



WASH United®

THE HUMAN RIGHTS TO WATER AND SANITATION

A contribution to discussions at the Human Rights Council

The human rights to water and sanitation¹ are a remarkable success story of international human rights law: The speed with which the recognition and understanding of the rights have developed since General Comment No. 15 is likely unprecedented. So is the reception of the rights to water and sanitation by practitioners from the water, sanitation and hygiene (WASH) sector.

From General Comment No. 15 by the Committee on Economic, Social and Cultural Rights in 2002 to the establishment of a Special Procedures Mandate in 2008, the recognition by the General Assembly in 2010 and following Human Rights Council Resolutions, it has taken less than a decade to consolidate a consensus among UN Member States that water and sanitation are human rights. The Human Rights Council has been instrumental in discussing and defining the human rights dimensions of water and sanitation.

¹) WASH United advocates for interpreting water and sanitation as two distinct, closely related human rights. See below for the rationale for this position.

Remarkably, these developments are not confined to human rights forums.

By and large, the human rights to water and sanitation are seen as a useful and welcome contribution in the water, sanitation and hygiene (WASH) sector. There is a great willingness in the WASH sector to understand and use the rights in practice in order to improve how water and sanitation service provision is realised, operated, maintained and monitored. The reports by the WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation are an example: The Programme has consecutively looked deeper into challenges such as inequalities, safety and affordability of services and is doing so on the basis of the rights to water and sanitation.²

The Human Rights Council will remain instrumental in consolidating the consensus and further developing the understanding of the human rights to water and sanitation. WASH United therefore would like to suggest to delegates a number of focus areas that we consider of great importance to the further development of the human rights to water and sanitation. We hope that these suggestions will contribute to constructive discussions and can find reflection in resolutions by the Human Rights Council.

2) JMP (2014) Progress on Drinking Water and Sanitation 2014 Update. UNICEF, New York and World Health Organization, Geneva, available at <http://www.wssinfo.org/>

FOCUS AREAS

■ Using the term »human right to water«

Human Rights Council resolutions currently use the term »human right to safe drinking water«. It is agreed, however, that the right to water includes water »for personal and domestic use«,³ which will typically involve water for drinking, food preparation and personal and domestic hygiene. The Human Rights Council thereby affirmed the fact that water for drinking alone will not allow individuals to enjoy an adequate standard of living and to live a healthy and dignified life. The word »safe« is not needed in the term used to refer to the right, as it is part of agreed language at the Human Rights Council.

→ We ask delegates to support the use of the term »human right to water« and thereby reconcile the term used to refer to the right with its agreed content.

■ Define water and sanitation as distinct rights

The human rights to water and sanitation are closely related. As all economic, social and cultural rights, a common typology is used to describe the content and meaning of the rights. However, there are also important differences to consider in defining adequate water and sanitation service provision in human rights terms. Most importantly, privacy and dignity are of paramount importance for the right to sanitation. When people do not feel that a toilet or latrine ensures that they can urinate, defecate and take care of menstrual hygiene in privacy and with dignity, it is highly likely that they will not use them and resort to – at worst – open defecation. The impacts on individual and public health and the enjoyment of other human rights – including the right to water – are severe. According to a systematic review of available evidence, it is estimated that 1.8 billion people use water that is contaminated with faecal matter, including people who have access to a water source that is considered 'improved' and therefore safe by current monitoring standards.⁴

3) See A/HRC/RES/24/18, PP 15: Recognizing that the human right to safe drinking water and sanitation entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use (...)

4) See page 41-42, JMP (2014) Progress on Drinking Water and Sanitation 2014 Update.

UNICEF, New York and World Health Organization, Geneva, available at <http://www.wssinfo.org/>

Similarly, sanitation facilities that are not socially and culturally acceptable for the people they are intended to serve will likely not be used. Social and cultural acceptability are therefore of great importance for the realisation of the right to sanitation. What this means is strongly impacted by social and cultural contexts. In most cultures, for example, sex segregation will be necessary to ensure sanitation facilities are considered acceptable. While »culture« is sometimes used to try to justify human rights violations, social and cultural acceptability related to sanitation is determined on the basis of the needs of users.

Moreover, sanitation remains a neglected topic. This is exemplified by the fact that between 1990 and 2012, 13% of the world population have gained access to an improved source of drinking water, as currently monitored, whereas only 7% have gained access to improved sanitation.⁵ According to a 2012 report, 73% of spending in the WASH sector was devoted to water and only 27% to sanitation.⁶ While the MDG target on water is on track, the MDG target on sanitation is one of the most off track. WASH United is convinced that defining sanitation as a distinct human right can contribute to ensure the political prioritisation that is needed to drive progress for the benefit of those suffering the indignity of a lack of adequate sanitation.

The interpretation of water and sanitation as two distinct rights is also supported by the Committee on Economic, Social and Cultural Rights. In its 2010 Statement on Sanitation, the Committee outlined that the right to sanitation is an element of the right to an adequate standard of living and integrally related to, inter alia, the right to water – thereby treating both rights as distinct. The Committee namely reaffirmed that *»since sanitation is fundamental for human survival and for leading a life in dignity, the right to sanitation is an essential component of the right to an adequate standard of living, enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights. The right to sanitation is also integrally related, among other Covenant rights, to the right to health, as laid down in Article 12 paragraphs 1 and 2 (a), (b) and (c), the right to housing, in Article 11, as well as the right to water, which the Committee recognized in its General Comment No. 15. It is significant, however, that sanitation has distinct features which warrant its separate treatment from water in some respects. Although much of the world relies on waterborne sanitation, increasingly sanitation solutions which do not use water are being promoted and encouraged.«*⁷

→ We ask delegates to refer to the human right to water and the human right to sanitation as two distinct rights, with closely related but distinct contents.

