

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

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## **I. The right to water**

Nearly one in six people in the world do not have access to safe drinking water, including for personal and domestic uses. As a result of lack of access to safe water for drinking and hygiene, as well as lack of access to basic sanitation, diarrhoea is a leading cause of death globally, especially for children under the age of 5.

Surprisingly, the Universal Declaration on Human Rights does not include any recognition of the right to water. Similarly, the first two UN human rights Covenants, on civil and political rights, and on economic, social and cultural rights respectively, do not include any explicit reference to the right to water. We may ask, why? Most probably, the issue of water was not present in the minds of the drafters of those documents as a critical issue. Now, of course, we know that access to water is a matter of fundamental human rights, and subsequent human rights treaties have recognized that.

The Convention on the Elimination of all Forms of Discrimination against Women, adopted in 1979 by the General Assembly, includes sanitation and water supply as components of the right to an adequate standard of living, in its Article 14, dealing specifically with rural women. The Convention on the Rights of the Child, adopted in 1989 by the General Assembly, refers to clean drinking water in the context of guaranteeing the right of the child to the enjoyment of the highest attainable standard of health. More recently, the Convention on the Rights of Persons with Disabilities includes access to clean water services for persons with disabilities as part of the right to social protection. At the regional level, human rights treaties regarding women and children in Africa also refer to the obligation to ensure access to clean drinking water. These treaties are legally binding on the States that ratify them and the explicit references to water indicate a growing consensus among the international community to consider access to safe drinking water a human right.

The Committee on Economic, Social and Cultural Rights, which monitors the implementation of the Covenant on Economic, Social and Cultural Rights, has regularly expressed concern about lack of access to water, and in 2002, it adopted its General Comment N.º 15 on The Right to Water. General Comments are considered authoritative interpretations of international law, and this General Comment was particularly important to address the Covenant's silence on the issue of water. The Committee defined the right to water as "the right of everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses." According to the Committee, the right to water is consecrated in article 11 of the ICESCR "implicitly", since that provision uses an open formulation as it guarantees the "right of everyone to an adequate

standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. The preposition “including” would mean, according to the Committee, that the catalogue of rights contained in article 11 was not intended to be exhaustive. To justify this assertion, the Committee remarks that “the right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival.”

The Committee went on to outline the normative content of the right to water as follows:

- Availability - water supply for each person must be sufficient and continuous for personal and domestic uses
- Quality - the water for these uses must be safe
- Accessibility - water and water facilities and services must be accessible to everyone without discrimination - that means both physically accessible, and economically accessible (or affordable). It also includes a right to seek, receive and impart information concerning water uses.

The General Comment also details the specific legal obligations of States to guarantee the right to water--namely,

- the duty to respect or to refrain from violating the right;
- the duty to protect, or to ensure third parties do not interfere with enjoyment of the right, and
- the duty to fulfil, which includes obligations
  - o to facilitate the right by taking positive measures to realize it,
  - o to promote the right through public education and other measures, and
  - o to provide the right when individuals are unable to realize it on their own.

Moreover, declarations and resolutions by the UN and by other organizations recognize safe drinking water and sanitation as a human right, as for example the Mar de la Plata Action Plan (1977) adopted by the United Nations Water Conference, the Dublin Statement on Water and Sustainable Development (1992) adopted at the International Conference on Water and the Environment, the Programme of Action adopted by the United Nations International Conference on Population and Development (1994) and the Habitat Agenda of the UN on Human Settlements (Habitat II) (1996). Additionally, other General Assembly and Commission on Human Rights resolutions refer to clean water as a human right. The former Sub-Commission on the Promotion and Protection of Human Rights adopted, in 2006, Draft Guidelines for the Realization of the Right to Drinking Water Supply and Sanitation.

A right to water and, in some cases, sanitation has also been recognised in several national legal systems, such as Algeria, Belgium, Democratic Republic of the Congo, Ecuador, France, South Africa, Uganda, Ukraine and Uruguay.

In its Decision 2/104 on Human Rights and Access to Water, the UN Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to undertake a 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.

As part of the consultation process, the OHCHR sought written submissions from various stakeholders. Over 90 responses were received from States, intergovernmental organizations (IGOs), local governments, National Human Rights Institutions (NHRIs), non-governmental organizations (NGOs), the business sector, universities and individuals. The High Commissioner for Human Rights presented this study to the Human Rights Council's at its sixth session in September 2007. She expressed her belief "that it is now time to consider access to safe drinking water and sanitation as a human right, defined as the right to equal and non-discriminatory access to a sufficient amount of safe drinking water for personal and domestic uses - drinking, personal sanitation, washing of clothes, food preparation and personal and household hygiene - to sustain life and health." The High Commissioner also mentioned that "States should prioritize these personal and domestic uses over other water uses and should take steps to ensure that this sufficient amount is of good quality, affordable for all and can be collected within a reasonable distance from a person's home".

