

The Human Right to Water and Sanitation: Legal basis, Practical Rationale and Definition

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1. Legal foundations

The human right to water and sanitation is included in a number of international treaties and declarations.

1.1 Treaties and their interpretation

The right to water and sanitation is implicitly included in a range of international human rights treaties. The Convention on the Elimination of All Forms of Discrimination against Women, for example, obliges States parties in article 14 (2) (h) on the specific needs of rural women to ensure “the right to enjoy adequate living conditions, particularly in relation to housing, *sanitation*, electricity and *water supply*, ...”. The Convention on the Rights of the Child (“CRC”) requires States parties in art. 24 (2) (e) to ensure that all segments of society “are informed, have access to education and are supported in the use of basic knowledge of ... hygiene and *environmental sanitation*.” Furthermore, article 27 (1) recognizing the right of every child to an adequate standard of living has consistently been interpreted by the Committee on the Rights of the Child, the treaty body in charge of monitoring and interpreting the CRC, to include access to *clean drinking water and latrines*.² In the recently adopted Convention on the Rights of Persons with Disabilities, States recognise in Article 28 “the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and resolve to take appropriate steps to safeguard and promote the realization of this right, including measures to ensure equal access by persons with disabilities to *clean water*.”

Entitlements to access to water and sanitary facilities can also be found in the Geneva Conventions. The Geneva Convention Relative to the Treatment of Prisoners of War (Geneva Convention III, 1949) provides under Article 29 that: “The Detaining Power shall be bound to take all sanitary measures necessary to ensure the cleanliness and healthfulness of camps and to prevent epidemics. Prisoners of war shall have for their use, day and night, conveniences which conform to the rules of hygiene and are maintained in a constant state of cleanliness. In any camps in which women prisoners of war are accommodated, separate conveniences shall be provided for them. Also, apart from the baths and showers with which the camps shall be furnished, prisoners of war shall be provided with sufficient water and soap for their personal toilet and for washing their personal laundry; the necessary installations, facilities and time shall be granted them for that purpose.” The Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV, 1949) in article 85 contains analogous entitlements for civilian internees.

Article 11 (1) of the the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by 157 States, stipulates that:

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² See, for example, Concluding Observations of the Committee on the rights of the Child: Ethiopia. U.N. Doc. CRC/C/ETH/CO/3 (2006), at para 61.

The State Parties to the present 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. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

The ICESCR does not explicitly refer to water or sanitation. However, by using the word ‘including’, Article 11 (1) lists food, clothing and housing as components of the right to an adequate standard of living, rather than an exhaustive statement as to what the right to an adequate standard means. While adequate food, clothes and shelter are all basic human needs that are indispensable for an adequate standard of living, they are not sufficient. In light of the fundamental importance of water for human survival, well being and dignity, it would be impossible to maintain that an individual lacking access to minimum supplies of safe water for basic needs could enjoy an adequate standard of living. Similarly, it is impossible to say that a person who does not have access to a safe and adequate toilet or latrine, and therefore has to defecate in the open has an adequate standard of living.

It is therefore sound to conclude that the right to an adequate standard of living recognized under article 11(1) ICESCR includes the right to water and sanitation. More precisely, the right to water and sanitation should be understood as a distinct right that forms a distinct normative component of the right to an adequate standard of living, exactly like the rights to food, clothing and housing.

Virtually all States that have ratified the ICESCR have stated twice that the right to an adequate standard of living implicitly includes water and sanitation. The Programme of Action of the 1994 Cairo Conference on Population and Development, endorsed by 177 States, recognises in Principle 2 that:

Countries should ensure that all individuals are given the opportunity to make the most of their potential. They have the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, **water and sanitation**.³

The Habitat Agenda, adopted in the framework of the Second United Nations Conference on Human Settlements (Habitat II) held in Istanbul in 1996, provides in almost identical terms in Principle 11 that:

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.⁴

The Vienna Convention on the Law of Treaties represents the international standard for the interpretation of treaties, one rule of which is stated in Article 31 of the treaty: “There shall be taken into account, together with the context: (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions...” As all States

³ Available at: http://www.unfpa.org/icpd/icpd_poa.htm. For a list of participating countries, see the Report of the International Conference on Population and Development, A/CONF.171/13, 18 October 1994, available at: <http://www.un.org/popin/icpd/conference/offeng/poa.html>.

