what environmental sanitation entailed precisely. At its 1989 session, the Working Group had before it a text from Venezuela, which proposed with regard to subparagraph (e) to add “have access to education”, before “are informed”, which was accepted by the Working Group.

⁵¹ The Reporting Guidelines of the Committee on the Rights of the Child require States Parties to provide disaggregated data on the percentage of households without access to hygienic sanitation facilities and access to safe drinking water in the framework of reporting on article 24 (health and health services).

⁵² In the Reporting Guidelines of the Committee on the Rights of the Child, it specifies that “States parties should provide data disaggregated as described in paragraph 1, above, on the: (d) Percentage of households without access to hygienic sanitation facilities and access to safe drinking water; - See UN Document CRC/C/58/Rev.1, §17, 29 November 2005

⁵³ For the legal status of Concluding Observations, see Fn. 6.

of neonatal deaths and premature births, by, inter alia, ... develop campaigns to inform parents about ... **hygiene and environmental sanitation**,⁵⁴

Furthermore, in the framework of the State reporting procedure, the CRC Committee has regularly interpreted the right of every child to an adequate standard of living as including sanitation. In its 2002 Concluding Observations on Niger,⁵⁵ for example, the CRC Committee states that it “is concerned about the widespread poverty in the State party and the increasingly high numbers of children who do not enjoy the right to an adequate standard of living, including access to clean drinking water, adequate housing and **latrines**”, thus explicitly including access to latrines within the ambit of the right to an adequate standard of living. The CRC Committee has confirmed this view in numerous other Concluding Observations.⁵⁶

In recent Concluding Observations, however, the CRC Committee appears to have expanded the scope of the article to go beyond just latrines. In its Concluding Observations on Serbia adopted in 2008, for example, the CRC Committee refers to **sanitation**, without any further qualification of the term.⁵⁷ In the Concluding Observations on Bulgaria adopted at the same session, the CRC Committee then recommends that the State Party take “all necessary measures to make **adequate** housing, **sanitation** and infrastructure available for all families including for low-income and large families and Roma communities”.⁵⁸ Similarly, in its considerations regarding article 27 of the Convention in the Concluding Observations on Eritrea, the CRC Committee includes “access to ... clean drinking water, **adequate** housing and **sanitation**” under the right to an adequate standard of living.

In its Concluding Observation on Djibouti, adopted in its 49th and last session, the Committee recommends the State in the framework of its analysis of the right to an adequate standard of living to “[p]rovide access to clean water, **adequate sanitation**, food and shelter in all regions and communities of the country, ...”⁵⁹ and in its Concluding Observations on Bhutan, equally adopted at the 49th session, the CRC Committee refers to “**basic sanitation**”.⁶⁰

I.6.B.2. General Comments

General Comment No. 11 on indigenous children and their rights under the Convention urges States parties “to consider the application of special measures in order to ensure that indigenous children have access to **culturally appropriate** services in the areas of health, ... housing, **sanitation** and juvenile justice.”⁶¹ The Committee also emphasises that “States should take all reasonable measures to ensure that **indigenous children, families and their communities**

⁵⁴ Concluding Observations of the Committee on the Rights of the Child: Georgia. U.N. Doc. CRC/C/GEO/CO/3 (2008), para 45. See also Concluding Observations of the Committee on the Rights of the Child: Paraguay. U.N. Doc. CRC/C/15/Add.166, para 38 (b).

⁵⁵ Concluding Observations of the Committee on the Rights of the Child: Niger. U.N. Doc. CRC/C/15/Add.179 (2002), para 56.

⁵⁶ For identical references to latrines, see inter alia Concluding Observations of the CRC: Ethiopia. U.N. Doc. CRC/C/ETH/CO/3 (2006), para 61; Concluding Observations of the CRC: Zambia. U.N. Doc. CRC/C/15/Add.206 (2003), para 54; Concluding Observations of the CRC: Kenya. U.N. Doc. CRC/C/KEN/CO/2 (2007), paras. 55-56.

⁵⁷ Concluding Observations of the CRC: Serbia. U.N. Doc. CRC/C/SRB/CO/1 (2008), at para 59 (c). Compare also para 51 of the Concluding Observations on Sierra Leone adopted in the same session (Concluding Observations of the CRC: Sierra Leone. U.N. Doc. CRC/C/SLE/CO/2 (2008)).

⁵⁸ Concluding Observations of the CRC: Bulgaria. U.N. Doc. CRC/C/BGR/CO/2 (2008), at para 54 (b).

⁵⁹ Concluding Observations of the CRC: Djibouti. U.N. Doc. CRC/C/DJI/CO/2 (2008), at para 61 (c).

⁶⁰ Concluding Observations of the CRC: Bhutan. U.N. Doc. CRC/C/BTN/CO/2 (2008), at para 56, where the CRC Committee under the heading “Standard of living” “welcomes the improved access to safe drinking water and basic sanitation”.

⁶¹ CRC Committee, General Comment No. 11: Indigenous children and their rights under the Convention, U.N. Doc. CRC/C/GC/11 (2009), at para 25. Unedited version.

receive information and education on issues relating to health and preventive care such as nutrition, breastfeeding, ... hygiene, environmental sanitation ...".⁶²

General Comment No. 7 states with regard to the child's right to health:

"27. **Health-care provision.** States parties should ensure that all children have access to the highest attainable standard of health care and nutrition during their early years, in order to reduce infant mortality and enable children to enjoy a healthy start in life (art. 24). In particular:

(a) States parties have a **responsibility to ensure access to clean drinking water, adequate sanitation, ...;**

(b) States parties have a responsibility to implement children's right to health by encouraging education in child health and development, including about the advantages of breastfeeding, nutrition, **hygiene and sanitation.**"⁶³

General Comment No. 4 on adolescent health and development states that "[c]onsidering the importance of appropriate education for the current and future health and development of adolescents, as well as for their children, the Committee urges States parties, in line with articles 28 and 29 of the Convention to ... (b) provide well-functioning school and recreational facilities which do not pose health risks to students, **including water and sanitation** and safe journeys to school...."⁶⁴

Furthermore, "[a]dolescents have the right to access adequate information essential for their health and development and for their ability to participate meaningfully in society. It is the obligation of States parties to ensure that all adolescent girls and boys, both in and out of school, are provided with, and not denied, accurate and appropriate information on how to protect their health and development and practise healthy behaviours."⁶⁵ Para 27 adds that "[i]n order to act adequately on the information, adolescents need to develop the skills necessary, including self-care skills, such as ... proper personal hygiene habits...."⁶⁶

I.6.C. Academic writings

Eide and Eide elaborate in a recent commentary on article 24 of the CRC:

"The State is under an obligation to ensure that they [the parents] have at least basic knowledge regarding child health and nutrition, and they must be supported in the acquisition and use of this knowledge. Several requirements flow from this provision. The State must ensure that relevant, updated knowledge is available, that this knowledge is made available to all segments of the population, that there is a sufficient educational level in all parts of the population to be able to absorb this knowledge, and that supporting facilities exist to make use of the knowledge. Ensuring that relevant and updated information exists, requires the existence within the State of relevant institutions which seek, systematize, analyze and disseminate the relevant knowledge. ... Furthermore, there must be adequate training of the health professionals and community health workers, and

⁶² Ibid., para 53.

⁶³ CRC Committee, General Comment No. 7: Implementing child rights in early childhood, U.N. Doc. CRC/C/GC/7/Rev.1 (2005), para 27.

⁶⁴ CRC Committee, General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child, U.N. Doc. CRC/GC/2003/4 (2003), at para 17.

⁶⁵ Ibid., para 26.

⁶⁶ Ibid., para 27.

the training must be of a kind that enables them to work both with policy makers and public authorities at all levels and with communities in mobilizing all responsible actors to enable a healthy environment for and appropriate health care of the children and women in child-bearing age.”⁶⁷

Eide further states in a recent commentary on article 27 CRC that “[o]n the material side, an adequate standard of living requires access for all children to **adequate** food and housing, including water and **sanitation**.”⁶⁸

II. International Declarations and Resolutions, Political Commitments, etc

International declarations, resolutions and other political commitments generally are not legally binding in the sense that they do not directly give rise to individual rights and legally binding State obligations. All these instruments have in common a certain proximity to law and a certain legal relevance, and yet they are not legally binding *per se*. Some States have sometimes even explicitly denied their legal binding character. However, they cannot be considered as being merely morally or politically binding and their designation as soft law may be attributed to their proximity to law. Additionally, these declarations create legitimate expectations that States act in good faith consistent with their prior statements. Finally, such declarations, particularly State declarations adopted under the umbrella of the UN, constitute important precedents for UN bodies, including the Human Rights Council. In fact, they often provide the immediate base for subsequent legally binding treaties and can contribute to the formation of customary international law.