⁵) Ibid, page 7

⁶) For example, as indicated in the WHO – UN-Water Global Analysis and Assessment of Sanitation and Drinking-Water (GLAAS) Report of 2012, only 27% total WASH funds is spent on sanitation, with 73% of it spent on water. These numbers include those countries with approximately 990 million people who do not have access to improved sanitation, compared with 190 million people who do not have access to an improved source of drinking-water.

⁷) Committee on Economic, Social and Cultural Rights (CESCR), Statement on the Right to Sanitation (2010), E/C.12/2010/1

▪ Focus on the elimination of inequalities

As the 2014 update of the Joint Monitoring Programme states, stark disparities exist across regions, between urban and rural areas, and between the rich and the poor and marginalised. Progress on sanitation in particular has often benefitted wealthier people, with the result that inequality between the rich and the poor and marginalised has actually increased.⁸ Human rights demand precisely the opposite: Non-discrimination and equality are fundamental principles of international human rights law.

It is therefore crucial to focus on the elimination of non-discrimination and equality in order to drive progress in the realisation of rights. This includes the need to identify root causes of disparities, and prohibition of discrimination in service provision, including on the basis of tenure status.

→ We ask delegates to strongly reflect the human rights principles of non-discrimination and equality in the resolution.

▪ The value of looking at violations of the human rights to water and sanitation

The recognition of water and sanitation as human rights has brought with it an important paradigm shift by defining people as rights holders and governments as duty bearers. This paradigm shift necessitates not only a focus on what must be done to realise those rights for all, as expeditiously as possible. It is equally important to look at what must not be done, because it would constitute a violation of the rights to water and sanitation.

Importantly, legal frameworks – whether at the international or national level – are characterised by a high degree of generalisation, as they regulate a subject matter for an entire jurisdiction. Violations are therefore not always an indicator for a lack of will or capacity – they can just as well be the result of unforeseen gaps. Whatever the reason for violations of the rights, examining violations and remedies is one of the best ways of identifying and overcoming challenges in the realisation of rights.⁹

The Human Rights Council has underlined in its resolution 25/11 of 27 March 2014 the importance of access to justice for all in the context of the realisation of economic, social and cultural rights and of an effective remedy for violations of these

⁸) JMP (2014) Progress on Drinking Water and Sanitation 2014 Update. UNICEF, New York and World Health Organization, Geneva.

⁹) Most recently, the Human Rights Council engaged with the topic of violations in resolution 25/11 of 27 March 2014, underlining, inter alia, the importance of an effective remedy for violations of economic, social and cultural rights (...) to avoid infringements of such rights.

rights. We hope that delegates will take the opportunity of the report by the Special Rapporteur to the 27th Human Rights Council that focuses on common violations of the human rights to water and sanitation as an opportunity for constructive engagement.

→ We ask delegates to welcome the report and to engage constructively with the topic of violations of the rights to water and sanitation

▪ Build consensus on the full definition of the rights to water and sanitation

Human Rights Council resolution A/HRC/24/18 of September 2013, co-sponsored by 111 States and adopted by consensus, contained a detailed list of content categories describing the rights to water and sanitation.

The content categories provide much needed clarity, guidance and additional political support for the use of the human rights to water and sanitation in practice. They can guide both the implementation of the rights in practice and the monitoring of progress in their realisation – including with regards to the post-2015 development agenda. For example, the Joint Monitoring Programme – with the explicit purpose of monitoring the progressive realisation of the right to water and sanitation - is in the process of developing new indicators to measure inequality in water and sanitation service provision as well as safety of water and sanitation services.¹⁰

In addition, resolutions should include the words »socially and culturally« in relation to acceptability of sanitation. As outlined above, these words are important qualifiers to indicate that acceptability of sanitation facilities must be determined by their users, as unacceptable facilities will not be used.

→ We ask delegates to support the following definition of the rights:

»the human rights to water and sanitation entitle everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use and to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity«.

¹⁰ See p. 40-45, JMP (2014) Progress on Drinking Water and Sanitation 2014 Update. UNICEF, New York and World Health Organization, Geneva, available at <http://www.wssinfo.org/>

▪ **Recognising the importance of menstrual hygiene management**

Menstruation and the importance of menstrual hygiene management is still a neglected issue in many parts of the world. This neglect and widespread stigma related to menstruation has a profound impact on girls and women's human rights, including their rights to water and sanitation, health, privacy, dignity, education and work. It crucially also negatively impacts on gender equality.

Menstrual hygiene is still considered a taboo topic in many places throughout the world, contributing to the lack of attention to this natural and regular part of girls' and women's lives and leaving many without safe, accessible and hygienic spaces for washing and sanitation. Many girls and women are forced to use unhygienic methods to manage their menstruation or have to severely restrict their social contacts during menstruation.

→ We ask delegates to recognise that the lack of provision for menstrual hygiene management negatively impacts the human rights of women and girls.



WASH United®

WASH United is an international non-profit organisation headquartered in Berlin/Germany that works in Sub-Saharan Africa, South Asia and at the global level. WASH United combines a strong background in international human rights law with WASH sector expertise and creative talent to tackle the global WASH crisis through the promotion of the rights to water and sanitation, advocacy campaigns and behaviour change interventions. Working closely with the mandate of the UN Special Rapporteur as well as key civil society partners and governments, WASH United coordinates civil society advocacy on the rights to water and sanitation at the international level, and also leads critical research aimed at promoting the implementation of the rights, both at the legal and programmatic level.

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