⁴ The Habitat Agenda Goals and Principles, Commitments and the Global Plan of Action, available at: <http://www.unhabitat.org/content.asp?ID=1176&catid=10&typeid=24&subMenuId=0>. The Habitat Agenda was adopted by consensus of all 171 UN member States represented at the conference. For a full list of participants, see UN Doc. A/CONF.165/L.4 (1996).

parties to the ICESCR were party to the Cairo Declaration and Habitat Agenda, there is a strong case for arguing that the provision of the ICESCR relating to the right to an adequate standard of living should be interpreted as including water and sanitation.

In 2002, the Committee on Economic, Social and Cultural Rights (CESCR), the body of independent experts responsible for interpreting and monitoring implementation of the ICESCR by States parties, adopted General Comment No. 15 on the right to water,⁵ in which it states:

Article 11, paragraph 1, of the Covenant specifies a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living, including adequate food, clothing and housing. The use of the word ‘including’ indicates that this catalogue of rights was not intended to be exhaustive. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival.

Access to water and sanitation for all is also required in order to realise other human rights explicitly contained in the ICESCR, including the right to the highest attainable standard of health (article 12 (1))⁶ the right to adequate housing (article 11 (1))⁷ and the right to education (article 13(1)),⁸ as well as the right to life contained in the International Covenant on Civil and Political Rights (article 6 (1)).

1.2. International declarations

Virtually all States have recognised the right to water and sanitation in at least two political declarations. As noted in Section 1.1 above, the Programme of Action of the 1994 Cairo Conference on Population and Development and the Habitat Agenda, endorsed respectively by 177 and 171 States (representing all the States represented at the conferences), recognises that the right to an adequate standard of living encompasses access to both water and sanitation. In December 2007, 37 countries from the Asian-Pacific region at the 1st Asia-Pacific Water Summit endorsed the “Message from Beppu”, which recognizes “the people’s right to safe drinking **water and basic sanitation** as a basic human right.”⁹

Several international declarations recognise the right to water. These have included the Mar del Plata Declaration of the UN Water Conference, 1977, which provides that, “all peoples, whatever their stage of development and social and economic conditions, have the right to have access to

⁵ General Comment No. 15 is not legally binding per se, but it constitutes an authoritative interpretation of the provisions of the ICESCR by the competent body. The Committee on Economic, Social and Cultural Rights sought the authorisation of the United Nations Economic and Social Council to develop General Comments, and received encouragement from the Council to “continue using that mechanism to develop a fuller appreciation of the obligations of State Parties under the Covenant.” Economic and Social Council Resolution 1990/45, para. 10, General Comment No. 15 has received wide acceptance by States parties.

⁶ A core obligation of the right to health is for the State to ensure access to basic sanitation, and an adequate supply of safe and potable water, see Committee on Economic, Social and Cultural Rights, General Comment No. 14: *The right to the highest attainable standard of health*, UN ESCOR, 2000, para. 43 (c). See also paras. 11, 12, 15, 36.

⁷ Access to safe drinking water and sanitation is an element of the right to adequate housing, see Committee on Economic, Social and Cultural Rights, General Comment No. 4: *The right to adequate housing*, UN ESCOR, 1991, UN Doc. E/1992/23, para. 8 (b).

⁸ Sanitation facilities for both sexes and safe drinking water are required in schools as part of the right to education, see Committee on Economic, Social and Cultural Rights, General Comment No. 13: *The right to education*, UN ESCOR, 1999, UN Doc. E/C.12/1999/10, para. 6 (a).

⁹ At: <http://www.apwf.org>. The full list of participating countries is available on the same site.

drinking water in quantities and of a quality equal to their basic needs”.¹⁰ The UN General Assembly Resolution on the Right to Development in 2000 recognised the right to clean water.¹¹ The Non-Aligned Movement, which consists of 118 countries, also recognised the right to water.¹² In Europe, the Committee of Ministers to Member States on the European Charter of Water Resources, declared that, “Everyone has the right to a sufficient quantity of water for his or her basic needs. International human rights instruments recognise the fundamental right of all human beings to be free from hunger and to an adequate standard of living for themselves and their families. It is quite clear that these two requirements include the right to a minimum quantity of water of satisfactory quality from the point of view of health and hygiene.”¹³

Such declarations are not binding in that they do not directly give rise to individual rights and legally binding State obligations. However, they represent State recognition of an existing right created by legally binding treaties and the principle of good faith in international law requires that States act in accordance with their recognition of this right. Furthermore, such declarations provide important precedent for the actions of the United Nations, including the UN Human Rights Council.