II.1. International declarations adopted by States within the UN framework

Paragraph 15 of the 1955 Standard Minimum Rules for the Treatment of Prisoners⁶⁹ provides that “[p]risoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such **toilet articles as are necessary for health and cleanliness**.”

The 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty provide in paragraph 34 that “[s]anitary installations should be so located and of a **sufficient standard** to enable every juvenile to comply, as required, with their physical needs **in privacy** and in a **clean and decent manner**.”⁷⁰

Using a formulation that is highly reminiscent to the wording of article 11 (1) ICESCR, the Programme of Action adopted at the 1994 Cairo International Conference on Population and Development provides in Principle 2 as follows:

“Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature. People are the most important and valuable resource of any nation. Countries should ensure that all individuals are given the opportunity to make the most of their potential. They have the

⁶⁷ A. Eide and W.B. Eide, “Article 24. The Right to Health”, in A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang, E. Berghmans and M. Verheyde (Eds.) *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers, Leiden, 2006), p. 36-37

⁶⁸ A. Eide, Article 27 – the right to an adequate standard of living, 2006, at para 15.

⁶⁹ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

⁷⁰ Adopted by General Assembly resolution 45/113 of 14 December 1990.

right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and **sanitation**.”⁷¹

The same formulation was also included in the 1996 Habitat Agenda coming out of the Second United Nations Conference on Human Settlements (Habitat II) held in Istanbul, which recognises in Principle 11 that “[m]ore people than ever are living in absolute poverty and without adequate shelter. Inadequate shelter and homelessness are growing plights in many countries, threatening standards of health, security and even life itself. Everyone has the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and **sanitation**, and to the continuous improvement of living conditions.”⁷²

In the Declaration on Cities and Other Human Settlements in the New Millennium, adopted in 2001,⁷³ representatives of Governments resolved “to promote access to safe drinking water for all and to facilitate the provision of basic infrastructure and urban services, including adequate sanitation, waste management [...] that is integrated and accessible to all, including people with disabilities.”

The recent United Nations Declaration on the Rights of Indigenous Peoples⁷⁴ states in article 21 (1) that “[i]ndigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of ... **sanitation**, health and social security.”

II.2. Statements adopted by UN expert bodies

Statements adopted by UN bodies composed of independent experts acting in their own capacity may have considerable persuasive value, but less political weight than State declarations.

The 1998 Guiding Principles on Internal Displacement, drafted by the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis M. Deng and submitted to the Commission on Human Rights in 1998, provide under article 18 (1) that “[a]ll internally displaced persons have the right to an adequate standard of living”, and sub-para (2)(d) specifies that “[a]t the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure **safe access to** ...[e]ssential medical services and **sanitation**.”⁷⁵

In 1997, the UN Sub-Commission on the Promotion and Protection of Human Rights,⁷⁶ through Resolution 1997/18 of 27 August 1997, appointed Mr. El Hadji Guissé as Sub-Commission Special Rapporteur on the realization of the right to drinking water and sanitation.

In his final 2004 report,⁷⁷ Mr. Guissé stated as follows:

⁷¹ U.N. Doc. A/CONF.171/13 (1994). The Cairo Programme of Action was signed by 177 States.

⁷² The Habitat Agenda Goals and Principles, Commitments and the Global Plan of Action, available at: http://www.unhabitat.org/downloads/docs/1176_6455_The_Habitat_Agenda.pdf. The Habitat Agenda was unanimously adopted by 171 States.

⁷³ Adopted by GA resolution S25.2 of 9 June 2001, § 59.

⁷⁴ UNGA Res. A/61/L.67 (2007).

⁷⁵ Contained in UN Doc. E/CN.4/1998/53/Add.2, 11 February 1998. Available at: <http://www.unhchr.ch/html/menu2/7/b/principles.htm>.

⁷⁶ The Sub-Commission was the main subsidiary body of the Commission on Human Rights. The Sub-Commission was composed of 26 experts who were elected by the Commission and acted in their personal capacity. The Sub-Commission has been replaced by the Human Rights Council Advisory Committee.

“The **right to drinking water and sanitation** constitutes a part of internationally recognized human rights and may be considered as a prerequisite to the realization of other human rights. The Universal Declaration of Human Rights has arguably recognized implicitly the right to drinking water and sanitation in article 25 (1), which states that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care ...”.

The Sub-Commission subsequently requested Mr. Guissé to prepare a set of draft guidelines related to the realization of the right to drinking water supply and sanitation, which he submitted to the Sub-Commission’s fifty-seventh session in 2005⁷⁸ and which were adopted in the fifty-eighth session in 2006.⁷⁹

The Sub-Commission Guidelines recognise that “[e]veryone has the right to have **access to adequate and safe sanitation** that is **conducive to the protection of public health and the environment**.”⁸⁰ further specifying in article 1.3 that everyone has the right to a water and sanitation service that is **physically accessible within, or in the immediate vicinity of the household, educational institution, workplace or health institution; of sufficient and culturally acceptable quality; in a location where physical security can be guaranteed; and provided at a price that everyone can afford without compromising their ability to acquire other basic goods and services**.⁸¹ With regard to concrete State obligations, the Sub-Commission Guidelines stipulate that “[e]ach level of government in a State, including the national Government, regional governments and the local authorities, has a responsibility to move progressively and as expeditiously as possible towards the full realization of the right to water and sanitation for everyone, using practical and targeted measures and drawing, to the maximum extent possible, on all available resources.”⁸² The Guidelines then continue to define concrete State actions for the implementation of the right to water and sanitation (article 2).

Article 3 on discrimination specifies that States should ensure that no persons or public or private organizations engage in discriminatory practices limiting access to water and sanitation on prohibited grounds (3.1), that “States should give particular attention to the needs of individuals or groups who are vulnerable or who have traditionally faced difficulties in exercising their right to water and sanitation...” (3.2), that States should give priority to providing water and sanitation services to institutions serving vulnerable groups (3.3).

Article 6 on affordability provides that “States should ensure that they have appropriate water and sanitation pricing policies, including through flexible payment schemes and cross-subsidies from high-income users to low-income users” (6.1), that States should subsidize water and sanitation services for low-income households and poor areas that lack the means to secure access to such services (6.2), that States should offer a range of services (including low-cost technology options to promote affordable access for low-income households) where public resources cannot guarantee high-quality services for all (6.3) and that States should ensure that account is taken of ability to pay before a access to water and sanitation services is reduced due to non-payment, and no one should be deprived of the minimum essential amount of water or access to basic sanitation facilities.

⁷⁷ 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* - Final report of the Special Rapporteur, El Hadji Guissé”, UN Doc. E/CN.4/Sub.2/2004/20, 14 July 2004.

⁷⁸ UN Doc. E/CN.4/Sub.2/2005/25 (2005).

⁷⁹ UN Doc. A/HRC/Sub.1/58/L.25 (2006).

⁸⁰ Ibid, para 1.2.

⁸¹ Ibid, para 1.3.

⁸² Ibid., para 2.1.

With regard to participation, article 8 provides that “[e]veryone has the right to participate in decision-making processes that affect their right to water and sanitation and that special efforts must be made to ensure the equitable representation in decision-making of vulnerable groups and sections of the population that have traditionally been marginalized, in particular women” (8.1), that communities have the right to determine what type of water and sanitation services they require and how those services should be managed and, where possible, to choose and manage their own services with assistance from the State (8.2), and that everyone should be given equal access to full and transparent information concerning water, sanitation and the environment held by public authorities or third parties (8.3).

Article 9 provides with regard to remedies and monitoring that everyone should have access to administrative or judicial procedures to make complaints about acts or omissions contravening the right to water and sanitation (9.1) and that States should adequately monitor the implementation of their obligations relating to the right to water and sanitation. Article 10 finally addresses and international obligations.

II.3. Other relevant statements

Paragraph 19 of the 1961 ILO Recommendation No. 115 on Workers’ Housing⁸³ stipulates that “[a]s a general principle, the competent authority should, in order to ensure structural safety and reasonable levels of **decency, hygiene** and comfort, establish minimum housing standards in the light of local conditions and take appropriate measures to enforce these standards.” The “Suggestions Concerning Methods of Application” under paragraph 7 elaborate that the standards referred to in Paragraph 19 of the General Principles should relate in particular to “adequate sewage and garbage disposal systems” (sub c), “**adequate sanitary and washing facilities**” (sub e), “a minimum degree of **privacy**” (sub f). Paragraph 8 addressing situations when housing accommodation for single workers or workers separated from their families is collective under sub c also explicitly refers to “**adequate drainage and sanitary conveniences.**”

The 1992 Dublin Statement on Water and Sustainable Development, adopted at the International Conference on Water and the Environment (ICWE), recognised in Principle No. 4 that “[w]ater has an economic value in all its competing uses and should be recognized as an economic good. Within this principle, it is vital to recognize first the basic right of all human beings to have access to clean water and **sanitation at an affordable price.**”⁸⁴

In paragraph 18 of the Abuja Declaration adopted in the framework of the 1st Africa-South America Summit in 2006, 45 African and 12 South American States committed to “promote the right of our citizens to have access to clean and safe water and sanitation within our respective jurisdictions.”⁸⁵

III. Findings of UN Special Procedures

The studies and recommendations made by UN Special Procedures mandate holders (Independent Experts, Special Rapporteurs, Working Groups, Representatives of the Secretary-

⁸³ At: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?R115>.