However, the recognition of water as a human right in declarations and resolutions has been irregular. Several States have not recognised a human right to water and sanitation either at the national or international levels, and some have defended the need to further explore the connections between human rights obligations and water and sanitation.

In this regard, the focus of the Human Rights Council resolutions has been on the links between access to water and sanitation and human rights, and Human Rights Council resolution 7/22 - the one which decided to appoint an Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation - recognised indeed a need for further study to clarify the content of human rights obligations in relation to safe drinking water and sanitation.

## II. United Nations Special Procedures system<sup>1</sup>

“Special procedures” is the general name given to the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world.

Special procedures mandates usually require mandate-holders to monitor, advise and publicly report on human rights situations in specific countries or territories (country mandates), or on major phenomena of human rights violations worldwide (thematic mandates). Each special procedure’s mandate is defined in the resolution that created it. Thematic mandates are renewed every three years and country mandates annually, unless otherwise decided by the Human Rights Council. By September 2008 there were 38 special procedures in operation—30 thematic mandates and 8 country mandates.

Special procedures mandate-holders are either an individual (special rapporteur, special representative of the Secretary-General, representative of the Secretary-General or independent expert) or a group of individuals (working group). Mandate-holders serve in their personal capacity for a maximum of six years and do not receive salaries or any other financial compensation for their work. The independent status of mandate-holders is crucial to the impartial performance of their functions.

The OHCHR provides special procedures mandate-holders with personnel, logistical and research assistance to support them in their mandates.

Special procedures mandate-holders engage in the following activities:

- Receive and analyse information on human rights situations provided by various sources on an ongoing basis;
- Network and share information with partners, both governmental and non-governmental, within and outside the United Nations;
- Seek—often urgently—clarification from Governments on alleged violations and, where required, request Governments to implement protection measures to guarantee or restore the enjoyment of human rights;
- Raise awareness about specific human rights situations and phenomena, and threats to and violations of human rights;

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<sup>1</sup> Excerpts from: Working with the United Nations Human Rights Programme: A Handbook for Civil Society. Office of the High Commissioner for Human Rights (OHCHR), 2008.

- When specific circumstances so warrant, communicate their concerns through the media and other public statements;
- Undertake country visits to assess human rights situations pertaining to their respective mandates, and make recommendations to Governments with a view to improving those situations;
- Report and make recommendations to the Human Rights Council and, where relevant to their mandates, to the General Assembly (and in some cases to the Security Council) on: regular activities under their mandate; field visits; and specific thematic trends and phenomena;
- Contribute thematic studies to the development of authoritative norms and standards for the subject area of the mandate, and may provide legal expertise on specific issues.

### **Eligibility for appointment**

Highly qualified individuals with established competence, relevant expertise, extensive professional experience in the field of human rights and flexibility/availability of time are considered eligible candidates for appointment as mandate-holders.

Individuals holding decision-making positions in Government or in any other organization or entity (including non-governmental organizations (NGOs), national human rights institutions (NHRIs) and other human rights organizations) which may give rise to a conflict of interest with the responsibilities inherent in the mandate are excluded.

Candidates for special procedures mandate-holders may be nominated by Governments; regional groups operating within the United Nations human rights system; international organizations or their offices (e.g. OHCHR); NGOs; other human rights bodies; and individuals.

## **III. The United Nations Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation**

In March 2008, through its resolution 7/22, the Human Rights Council created the mandate of the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation. According to the resolution, the Independent Expert is called upon to carry out the following activities:

- (a) *Firstly*, to develop a dialogue with Governments, the relevant United Nations bodies, the private sector, local authorities, national human rights institutions, civil society organizations and academic institutions, to identify, promote and exchange views on **best practices** related to access to safe drinking water and sanitation, and, in that regard, to prepare a compendium of best practices;
- (b) *Secondly*, to advance the work by undertaking a study, in cooperation with and reflecting the views of Governments and relevant United Nations bodies, and in further cooperation with the private sector, local authorities, national human rights institutions, civil society organizations and academic institutions, on the **further clarification of the content of human rights obligations**, including non-discrimination obligations, in relation to access to safe drinking water and sanitation;
- (c) *Thirdly*, on making recommendations that could help the **realization of the Millennium Development Goals**, in particular of Goal 7.