1.3. United Nations expert reports

The right to water and sanitation was recognised in the 2006 Guidelines for the realization of the right to drinking water and sanitation adopted by the Sub-Commission on the Promotion and Protection of Human Rights.¹⁴ In addition, the legal basis for this right was set out in the 2004 report of the UN Sub-Commission on the Promotion and Protection of Human Rights Special Rapporteur on the Right to Drinking Water Supply and Sanitation¹⁵ and the 2007 Report of the UN High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to drinking water and sanitation (OHCHR Report). The OHCHR Report concluded that “it is now time to consider access to safe drinking **water and sanitation** as a human right.”¹⁶ The OHCHR report was based on an explicit mandate of the Human Rights Council in a decision taken without a vote to carry out: “a detailed study on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments.”¹⁷

¹⁰ The UN Water Conference, Mar del Plata Declaration (1977), preamble.

¹¹ General Assembly Resolution 54/175 (2000) para. 12(a) which states the “rights to food and clean water are fundamental human rights, and their promotion constitutes a moral imperative both for national Governments and for the international community.”

¹² The Non-Aligned Movement acknowledged the right to water in September 2006: “The Heads of State or Government recalled what was agreed by the UN Committee on Economic, Social and Cultural Rights in November 2002, recognised the importance of water as a vital and finite natural resource, which has an economic, social and environmental function, and acknowledged the right to water for all” (14th Summit Conference of Heads of State or Government of the Non-Aligned Movement, Final Document, 16 September 2006, NAM 2006/doc.1/rev.3, para. 226).

¹³ Council of Europe, Recommendation of the Committee of Ministers to Member States on the European Charter on Water Resources, Recommendation 14 (2001) para. 5. This decision was made by representatives of Foreign Ministers of the 43 states that are members of the Council of Europe.

¹⁴ Available at: <http://www2.ohchr.org/english/issues/water/index.htm>.

¹⁵ Sub-Commission on the Promotion and Protection of Human Rights, *Final report of the Special Rapporteur on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation*, 14 July 2004, E/CN.4/Sub.2/2004/20, paras. 40-44.

¹⁶ Available at: http://www2.ohchr.org/english/issues/water/docs/HRC_decision2-104.pdf. At para 66. Emphasis added.

¹⁷ UN Doc. A/HRC/2/L.3/Rev.3.

2. Rationale for treating water and sanitation together as a right

Treating water and sanitation together under a single right is warranted for three reasons.

First, water and sanitation are inextricably linked and interdependent in practice. Unsafe disposal of human excreta is one of the most important causes of contamination of drinking water supplies. Therefore, provision of safe water for personal and domestic needs requires basic sanitary measures that ensure the effective separation of drinking water supplies from human excreta and wastewater. Furthermore, particularly in urban areas, the provision of greater quantities of water must go hand in hand with development of facilities for wastewater treatment and disposal in order to prevent environmental pollution and standing waters that can serve as breeding grounds for pathogens.¹⁸

Second, sanitation - the pariah among basic needs - has been grossly neglected by development efforts in favour of more attractive issues for decades. There are few political leaders who would actually take the risk of associating themselves with a public latrine or sewage treatment plant when they can also lend their name to a new hospital. Sanitation in fact is still considered a dirty issue or even taboo in many world regions. The resulting lack of publicity severely hinders the dissemination of knowledge about good and bad sanitary practices and prevents public action at the local, national and international level to ensure adequate sanitation.