⁸⁴ ICWE was attended by five hundred participants, including, including government-designated experts from a hundred countries and representatives of eighty international, intergovernmental and non-governmental organizations.

⁸⁵ See <http://www.africa-union.org/root/AU/Conferences/Past/2006/November/SummitASA/summit.htm>.

General) may inform decision making by States and by the Human Rights Council. In fact “their reports often provide an invaluable analysis of the human rights situation in a specific country or on a specific theme. Some reports bring to the attention of the international community issues that are not adequately on the international agenda”⁸⁶. Their findings have a certain political weight as the Special Procedures are appointed by and report back to the Human Rights Council. But it is true that “much depends on how Governments, the civil society in a particular country and the international community react to the violations and to the findings, conclusions and recommendations of experts”⁸⁷. However, their findings do not have any binding nature in the sense that States or the Human Rights Council as a whole would be obliged to follow the findings of Special Procedures.

III.1. Former Special Rapporteur on the right to adequate housing, Mr. Miloon Kothari

The former Special Rapporteur on the right to adequate housing, Miloon Kothari, repeatedly stated that “full realization of the right to adequate housing is closely interlinked with and contingent upon fulfilment of other rights and services, including access to safe drinking water and *sanitation*. [footnote omitted] No dwelling should be deprived of water because such deprivation would render it unliveable.”⁸⁸

In his report to the seventh session of the Human Rights Council in 2008, the Special Rapporteur explicitly referred to the “human right to water and sanitation.”⁸⁹

III.2. Former Special Rapporteur on the right to the highest attainable standard of health, Mr. Paul Hunt

In his final report to the General Assembly,⁹⁰ the Special Rapporteur comprehensively addressed the issue of human right obligations related to sanitation, stating inter alia as follows:

Water and sanitation as a human right

63. The human right to water and sanitation is recognized as a self-standing right in a wide range of international documents, including treaties and declarations, as well as by governmental and non-governmental bodies and in various court decisions.[footnote omitted]

64. While the International Covenant on Economic, Social and Cultural Rights makes no explicit reference to the right to water and sanitation, the Committee on Economic, Social and Cultural Rights takes the view that water is an independent right implicit in the Covenant and closely related to the rights to the highest attainable standard of health, adequate housing and food.

See also paras 73 to 102 of the Special Rapporteur’s report for a detailed analysis of the human rights obligations related to water and sanitation under the right to health.

III.3. Special Rapporteur on the right to education, Mr. V. Muñoz Villalobos

⁸⁶ Fact Sheet Nr 27, Seventeen Frequently Asked Questions about United Nations Special Rapporteurs <http://www.ohchr.org/Documents/Publications/FactSheet27en.pdf>.

⁸⁷ Idem.

⁸⁸ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr. Miloon Kothari, U.N. Doc. E/CN.4/2002/59 (2002), at para 56.

⁸⁹ See Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Miloon Kothari, U.N. Doc. A/HRC/7/16 (2008), at para 26-29.

⁹⁰ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, U.N. Doc. A/62/214 (2007).

The Special Rapporteur on the right to education, Mr. V. Muñoz Villalobos, recommended States with regard to school sanitation for girls to “[g]uarantee a significant and growing budget to bolster programmes for the construction and improvement of school infrastructure until all national needs are met. That infrastructure must be sited within communities and include a drinking water supply and **separate, private, safe sanitation services for girls.**”⁹¹ as well as to “[e]stablish efficient mechanisms for **supplying sanitary towels to adolescent girls who so wish, especially in rural areas, and ensure they can always have the use of the sanitation facilities they need.**”⁹²

IV. International Humanitarian Law Treaties

IV.1. Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949⁹³

Article 36 stipulates that departures⁹⁴ permitted under article 35 shall be carried out in satisfactory conditions as regards safety, **hygiene, sanitation** and food.⁹⁵

Article 49 (III) provides that the “Occupying Power undertaking [such] transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory **conditions of hygiene, health, safety and nutrition, and that members of the same family are not separate.**”

Article 76 stipulates that “[p]rotected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein. They shall, if possible, be separated from other detainees and shall enjoy **conditions of food and hygiene** which will be **sufficient to keep them in good health**, and which will be at least equal to those obtaining in prisons in the occupied country...”. According to the ICRC Commentary, this means that “the conditions of ... hygiene of the detained persons must be sufficient to keep them in good health and will at least be equal to those obtaining in prisons in the occupied country, but the treatment given to protected persons in detention must take into account the principles of humanity and respect for human dignity in all places and all circumstances. Thus local conditions must not serve as a basis of comparison unless they conform to the requirements of humanity.”⁹⁶

Article 85 stipulates that the Detaining Power is bound to take “all necessary and possible measures to ensure that protected persons shall, **from the outset of their internment**, be accommodated in buildings or quarters which afford **every possible safeguard as regards hygiene** and health, and provide efficient protection against the rigours of the climate and the effects of the war. In no case shall permanent places of internment be situated in unhealthy areas or in districts the climate of which is injurious to the internees...”. The article further provides that “[i]nternees shall have for their use, **day and night, sanitary conveniences** which conform to the **rules of hygiene** and are **constantly maintained in a state of cleanliness**. They shall be **provided with sufficient water and soap for their daily personal toilet** ... Whenever it is necessary, as an exceptional and temporary measure, to accommodate women internees who are

⁹¹ Girls’ right to education, Report submitted by the Special Rapporteur on the right to education, Mr. V. Muñoz Villalobos, U.N. Doc. E/CN.4/2006/45 (2006), at para. 129.

⁹² *Ibid.*, para 130.

⁹³ Geneva Convention relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287. Adopted 12 August 1949. Entered into force 21 October 1950.

⁹⁴ “Departure” refers to the leaving of the territory before or during armed conflict.

⁹⁵ For commentary, see J.S. Pictet (ed.), *Commentary – IV Geneva Convention relative to the protection of civilian persons in time of war* (International Committee of the Red Cross, Geneva, 1958), pp. 239-40.

⁹⁶ J.S. Pictet (ed.), *Commentary – IV Geneva Convention relative to the protection of civilian persons in time of war* (International Committee of the Red Cross, Geneva, 1958), p. 364.

not members of a family unit in the same place of internment as men, the provision of **separate** sleeping quarters and **sanitary conveniences for the use of such women internees shall be obligatory.**”

With regard to the term “**sanitary conveniences**” in paragraph 3 of the above article, the ICRC Commentary states that these should be taken to primarily mean latrines, in conformity with article 29 (2) of Geneva Convention III. The Commentary continues to specify that such conveniences should be so constructed as to preserve decency and cleanliness, must be sufficiently numerous, should be inspected periodically by the health authorities⁹⁷ and internees must further have access to such facilities 24 hours per day.⁹⁸ The Commentary on the identical provision in Geneva Convention (III) adds that “if additional conveniences become necessary, the Detaining Power must install them immediately.”⁹⁹

Geneva Convention (III) contains almost identical provisions governing the treatment of prisoners of war.¹⁰⁰ The ICRC Commentary on Geneva Convention (IV) explains that while articles 85 of Geneva Convention (IV) and article 29 of Geneva Convention (III) are essentially identical, there are differences between the detaining power’s obligations related to civilian internment and prisoners of war. Importantly with regard to sanitation, while the provisions relating to prisoners of war tacitly admit that some time is necessary in certain cases to fulfil the conditions laid down, the obligations are of an immediate nature in case of civilian internment, i.e. accommodation and sanitary condition must be satisfactory from the outset of internment.¹⁰¹

IV.2. 1977 Additional Protocols to the 1949 Geneva Conventions

There is no explicit reference to sanitation in the Additional Protocols.

However, article 54 (1) of the 1st Protocol Additional to the Geneva Conventions governing international armed conflicts¹⁰² explicitly prohibits the parties to a conflict to “attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, **such as** food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, **drinking water installations and supplies** and irrigation works”.¹⁰³ According to the ICRC Commentary, the objects listed in the relevant articles “should be interpreted in the widest sense, in order to cover the infinite variety of needs of populations in all geographical areas.”¹⁰⁴ Henckaerts and Doswald-Beck confirm that “the list of examples is not exhaustive as indicated by the words ‘such as’ in the relevant provisions.”¹⁰⁵ Paragraph 3 (b) of the same article adds that “in no event shall actions against these objects be taken which may be expected to leave the civilian population with such

⁹⁷ See *ibid.*, p. 387.

⁹⁸ The Commentary notes that this qualification was included because in World War II, prisoners of war were sometimes not allowed to leave their quarters at night. (see *ibid.*, p. 387).

⁹⁹ J.S. Pictet (ed.), *Commentary – III Geneva Convention relative to the treatment of prisoners of war* (International Committee of the Red Cross, Geneva, 1960), p. 364.

¹⁰⁰ Geneva Convention relative to the Treatment of Prisoners of War, 75 U.N.T.S. 135. Adopted 12 August 1949. Entered into force 21 October 1950. See in particular articles 22 and 29.

¹⁰¹ J.S. Pictet (ed.), *Commentary – IV Geneva Convention relative to the protection of civilian persons in time of war* (International Committee of the Red Cross, Geneva, 1958), p. 385.

¹⁰² Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 U.N.T.S. 609. Entered into force 7 December 1979.

¹⁰³ Article 14 of the 2nd Protocol Additional (Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 1125 U.N.T.S. 609) phrased in virtually identical terms.

¹⁰⁴ Y. Sandoz, C. Swinarski, B. Zimmermann (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Martinus Nijhoff Publishers, Geneva, 1987), para 2102.

¹⁰⁵ J.-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law – Volume I : Rules* (Cambridge University Press, Cambridge, 2005), p. 193.

inadequate food or water as to cause its starvation or force its movement”. Furthermore, article 55 (1) stipulates that “[c]are shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.”

Facilities for the collection, transport and treatment of sewage are indispensable to prevent epidemics such as typhoid and cholera, as well as to safeguard drinking water supplies,¹⁰⁶ and therefore could be held to constitute objects indispensable for the survival of the civilian population protected under article 54 of the 1st Additional Protocol and article 14 of the 2nd Additional Protocol respectively.

Part B. Regional standards

I. Africa

In the 2008, the Sharm El-Sheikh Commitments for accelerating the achievement of water and sanitation goals in Africa were adopted at the 11th Ordinary Session of the Assembly of the African Union. The Member States of the African Union committed inter alia to “[p]romote programming that addresses the role and interests of youth and women, given that the burden of poor water and sanitation falls disproportionately on women and children” (m), “[p]romote effective engagement of African civil society and public participation in water and sanitation activities and programmes”.¹⁰⁷

In its decision in *Free Legal Assistance Group and others v. Zaire*,¹⁰⁸ the African Commission on Human and People’s Rights found that “[a]rticle 16 of the African Charter states that every individual shall have the right to enjoy the best attainable state of physical and mental health, and that States Parties should take the necessary measures to protect the health of their people. The failure of the Government to provide basic services such as safe drinking water and electricity and the shortage of medicine as alleged in communication 100/93 constitutes a violation of Article 16.”¹⁰⁹ The use of the wording “such as” suggests that the obligation to provide access to basic services may also extend to other basic services, including sanitation.

II. Americas

In the framework of the OAS, the 1948 American Declaration of the Rights and Duties of Man in article XI states that “[e]very person has the right to the preservation of his health through **sanitary** and social **measures** relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.”¹¹⁰

Furthermore, article 11 of the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”)¹¹¹ guarantees everyone the right “to live in a healthy environment and to have **access to basic public services**”, which arguably can be understood to cover sanitation services.

¹⁰⁶ Inadequate sanitation is the primary cause of contamination of drinking water sources.

¹⁰⁷ AU Doc. Assembly/AU/Decl.1(XI) (2008).

¹⁰⁸ *Free Legal Assistance Group and others v. Zaire*, Communications 25/89, 47/90, 56/91 and 100/93, decision made at the 18th Ordinary Session, Praia, Cape Verde, October 1995, at http://www1.umn.edu/humanrts/africa/comcases/25-89_47-90_56-91_100-93.html.

¹⁰⁹ *Ibid.*, at para 47.

¹¹⁰ OAS Res. XXX

¹¹¹ O.A.S. Treaty Series No. 69 (1988). Entered into force 16 November 1999.

In 2007, the OAS General Assembly adopted a resolution on “Water, Health, and Human Rights”,¹¹² which underscores that “efforts must be made to ensure that all sectors of the population have access to safe drinking water and sanitation services.”¹¹³

With regard to case law, the Inter-American Court of Human Rights has expanded the meaning of article 4 (the right to life) and article 5 (the right to personal integrity) of the American Convention on Human Rights (“Pact of San Jose”)¹¹⁴ to encompass the right to harbour a project of life, addressing essential elements of, inter alia, the rights to education, food, adequate housing, health and sanitation.

In the *Panchito López* case¹¹⁵, the Court reviewed whether the State had adopted the necessary initiatives to guarantee to all the detainees in the facility, adults as well as children, a dignified life with the objective of strengthening their life projects...¹¹⁶ The Court found that detainees were exposed to conditions of undignified life that affected their right to life, their development and their life projects, therefore violating articles 4 and 5 of the Convention. While the *Panchito López* case was closely related to the special obligations States have with regard to persons deprived of liberty, the Court’s decision suggests that the same rationale would also apply to general situations in which the State fails to take appropriate measures to ensure a dignified life for persons unable - for reasons beyond their control - to ensure such conditions by themselves, including with regard to access to basic sanitation.

Similarly, in the *Yakye Axa* case,¹¹⁷ which involved members of a displaced community living in extreme misery, including awful sanitary conditions, the Court found that the State, by failing to take appropriate and necessary positive measures to amend conditions that limited the community members’ possibilities of having a dignified life, the State violated the right to life of the members of community guaranteed under article 4 of the Convention. As regards reparation, the Court ordered as follows: “As long as the Community remains landless, given its special state of vulnerability and the impossibility of resorting to its traditional subsistence mechanisms, the State must supply, immediately and on a regular basis, sufficient drinking water for consumption and personal hygiene of the members of the Community; ...; it must provide latrines or any other type of appropriate toilets for effective and healthy management of the biological waste of the Community.”¹¹⁸

Furthermore, a set of cases from the Inter-American Commission on Human Rights involves the State duty to ensure general conditions of health, hygiene and sanitation in prison or custodial facilities.¹¹⁹ In the 2002 Grenada prison cases of *Paul Lallion*¹²⁰ and *Benedict Jacob*,¹²¹ for example, the Commission found that the inhuman conditions of detention to which the petitioners were subjected violated their rights under article 5 of the Convention. Significantly, in coming to this

¹¹² AG/RES. 2349 (XXXVII-O/07), adopted at the fourth plenary session held on 5 June 2007. At: <http://www.oas.org/37ag/docs/eng/2349.doc>.

¹¹³ *Ibid.*, at para 3.

¹¹⁴ At O.A.S.Treaty Series No. 36, 1144 U.N.T.S. 123. Entry into force 18 July 1978.

¹¹⁵ *Case of Children’s Rehabilitation v. Paraguay*, Judgment of 2 September 2004, Inter-Am. Ct. H.R. (Ser. C) No. 112.

¹¹⁶ *Ibid.*, para 164.

¹¹⁷ At: *Yakye Axa Indigenous Community v. Paraguay*, Judgment of 17 June 2005, Inter-Am. Ct. H.R. (Ser. C) No. 125.

¹¹⁸ *Ibid.*, para. 205. For a similar case, see also *Sawboyamaxa Indigenous Community v. Paraguay*, Inter-American Court of Human Rights, Merits, Reparations and Costs, 29 March 2006, Series C No. 146.

¹¹⁹ This paragraph is taken from T. Melish, The Inter-American Commission on Human Rights, in: M. Langford (ed.), *Social Rights Jurisprudence* (Cambridge University Press: New York, 2008) at p. 353.

¹²⁰ *Paul Lallion v. Grenada*, Case 11.765, Report No. 55/02, Inter-Am. C.H.R., OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2003).