It is hoped that linking sanitation and water under a single human right will help to increase attention for the sanitation aspect of the global water and sanitation crisis. In contrast, it is likely that treating sanitation as a right on its own or solely as a component of the right to health will lead to neglect of this right. The common neglect of sanitation was illustrated when the Millennium Declaration, which includes a commitment to reduce lack of access to water by half, neglected to include a target on access to sanitation. However, States corrected this omission two years later at the 2002 Johannesburg World Summit on Sustainable Development when States committed to reduce by half the lack of access to basic sanitation, thereby including sanitation within the Millennium Development Goals.¹⁹

Third, treating water and sanitation together reflects current international practice evidenced by the 2006 Sub-Commission Guidelines, the 2007 OHCHR Report, the 2006 Human Development Report and Millennium Development Goal 7 Target 10. Virtually all United Nations specialised agencies that work on water supply also include sanitation within their mandates.

To ensure that sanitation gets the sustained attention necessary in the face of 2.6 billion people around the world living without access to a decent toilet or latrine, it is crucial that it is understood that water and sanitation are two sides of one coin and that sanitation is being addressed together with its more attractive counterpart: water.

¹⁸ The complementarity of water supply and sanitation is recognized in Paraguay's *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*, which stipulates in article 46 that "The services of provision of potable water and sanitation constitute complementary services that will be developed harmoniously, so as to avoid the installation of systems for the provision of potable water without that for sanitation, and vice versa, ..."

¹⁹ Neglect persists on the UN MDG website, which to this day has not been fully updated to include the sanitation target into MDG 7 Target 10. Go to <http://www.un.org/millenniumgoals/> > left column: "The Goals" > click "7".

3. What is the practical rationale for a distinct right to water and sanitation?²⁰

It has been suggested that entitlements to access to water and sanitation could be sufficiently dealt with under the rights to housing and health. However, there are three reasons why it is important that the right to water and sanitation is recognised as a distinct right.

First, water and sanitation are primary needs. About 10,000 people die each day due to diseases caused by lack of clean water and sanitation. Lack of clean water and sanitation is the primary cause of diarrhoea, which kills more children under the age of 5 than tuberculosis and malaria combined. In light of such figures, no one can dispute that access to clean water and a clean toilet or latrine is fundamental to a decent existence and that the right to water and sanitation is as important as other rights such as food, education, health and housing. The need for water and sanitation is recognised in the Millennium Development Goals in a manner similar to other equally essential items such as food, health and education. However, to ensure that the right to water and sanitation receives sufficient attention, it should not be subordinated under the rights to health or housing, but be given the prominence and visibility of a distinct right.

Second, it is necessary to ensure that the water and sanitation sector in each country integrates human rights into its policies, programmes and practice. The water and sanitation sector at the national level is normally entirely distinct from the health or housing sector. Water is normally dealt with by a water ministry or local government, which logically does not see itself as responsible for the realisation of the rights to health or housing or elements thereof, but would rather consider the ministries for health or housing responsible for these rights. However, water and sanitation sector institutions can clearly see how a right to water and sanitation is relevant to them. In this sense, a distinct right to water and sanitation is necessary in order to clarify responsibilities for ensuring that all people have access water and sanitation. at the national level.

Third, it would not be reasonable to treat sanitation only as an element of the right to water or of the right to health. The scope of sanitation goes well beyond prevention of contamination of drinking water supplies and wastewater drainage. In some countries, however, the water ministry deals only with water-borne sewerage. Basic sanitation such as latrines, which are normally used by the poor, is normally dealt with by health ministries, local government, or not at all. In addition, the water sector tends to be focused, not surprisingly, on providing water, and less on ensuring hygiene and safe water storage. Similarly, health ministries tend to be focused primarily on provision of medical care, rather than on issues such as water and sanitation.

It should be noted that both water and sanitation are generally recognised by development experts as being comparatively under-resourced, in comparison to areas such as health and education. Explicitly recognising water and sanitation in human rights terms may help redress this deficit.

4. Is it technically and financially feasible to achieve access to water and sanitation for all?

First of all, it is important to acknowledge that lack of access to basic levels of water and sanitation is primarily due to exclusion and neglect of the poor and not, as commonly assumed, lack of sufficient water resources or lack of technical solutions. The knowledge, low-cost

²⁰ This section closely draws on the arguments of Malcolm Langford, "Ambition that overleaps itself? A Response to Stephen Tully's 'Critique' of the General Comment on the Right to Water", *Netherlands Quarterly of Human Rights*, Vol. 26, No. 3 (2006), pp. 433-459.

technology solutions and - in most cases - the water resources²¹ to provide all people with access to safe water and basic sanitation are readily available.