¹²¹ *Benedict Jacob v. Grenada*, Case 12.158, Report No. 56/02, Inter-Am. C.H.R., OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2003).

conclusion, the Commission evaluated the petitioners' allegations in light of the UN Standard Minimum Rules for the Treatment of Prisoners.¹²² The Commission currently has several similar cases under consideration, each involving severe overcrowding, lack of sanitary facilities, insufficient food, and inadequate medical attention, having found the respective alleged violations of the 'right to health' admissible under articles 4 and 5 of the Convention.¹²³

III. Asia

The "Message from Beppu" adopted by 37 States from the wider Asia-Pacific region in the framework of the 1st Asia-Pacific Water Summit held in Beppu, Japan in December 2007 recognises "the people's right to safe drinking water and basic sanitation as a basic human right and a fundamental aspect of human security."¹²⁴ Similarly, the Delhi Declaration, adopted by eight South Asian States at the 3rd South Asian Conference on Sanitation (SACOSAN III) held in Delhi in November 2008, recognises in article 1 "that access to sanitation and safe drinking water is a basic right, and according national priority to sanitation is imperative."¹²⁵

IV. Europe

IV.1. UNECE London Protocol on Water and Health

Article 1 of the 1999 **UNECE London Protocol on Water and Health**¹²⁶ defines the objective of the Protocol as to "promote at all appropriate levels, nationally as well as in transboundary and international contexts, the protection of human health and well-being, both individual and collective, within a framework of sustainable development, through improving water management, including the protection of water ecosystems, and through preventing, controlling and reducing water-related disease." Article 6 (b) provides that in order to achieve the objective of this Protocol, the Parties shall pursue the aims of "[p]rovision of sanitation for everyone within a framework of integrated water-management systems aimed at sustainable use of water resources, ambient water quality which does not endanger human health, and protection of water ecosystems."

See also article 6 (2) on establishment of national and/or local targets and means of achieving these, including provisions related to public participation and enforcement.

IV.2. European Convention on the Protection of Human Rights and Fundamental Freedoms:

¹²² These rules provide for minimum basic standards in prison contexts on medical treatment, accommodation, hygiene, sanitation, exercise, etc. They include the requirement that all accommodation meet health requirements related to air content, minimum floor space, lighting, heating and ventilation; that sanitary installations be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner; and that a medical officer examines on a daily basis all sick prisoners, all who complain of illness, and any prisoner to whom her attention is specially directed. *Ibid.*

¹²³ See, e.g., *Mendoza Prison Inmates v. Argentina*, Report N° 51/05, Petition 1231/04, Inter-Am. Comm. H.R., Annual Report 2005, paras. 5 and 46; *Adolescents in the Custody of the Febem v. Brazil*, Case 12.328, Report No. 39/02, Inter-Am. C.H.R., OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2003).

¹²⁴ Available at: Available at: <http://www.apwf.org/project/result.html>. List of participants: [http://www.apwf.org/archive/documents/summit/071204 List of summit participants of the 1st APWS rev.pdf](http://www.apwf.org/archive/documents/summit/071204%20List%20of%20summit%20participants%20of%20the%201st%20APWS%20rev.pdf).

¹²⁵ At: <http://www.ddws.nic.in/infosacosan/ppt/Delhi%20Declaration%207.pdf>. The Signatories are Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.

¹²⁶ 1999 London Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, done in London, MP.WAT/2000/1. EUR/ICP/EHCO 020205/8Fin (1999). At: <http://unece.org/env/documents/2000/wat/mp.wat.2000.1.e.pdf>.

In the case of *Melnik v. Ukraine*,¹²⁷ the applicant (who was serving a prison sentence in a Ukrainian prison) contended that the conditions of detention were, inter alia, in violation of article 3 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, which stipulates that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” With regard to adequate conditions of sanitation and hygiene, the Court notes that “the fact that the applicant had only once-weekly access to a shower and that his linen and clothes could be washed only once a week raises concerns as to the conditions of hygiene and sanitation, given the acutely overcrowded accommodation. Such conditions would have had an aggravating effect on his poor health.”

In result, the Court found that the overcrowding of prison cells, inadequate medical care and unsatisfactory conditions of hygiene and sanitation, taken together with their duration, the applicant's detention in such conditions amounted to degrading treatment and thus found a violation of article 3 of the Convention.

See also the case of *Dvoynikh v. Ukraine*,¹²⁸ which also related to conditions of detention, where the Court stated as follows: “Thus, in the light of the Court's findings as to overcrowding, unsatisfactory conditions of hygiene and sanitation, and lack of natural light and air (see paragraphs 66-67 above), the Court concludes that the conditions of the applicant's detention in the Simferopol SIZO amounted to degrading treatment. Accordingly, there has been a violation of Article 3 of the Convention.”

IV.3 European Committee on Social Rights

The European Committee on Social Rights has the task of overseeing the implementation of the European Social Charter. It examines the annual national reports of the States parties and decides whether or not the situations in the countries concerned are in conformity with the European Social Charter. Its decisions, known as “conclusions”, are published every year. In respect of national reports, the Committee adopts conclusions as to whether or not the situations in the countries concerned are in conformity with the European Social Charter, in respect of collective complaints, it adopts decisions. The legal value of its findings is similar to the ones by the United Nations treaty monitoring bodies.

The Committee has consistently held in its Conclusions on State Reports¹²⁹ that for the purpose of article 31 (I) of the Charter guaranteeing the right to housing, ‘adequate housing’ meant a dwelling which is, inter alia, safe from a sanitary and health point of view. The Committee has further explained that “a dwelling is safe from a sanitary and health point of view if it possesses all basic amenities, such as water, heating, waste disposal; sanitation facilities; electricity etc; and if specific dangers such as, for example, the presence of lead or asbestos are under control.” Also under social, economic and legal protection for vulnerable families (see article 16 of the Convention) the Committee has also dealt with the lack of sanitation. For example in relation to the Slovak Republic the Committee has noted that “the housing situation of many Roma communities remains serious, since numerous dwellings lack basic facilities. e.g. water, sanitation

¹²⁷ Case of *Melnik v. Ukraine*, European Court of Human Rights, Application no. 72286/01, Judgment of 28 March 2006.

¹²⁸ Case of *Dvoynikh v. Ukraine*, European Court of Human Rights, Application no. 72277/01, Judgment of 12 October 2006.

¹²⁹ See 2005 Conclusions on Lithuania (Document c-2005-en1, at: http://hudoc.esc.coe.int/esc1doc/escsec/doc/200844/2005vol_1_en/00000163.doc). The Committee applied the same definition of adequate housing in its 2005 Conclusions on Norway (Document c-2005-en2, at http://hudoc.esc.coe.int/esc1doc/escsec/doc/200844/2005_conclusions_vol_2_en/00000076.doc.) 2003 Conclusions on France (Document c-2003-en1, at http://hudoc.esc.coe.int/esc1doc/escsec/doc/200846/2003_vol_1_en/00000095.doc), 2003 Conclusions on Italy (Document c-2003-en1, at <http://hudoc.esc.coe.int/esc2008/document.asp?item=8>).

and electricity. [...] In view of this information, the Committee asks for up-to-date information in the next report on any measure that improved the situation.”¹³⁰

V. Middle East

Article 39 of the 2004 Arab Charter on Human Rights¹³¹ recognises “the right of every member of society to the enjoyment of the highest attainable standard of physical and mental health and the right of the citizen to free basic health-care services and to have access to medical facilities without discrimination of any kind”. Paragraph 2 outlining measures for implementation of the right provides in subpara (f) that this includes “**providing proper sanitation systems**”.

Part C. Examples of domestic standards

I. Constitutional Sources

Bolivia

Constitution of Bolivia, 2009

Article 20

I. Everyone has the right to universal and equitable access to the basic services of drinking water, sanitation, electricity, gas for household uses, postal services and telecommunication.

...

III. Access to water and sanitation constitute human rights; they can not be the object of concessions or privatisation and are subject to a regime of licenses and registers, in accordance with the law.

Colombia

Constitution of Colombia, 1991, as last amended April 1, 2005

Article 49

Public health and environmental sanitation are public services for which the State is responsible. All individuals are guaranteed access to services that promote, protect, and rehabilitate public health.

It is the task of the State to organise, direct, and regulate the provision of health services to inhabitants as well as environmental sanitation consistent with the principles of efficiency, universality, and solidarity...

Article 366

General welfare and the improvement of the quality of life of the population are social purposes of the State. It will be a fundamental objective of State activity to address the unmet needs regarding health, education, environmental sanitation and potable water. ...

Ecuador

Constitution of the Republic of Ecuador, 2008

Article 66 - The following rights are recognised and guaranteed to the people:

...

2. The right to a life in dignity, that safeguards health, ... environmental sanitation, ...

Article 314

The State shall be responsible for providing the public services of drinking-water and irrigation, sanitation,

The State must ensure that public services and their provision follow the principles of obligatoriness, uniformity, efficiency, responsibility, universality, accessibility, regularity,

¹³⁰ Conclusions regarding the Slovak Republic, of 10/31/2006, contained in Conclusions XVIII-I, volume 2.

¹³¹ Reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005). Entered into force on 15 March 2008.

continuity and quality. The State shall stipulate that prices and tariffs for public services are equitable, and must control and regulate them.

Ghana

The Constitution of the Republic of Ghana, 1992

Article 35

... The State shall promote just and reasonable access by all citizens to public facilities and services in accordance with law.

Guatemala

Constitution of the Republic of Guatemala, 1985, as amended 17 November 1993

Article 96: Control of product quality

The State shall control the quality of alimentary, pharmaceutical, chemical and all other products that can affect the health and well-being of inhabitants. It shall watch over the establishment and planning of primary health care and the improvement of the conditions of basic environmental sanitation of the less protected communities.