From a financial point of view, it is important to realise that the water and sanitation gap comes with a staggering price tag for developing countries' economies. Global economic damage caused by the current crisis is estimated at a staggering \$170 billion – or 2.6% of developing country GDP. According to recent estimates, diseases and productivity losses related to unclean water and poor sanitation cost the countries in Sub-Saharan Africa 5% of GDP or \$28.4 billion per year, a figure that exceeded total aid flow and debt relief into the region in 2003.²²

It is estimated that achieving universal access using lowest-cost sustainable technologies would require investments of approximately \$20 billion per year - allowing the current trend to continue would thus cost roughly nine times more than resolving it. The amount of \$20 billion equals less than one week of global military spending (at \$1.2 trillion in 2006). The annual cost of providing every human being with access to clean water and a decent toilet would be less than what Europeans and Americans spend on either ice-cream, household pets or bird-watching every year.

Providing access to water and sanitation creates a virtuous circle of better health and rising wealth. Recent research by the World Health Organisation suggests that every \$1 spent on water and sanitation would bring an economic return of between \$3 and \$34. On average, every dollar invested in the sector is estimated to create \$8 in costs averted and productivity gained.

Ensuring that all people have access to essential water supplies and basic sanitation is first of all a legal and moral obligation. At the same time, the above suggests that investing into water and sanitation is also one of the best strategies to achieve sustainable economic development.

5. Definition of the right to water and sanitation

General Comment No. 15 and the Sub-Commission Guidelines, taken together, explain that the right to water and sanitation includes the following:

Sufficient water: Water supply for each person that is sufficient and continuous for personal and domestic uses, which normally include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.²³

Clean water: Safe water that, in particular, is free from hazardous substances that could endanger human health,²⁴ and whose colour, odour and taste are acceptable to users.²⁵

Accessible water and sanitation: Water and water and sanitation services and facilities that are accessible within, or in the immediate vicinity, of each household, educational institution and workplace, and which are in a secure location and address the needs of different groups, in particular threats to the physical security of women collecting water.²⁶ According to the Sub-

²¹ There are very few regions in the world where there is insufficient water to satisfy the basic needs of the population.

²² The overall annual costs of the current water and sanitation gap are estimated at \$170 billion, or 2.6% of developing country GDP.

²³ General Comment No. 15, para. 12(a).

²⁴ General Comment No. 15, para. 12(b), referring to the respective WHO Guidelines.

²⁵ General Comment No. 15, para. 12(b).

²⁶ General Comment No. 15, paras. 12(c)(i), 29, Sub-Commission Guidelines s. 1.3(a)-(c).

Commission Guidelines, sanitation must be safe, adequate and conducive to the protection of public health and the environment.²⁷

The term ‘sanitation’ in General Comment No. 15 and the Sub-Commission Guidelines is not defined. However, the description of the relevant entitlements and State obligations implies that sanitation comprises at least, a toilet or latrine, along with associated services such as sewage or latrine exhaustion. The criterion of ‘conducive to the protection of public health and the environment’ in the Sub-Commission Guidelines indicates that wastewater drainage channels are required for situations where piped water, but not sewage, is available in urban and peri-urban areas. It also implies that wastewater and excreta is treated or disposed of in a manner that avoids threats to public health and damage to ecosystems.

Affordable water and sanitation: Both the direct and indirect costs of securing water and sanitation should not reduce any person’s capacity to acquire other essential goods and services, including food, housing, health services and education.²⁸

As outlined in General Comment No. 15 and the Sub-Commission Guidelines, the right also incorporates requirements that apply to all human rights, such as non-discrimination and inclusion of vulnerable and marginalised groups,²⁹ access to information and participation,³⁰ and accountability.³¹

²⁷ Sub-Commission Guidelines, s. 1.2.

²⁸ General Comment No. 15, para 12(c)(ii); Sub-Commission Guidelines, s. 1.3(d).

²⁹ ICESCR, Art. 2 (2), General Comment No. 15, paras. 12 (c)(iii), (13), (16); Sub-Commission Guidelines, s. 3.

³⁰ General Comment No. 15, para. 12 (4), 48 and 55; Sub-Commission Guidelines, s. 8.1.-8.3.

³¹ General Comment No. 15, para. 55; Sub-Commission Guidelines, s. 9.