Iran

Constitution of the Islamic Republic of Iran, 1979

Article 43

The economy of the Islamic Republic of Iran, with its objectives of achieving the economic independence of the society, uprooting poverty and deprivation, and fulfilling human needs in the process of development while preserving human liberty, is based on the following criteria:

1. the provision of basic necessities for all citizens: housing, food, clothing, hygiene, ...

Kenya

Proposed Constitution of Kenya, draft of 23 August 2005

66. Sanitation

Every person has the right to a reasonable standard of sanitation.

Maldives

Constitution of the Republic of the Maldives, 2008

23. Every citizen [has] the following rights pursuant to this Constitution, and the State undertakes to achieve the progressive realisation of these rights by reasonable measures within its ability and resources:

...

(f) the establishment of a sewage system of a reasonably adequate standard on every inhabited island;

Panama

Constitution of the Republic of Panama, 1972, as last amended on 15 November 2004

Article 110

In the area of health, the State is primarily responsible for developing the following activities, integrating the functions of prevention, cure and rehabilitation: ...

4. Fighting transmittable diseases through environmental sanitation, and by developing the availability of drinking water...

Senegal

Constitution of the Republic of Senegal, 2001

Preamble

Proclaims:

- equal access for all citizens to public services; ...

Uruguay

Constitution of the Republic of Uruguay, 1967, as last amended 31 October 2004

Article 47

...

Access to drinking water and access to sanitation constitute fundamental human rights.

1) National Water and Sanitation policies will be based on:

...

d) the principle according to which the provision of drinking water and sanitation services social grounds must prevail over economic grounds. Any authorisation, concession or permission that in any way violates the above provision is without effect.

Venezuela

Constitution of the Bolivarian Republic of Venezuela, 1999

Article 82

Everyone has the right to housing that is adequate, secure, comfortable and hygienic, with essential basic services that include a living space that humanises family, neighbourly and community relations. The progressive realisation of this right is an obligation that in all of its aspects rests on both the citizens and the State.

II. Further domestic legislation

Algeria

Water Law no. 05-12, 4 August 2005

Article 3

The principles on which the use, the management and the sustainable development of water resources are based are the following:

- the right of access to water and sanitation to satisfy the basic needs of the population respecting equity and the rules set forth by the present law... ;

Belarus

Decision No. 724 of the Council of Ministers of Republic Belarus "On measures for the establishment of a system of state social service standards for the population of the Republic," 2003

3. The established state social service standards for the population of the Republic:

...

3.2. ... are realised within the limits of means being allocated to these purposes.

Appendix:

System for state social service standards for the population of the Republic: ...

10. Availability of public toilet facilities in the cities and the urban settlements

- no less than one per thousand people.

Belgium

Walloon region:

For drinking water there is a progressive block tariff system, with the first block of 30m³ per household and per year at a significantly reduced rate. There is a flat rate for sanitation. Consumers who do not exceed the first tranche of 30m³ are exempt from sanitation charges.

Flemish region:

There is an exemption from sanitation charges for the poorest people.

Bolivia

Law No. 2066 on Water and Sanitation Services, 11 April 2000

Article 22

The providers of water or sanitation services, whatever their nature may be, are obliged to offer the service to every user who demands it within their concession area, depending on the terms established in the concession contracts for the extension of the coverage of the service.

The providers of water or sanitation services may not discriminate between users of the same tariff category in the provision of the services.

Brazil

Law n. 10.257 of 10 July 2001 (“Statute of the City”)

Article 2

The purpose of urban policy is to give order to the full development of the social functions of the city and of urban property, through the following general guidelines:

I - guarantee the right to sustainable cities, understood as the right to urban land, housing, environmental sanitation, urban infrastructure, transportation and public services, to work and leisure for current and future generations; ...

Brazil

Law on Basic Sanitation, Law 11445 of 7 January 2007

Article 2

[basic] public sanitation services shall be delivered in accordance with the following fundamental principles:

I - universal access; ...

Article 27

Users of [basic] public sanitation services, in accordance to the legal, regulatory and contractual rules, are granted:

I - broad access to information on the services rendered;

II - previous knowledge of all their rights and duties and penalties to which they may be subject to;

III - access to a service delivery manual and user service manual, prepared by the service provider and approved by the corresponding regulatory entity;

IV - access to periodical reports on the quality of the services rendered.

Article 29

[Basic public] sanitation services shall be granted economic and financial sustainability, whenever possible, by means of remuneration...

§ 1 ...the implementation of tariffs, public dues and fees for basic sanitation services shall observe the following guidelines:

I - priority to fulfilling essential functions associated to public health;

II - expansion of access to services for low income citizens and localities;

...

§ 2 Tariff and non-tariff subsidies may be adopted for users and localities without enough payment capacity or economic scale for covering the integral cost of services.

Article 30

In complying with the provisions of Article 29 of this Law, the remuneration structure and the collection of [basic] public sanitation services may take into account the following aspects:

I - user categories, distributed by groups or increasing volumes of use or consumption;

II - the use and quality standards required;

- III - minimum amount of consumption or use of service, aiming at [guaranteeing] the social objectives, such as the preservation of public health, appropriate service to low income users and the protection of the environment;
- IV - the minimum cost required for making service available in an appropriate quantity and quality;
- V - significant cycles of increase in the demand of services, during different periods; and
- VI - the payment capacity of users.

Article 31

The subsidies required for serving low income users and localities shall be, depending on the characteristics of the beneficiaries and on the origin of resources:

- I - direct subsidies, whenever [directed at] certain users; or indirect, when destined to the service provider;
- II - tariff subsidies, when they are integrated into the tariff structure; or fiscal subsidies, when deriving from the allocation of budgetary resources, including by means of subventions;
- III - internal subsidies for each holder or among localities, ...

Article 53

The National System for Information on Basic Sanitation - SINISA - is established hereby, and its objectives are:

- I - to collect and systematise data regarding the conditions of [basic] public sanitation-service delivery;
- II - to provide for statistics, indicators and other relevant information for characterising the demand and supply of [basic] public sanitation services;
- III - to allow and facilitate the monitoring and evaluation of the efficiency and efficacy of the delivery of basic sanitation services.

§ 1 All information available to SINISA shall be made public and accessible to all, and must be published on the Internet.

§ 2 The Union shall support service holders in setting up information systems on basic sanitation, in compliance with the provisions of numeral VI of the caption to article 9 of this Law;

El Salvador

Health Code, Decree No. 955 of 1988, as last amended 1994

Article 100

IV. Every developed or undeveloped property situated in an urban area, whatever its purpose may be, must be provided with water, drainage and sanitation services or the corresponding connections.

Guatemala

Draft General Water Law, Draft Law No. 3118 of 1 August 2005 (Unofficial translation)

Article 2: Principles

...

a) Principle of equity.

Access to water and sanitation for the satisfaction of primary needs of the population at adequate prices is a fundamental right of every human being. ...

Guatemala

New Health Code, Decreto 90-97

Article 93: Access and coverage [sanitation]

The Ministry of Health, in conjunction with the institutions of the sector, the municipalities and the organised community, shall promote the universal coverage of the population with services for the final disposal of excreta, the transport and treatment of wastewater ...

Honduras

Decree No. 118-2003, Framework Law for the Drinking Water and Sanitation Sector

Article 1

The present law establishes the norms applicable to drinking water and sanitation services in the national territory as a basic instrument for the promotion of the quality of life of the population and for securing of sustainable development as an intergenerational legacy.

The provision of these services is governed by the principles of quality, equity, solidarity, continuity, generality [universality of access], respect for the environment and citizen participation.

Article 22

Priority shall be given, without forbearing from the objectives of improved efficiency and quality, to the goals of maintaining and extending the coverage of drinking water and sanitation services in economically depressed areas, applying criteria of equity.

Article 25

The users of the public drinking water and sanitation services enjoy, inter alia, the following rights: ...

2) To receive information about the provision of the services, tariff system and method of payment, plans regarding expansion and improvement of services, and any other circumstances that may be of their interest, with sufficient detail to enable them to exercise their rights as users;

...

Madagascar

Water Code, Law No. 98-029

Article 37

(1) The public service of drinking water supply and collective sanitation of domestic wastewaters, as defined in the present chapter as “public water and collective sanitation service”, is a service of drinking water supply and collective sanitation of domestic wastewaters provided to the public, that is to every user, public or private physical or moral person, with obligations of public services as defined in the tariff schedule.

Nicaragua

General law on drinking water and sanitation services, Law No. 297 of 2 July 1998

Article 40

(1) The State shall establish a rational subsidy system for the use of drinking water and sanitation services, exclusively intended for the low income sectors of the population whose consumption is limited to basic needs. ...

(2) The State shall be able to establish cross subsidies between its systems and its users, if this should be necessary to give access to a drinking water and sanitation service to the socio-economic segments of the population whose ability to pay is insufficient to cover the costs of those provisions; however, such subsidy must be removed when these conditions change or a system of direct State subsidies is implemented

Article 69

Every natural or legal person situated within the license area of the licensee has a right to be provided with the services by the licensee, ...

Paraguay

General law governing the regulatory and tariff framework for the public drinking water and sanitation services for the Republic of Paraguay, Law 1614 of 2000

Article 34: Generic right

All users have the right to the provision of service in accordance with the norms established in this law and the Regulatory Framework.

Article 35: Rights of the users

Users have the following rights, without this list being exhaustive:

a) to demand from the provider the provision and the quality of the service in accordance with the provisions of the present law, ...

Article 45: Complementarity

The services of provision of potable water and sanitation constitute complementary services that shall be developed harmoniously to avoid the installation of systems for the provision of potable water without the installation of systems for sanitation, and vice versa, except when ERSSAN authorises it and when such an exception is considered in the concession contract or in the license. Moreover, the different stages of service should be conceived and developed with the harmonious and efficient development of service as an integrated whole.

Peru

General Law on the Environment, Law No. 28611 of 15 October 2005

Article 67: Basic sanitation

The public authorities at national, sectoral, regional and local levels shall prioritise measures for basic sanitation that include the construction and administration of appropriate infrastructure; the provision and adequate management of potable water, ... promoting the universality, quality and continuity of sanitation services, as well as the establishment of tariffs that are adequate for and consistent with the cost of these services, their administration and improvement.

South Africa

Water Services Act, Act 108 of 1997, as last amended 2004

Preamble

RECOGNIZING the rights of access to basic water supply and basic sanitation necessary to ensure sufficient water and an environment not harmful to health or well-being ...

Section 1: Definitions

In this Act, unless the context shows that another meaning is intended –

...

basic sanitation means the prescribed minimum standard of services necessary for the safe, hygienic and adequate collection, removal, disposal or purification of human excreta, domestic waste-water and sewage from households, including informal households; ...

basic water supply means the prescribed minimum standard of water supply services necessary for the reliable supply of a sufficient quantity and quality of water to households, including informal households, to support life and personal hygiene; ...

Section 3: Right of access to basic water supply and basic sanitation

(1) Everyone has a right of access to basic water supply and basic sanitation.

(2) Every water services institution must take reasonable measures to realise these rights.

(3) Every water services authority must, in its water services development plan, provide for measures to realise these rights.

Section 13: Contents of draft water services development plan

Every draft water services development plan must contain details– ...

(ii) the time frame within which it may reasonably be expected that a basic water supply and basic sanitation will be provided to those persons;

Venezuela

Organic Law on the Provision of Potable Water and Sanitation Services, 31 December 2001

Article 3

The principles governing the provision of the public services regulated by this law are the following:

...

b. access of all citizens to potable water and sanitation services; ...

III. Domestic water and sanitation policies

Bangladesh

National Sanitation Strategy, March 2005

4. Guiding Principles

Sanitation is a human right

The international acceptance that health and access to water are human rights clearly implies that access to sanitation should also be considered as a human right. The national government is therefore obliged to progressively ensure access to basic sanitation equitably and without discrimination.

Bangladesh

National Policy for Safe Water Supply and Sanitation (Local Government Division Ministry of L.G.R.D & Co-operatives), 1998

3. Objectives

The objectives of the “National Policy for Safe Water Supply and Sanitation” are to improve the standard of public health and to ensure improved environment. For achieving these objectives, steps will be taken for:

a) facilitating access of all citizens to basic level of services in water supply and sanitation

...

Within the overall objectives the following specific goals will be targeted for achievement in phases in the near future: ...

ii. Ensuring the installation of one sanitary latrine in each household in the rural areas and improving public health standard through inculcating the habit of proper use of sanitary latrines.

iii. Making safe drinking water available to each household in the urban areas.

iv. Ensuring sanitary latrine within easy access of every urban household through technology options ranging from pit latrines to water borne sewerage.

Kenya

The National Water Services Strategy (NWSS), 2007-2015

Foreword

... Safe water and basic sanitation must be regarded as a basic human right and should therefore be accessible and affordable to all. ...

3.4 Key principles of the National Water Services Strategy

The guiding principles for the water sector reform and therefore for the National Water Services Strategy are:

1. Sustainable access to safe water and basic sanitation is a human right. ...

Sri Lanka

National Policy on Sanitation/NA, 2007

Objectives

The Government of Sri Lanka considers access to safe drinking water and sanitation as an inalienable right.

Sri Lanka

The Rural Water Supply and Sanitation Policy (RWSS Policy), 2001

4.1 - Government

The primary role shall be to:

a) Ensure all citizens have access to potable water and sanitation facilities. ...

3.3 - Basic Sanitation

The Government of Sri Lanka promotes all activities leading to provision of access to basic sanitation to all citizen[s]. In the day to day life of the community, domestic water and sanitation are closely and inextricably linked to each other. However, traditionally sanitation has been given lower priority as a basic need in comparison to drinking water. Sanitation is a personal matter that requires the commitment of each individual as well as the community at large to prevent health hazards arising from shortfalls in the disposal of waste.

Basic Sanitation should ensure protection to both surface and ground water from pollution and the users from water borne diseases and other health hazards. In conformity with this requirement the basic facility for sanitation should be the Ventilated improved Pit Latrine. Access to the basic facility for sanitation should be the Ventilated improved Pit Latrine. Access to this basic facility depends on the site technologies manageable at the household and community level should be development and promoted as a cost effective means of encouraging improved sanitation.

Sri Lanka

National Policy on Water Supply and Sanitation (WSS Policy), 2002

2.3 Goals in sanitation

- Access to adequate sanitation is available to 70% of the population of Sri Lanka by 2010 and 100% by 2025;
- Piped sewerage systems are provided in the major urban areas and selected growth centres; and
- Standard on-site sanitation is available to all those not connected to a sewerage system or other sanitation scheme.

IV. Domestic case law

Argentina

Marchisio José Bautista and others/ amparo, Court of First Instance on Civil and Commercial Matters of the City of Cordoba, decision of 19 October 2004¹³²

This case concerns the malfunctioning of a sewage treatment plant, which due to population growth in the area had been stretched beyond the limits of its capacity, resulting into untreated wastewater entering into the river and contaminated water draining into the wells of the community of Chacras de la Merced.

Basing its judgment on national environmental law as well as international human rights law (including explicitly quoting General Comment No. 15), the judge ordered the municipality to adopt all necessary measures to improve the functioning of the sewage treatment plant and minimise the effects on the environment until a definitive solution was achieved. Furthermore, the judge ordered the provision of at least 200 litres of safe water per capita per day until the public works required for connecting the residents to public water services were completed.

¹³² Paraphrased version of case summary from COHRE, International and National Standards on the Right to Water and Sanitation, to be published shortly

Argentina

Beatriz Mendoza and others vs. Federal Government, Province of Buenos Aires, Government of the City of Buenos Aires and others/damages, Supreme Court of Justice, Preliminary Decision of 20 June 2006. Final Decision of 8 July 2008¹³³

The Matanza Riachuelo basin is a mayor industrial zone with some of the highest levels of contamination in Argentina. In this case, residents of the informal settlement of Villa Inflammable, who had been affected by the environmental contamination of the area, filed a claim against the different government authorities with jurisdiction over the basin as well as against 44 companies that were carrying out economic activities in the area.

Basing its decision on the duty to protect and ensure the constitutional right to a healthy environment (article 41 of the National Constitution), the Court inter alia ordered the cleaning up of landfills, cleaning of the riverbanks, expansion of the potable water network, storm drainage, and sewage sanitation.

Fiji

Sailasa Naba and others vs the State, High Court of Fiji, No. HAC0012 of 2000L, judgment of 4 July 2001¹³⁴

This case concerned the question whether remand prisoners who had already been held for 18 months awaiting trial for murder were entitled to bail on the ground that the conditions of their detention, including overcrowding and inadequate sanitation, constituted cruel, inhuman and degrading treatment for the purposes of the article 25 (I) of the Constitution of Fiji (guaranteeing that “[e]very person has the right to freedom from torture of any kind, whether physical, mental or emotional; and from cruel, inhumane, degrading or disproportionately severe treatment or punishment”) and the UN Standard Minimum Rules for the Treatment of Prisoners.

Looking at the actual sanitary conditions in the Natabua Remand Block in Lautoka, the Court noted that “[f]rom 5pm all detainees are locked in their cells. They are then left with a bucket each for the needs of nature until 7.00am. Such a situation is inhumane and degrading in view of the fact that 3 persons are confined in a badly ventilated cell. This also breaches the SMR [UN Standard Minimum Rules for the Treatment of Prisoners] 12 which states: ‘The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.’”

In the Court’s view “[i]t does offend our sense of human decency to realise that persons who are presumed innocent are only allowed 2 hours out of their cells in a 24 hour period. Most of the time they are locked in a small cell with at least 2 other persons. That a bucket system is still used for the needs of nature is offensive in this day and age.”

With regard to the defendant’s reference to lack of resources, the Court referred to the Universal Declaration, the ICCPR and the Covenant Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to underline that the rights of detainees to be treated with human dignity cannot be compromised even under a state of emergency.

¹³³ Paraphrased version of case summary from COHRE, International and National Standards on the Right to Water and Sanitation, to be published shortly

¹³⁴ At: <http://www3.paclii.org/fj/cases/FJHC/2001/127.html>.

In result, the Court found that the treatment of the applicants in particular and other detained persons in the Remand block at the Natabua Prison at Lautoka did not comply with the UN Standard Minimum Rules for the Treatment of Prisoners and that as such their Constitutional right to be free from cruel, inhumane, degrading or disproportionately severe treatment or punishment (article 25 I of the Constitution) had been breached, and granted the five applicants bail.

India

L. K. Koolwal v. State of Rajasthan and Others, Rajasthan High Court, Writ Petition No. 121 of 1986, 19 September 1986¹³⁵

In this case, the petitioner L. K. Koolwal approached the Court in order to have the municipality directed to clean the city of Jaipur and remove the filth and dirt which he alleged was posing a threat to the health and life of citizens. While the municipality acknowledged the seriousness of the sanitation problem with unsanitary conditions prevailing in many areas in the city, the municipality pleaded that it did not have sufficient resources to solve the problem.

The Court relied on Section 98 of the Rajasthan Municipalities Act that includes provisions about the cleaning of public places and sewers and the removal of filth, rubbish, night-soil, odour and other noxious or offensive matter from privies, latrines or urinals to conclude that these tasks are primary duties of the municipality that have to be performed regardless of the availability of funds and staff and that the municipality has to raise the necessary resources to fulfil this duty.

Furthermore, the Court linked the unsanitary conditions to the right to life holding that the “[m]aintenance of health, preservation of the sanitation and environment falls within the purview of article 21 of the Constitution as it adversely affects the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen”.

The Court therefore ordered the municipality to remove the dirt within a period of six months, to clean the entire city of Jaipur and to maintain sanitary conditions. In order to monitor progress, the Court set up a commission to inspect the city and to submit a report about the implementation in different areas of the city.

India

Municipal Council, Ratlam v. Shri Vardhichand & Others, Supreme Court of India, 29 July 1980¹³⁶

The case addressed severely unsanitary conditions in the municipality of Ratlam. As a result of the municipality's failure to provide any sanitary facilities by the roads and for slum dwellers, people living in informal settlements were using the road for that purpose. The open drains attracted mosquitoes, thus posing a further threat to human health. The open sewage situation was even worsened by a distillery discharging bad smelling fluids into the street.

The applicants sought an order directing the Municipal Council of Ratlam to take the necessary action to stop this situation whereas the municipality argued, inter alia, that it faced financial difficulties.

¹³⁵ Case summary taken from COHRE, International and National Standards on the Right to Water and Sanitation, to be published shortly.

¹³⁶ Case summary taken from COHRE, International and National Standards on the Right to Water and Sanitation, to be published shortly

The Court relied on the Municipalities Act which includes the provision of sanitary facilities as duties of the municipal council and held that the municipality is required to abate such nuisance regardless of its financial situation.

In this early decision the Supreme Court did not make specific reference to the right to water, but to the overall social justice orientation of the Constitution. It held that it runs contrary to this orientation when pollutants of big factories are being discharged to the detriment of poorer sections of the population. Furthermore, it stressed that “[d]ecency and dignity are non-negotiable facets of human rights”. According to the Court, the municipality's failure to provide basic public conveniences “drives the miserable slumdweller to ease in the streets, on the sly for a time, and openly thereafter, because under Nature’s pressure, bashfulness becomes a luxury and dignity a difficult art.”

The Court therefore ordered the municipality to shift priorities by decreasing its budget on other items and using the savings for sanitary facilities and public health measures. The Court did not hesitate to issue detailed directions to stop effluents from the distillery flowing into the street and construct sufficient numbers of public latrines. Its judgment also included a fixed time limit and the exercise of supervisory jurisdiction on the execution of the Court’s orders.

India

Rampal and Others v. State of Rajasthan and Others, High Court of Rajasthan, Writ Petition No. 1604 of 1979, 4 September 1980¹³⁷

The petitioners in this case complained about the lack of drainage facilities in their road. The petitioners argued that as a result of the lack of drainage facilities, water used for domestic purposes, including waste water, and rain water collected in open chowks [street crossings]. The stagnant water served as a breeding place for mosquitoes and other insects that might cause the spread of infectious diseases. The petitioners therefore called for the municipality to be directed to remove the dirty water and to construct proper drainage facilities and sewers.

The Court relied on Section 98 of the Rajasthan Municipalities Act that lists the cleaning of public places and sewers, the removal of filth, rubbish, night-soil, odour and other noxious or offensive matter from privies, latrines or urinals and the construction of sewers and drainage works as primary duties of the municipality. The Court held that the municipality was responsible for maintaining sanitation and healthy living conditions. It had, the Court found, a statutory obligation to perform these duties and no discretion in the matter.

The Court therefore ordered the municipality to fulfil its duties and to construct and maintain sewers and drains for the discharge of domestic and rain water in order to remove the public nuisance caused by the open sewage within a period of three months.

India

Municipal Corporation Chandigarh and Ors. Etc. v. Shantikunj Investment Pvt. Ltd. Etc., Supreme Court of India, decision of 28 February 2006¹³⁸

This case addressed the issue of whether the provision of amenities is condition precedent to payment of ground rent, interest or penal interest. Sewerage and drainage were among the amenities that had not been provided. Though the court held that no such specific condition existed, it did decide to “remit the matter to the High Court for a very limited purpose to see that

¹³⁷ Case summary taken from COHRE, International and National Standards on the Right to Water and Sanitation, to be published shortly

¹³⁸ Case summary available at: <http://www.ielrc.org/content/e0613.pdf>.

in cases where facilities like kutchra road, drainage, drinking water, sewerage, street lighting have not been provided, then in that case, the High Court may grant the allottees some proportionate relief.”

Ireland

Martin v. Northern Ireland Prison Service ([2006] NIQB 1, judgment of 6 January 2006)

In this case, the plaintiff alleged that the prison sanitation regime constituted an unjustified and disproportionate interference with his private life protected under article 8 of the European Convention on Human Rights (ECHR) which amounted to degrading treatment under article 3 ECHR.

Mr Martin spent eight months in an individual cell in Magilligan prison, which was not equipped with in-cell sanitation facilities. In 1993, an electronic locking system was installed to allow prisoners to be released to use the toilets during lock-up periods. Girvan J however found that there could be delays in releasing prisoners and generally prisoners were not released to use the toilets after midnight. There were further problems with hygiene, poor sanitation, smells, etc.

However, Girvan J held that the circumstances were not comparable with those in the *Napier* case (see below) and did not amount to a violation of article 3 ECHR. Furthermore, Girvan J found that lack of in-cell sanitation, in itself, did not constitute a lack of respect for the prisoner’s privacy rights under article 8 ECHR. The Prison Service, however, was under an obligation to put in place and operate a system that minimised, as far as possible, interference with the prisoner’s rights and had, in its own admission, failed to consider the requirements of article 8 in relation to the sanitation system. The judge held that the plaintiff was entitled to a declaration that the Prison Service had failed to adequately respect his right to respect for his private life.

UK

*Robert Napier against The Scottish Minister*¹³⁹, Outer House, Court of Session, Case No. P739/01, judgment of 26 June 2001

The petitioner, who was a remand prisoner in HM Prison, Barlinnie, Glasgow, sought to challenge the conditions in which he was detained there, contending that they were in contravention of his rights under Article 3 of the European Convention on Human Rights.

The grounds on which the petitioner based the contention that the conditions of his detention contravened article 3 included that the sanitary arrangements, which involved the process known as “slopping out”, i.e. urination and defecation in vessels which are kept in the cell and emptied two or three times a day, are grossly inadequate.

While the Court did not make a determination as to whether and, if so, in what respects the conditions in which the petitioner is detained infringed the petitioner’s article 3 rights, the Court granted in the petitioner’s favour an order on the Scottish Ministers to secure the transfer of the petitioner to conditions of detention which comply with Article 3 of the Convention.

¹³⁹ At: http://www.scotcourts.gov.uk/opinions/P739_01.html.