At its ninth session in September 2008, the Council appointed Catarina de Albuquerque as Independent Expert, for a period of three years. Ms. de Albuquerque took up her mandate on 1 November 2008.

Resolution 7/22 explicitly excludes consideration of watercourse law and transboundary water issues from the purview of the mandate's activities.

#### **IV. Mandate activities**

The Independent Expert has engaged in numerous activities since taking up her mandate, a few of which are highlighted in this section.

Most recently she completed a country mission to Egypt (official report to the Human Rights Council to be presented in September 2010), prior to which she conducted a country mission to Costa Rica (official report to the Human Rights Council to be presented in September 2009).

From 27-28 April 2009, the Independent Expert organized an expert consultation on the human rights obligations related to sanitation, with participation by experts in human rights law and experts in the area of sanitation from all regions of the world. On 29 April, she organized a public consultation on the human rights obligations related to sanitation which was attended by numerous States, civil society organizations and other actors. This consultation provided valuable input to the

drafting of an official thematic report on the human rights obligations related to sanitation, which will be presented to the Human Rights Council in September 2009.

The Independent Expert has also engaged in discussions with members of the Committee on Economic, Social and Cultural Rights, as well as members of the UN Secretary-General's Advisory Board on Water and Sanitation. The mandate of the Independent Expert was represented at the 5th World Water Forum, which was held in Istanbul from 16 - 22 March 2009.

She has also attended, or been represented at numerous meetings organized by Governments and NGOs focused on human rights, and water and sanitation. These meetings have been important opportunities to raise awareness about the mandate, to continue to dialogue with various stakeholders about issues related to human rights, water and sanitation, and to explore opportunities for deeper cooperation.

## **V. Priorities of the mandate**

The Independent Expert presented her first official report to the Human Rights Council in March 2009 (A/HRC/10/6), in which she set forth the conceptual framework for her term as mandate holder, and discussed some of her priorities and working methods for her first year as Independent Expert. The priorities of the mandate stem from follow-up on the issues identified in the Report of the United Nations High Commissioner for Human Rights 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 (A/HRC/6/3).

The study notes that further work is certainly needed with regard to:

- a) the normative content of human rights obligations in relation to access to **sanitation**;
- b) the human rights obligations attached to the elaboration of a **national strategy** on water and sanitation;
- c) the regulation of the **private sector** in the context of private provision of safe drinking water and sanitation;
- d) criteria to protect the right to safe drinking water and sanitation in case of **disconnection**; and
- e) the specific obligations of **local authorities**.

The study raises also questions including:

- a) whether access to safe drinking water and sanitation is a **self-standing right** or is derived from other human rights;
- b) the issue of **prioritization** among various water uses; and
- c) interaction with **other areas of international law**, including trade and investment law.

To date, the priorities of the mandate have been sanitation, the Millennium Development Goals (MDGs), and good practices.

### **A. Clarification of human rights content: Sanitation**

The right to water, although still politically contested in some fora, is well defined and understood among human rights experts. However, sanitation does not enjoy the same status, and for this reason, the Independent Expert chose to devote her first year to sanitation. The official report on the human rights obligations related to sanitation, available in September 2009, will examine sanitation in the context of human rights. It will highlight the enormity of the crisis in access to sanitation, examine existing definitions of sanitation, and explain the inter-related nature of sanitation and a wide variety of human rights. The report will also offer a definition of sanitation in human rights terms, and explore the content of human rights obligations related to sanitation.

### **B. Millennium Development Goals (MDGs)**

Recognition and implementation of the right to water, and to sanitation, would not only help towards the achievement of MDG 7, but also the other MDGs on gender equality, poverty, health and education. These issues are integrally related, and the Independent Expert considers it useful that the resolution gives her a broad mandate concerning the MDGs and is not only focused on MDG 7.

Recognition and realization of the right to water and sanitation would not only help achieve the MDGs, but it would go beyond the MDGs. Human rights offer a more comprehensive framework for understanding the different dimensions of the MDGs, and human rights obligations require progress beyond the MDG targets to halve the population without access to safe drinking water and sanitation. Even if the MDG target is reached, there will still be 800 million people without access to water and 1.8 billion people without access to sanitation in 2015<sup>2</sup>. This is an unacceptable reality - human rights ultimately require universal access, and disparities in access which may be the result of discrimination must be particularly addressed.

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<sup>2</sup> United Nations Development Programme, Human Development Report 2006, Beyond Scarcity: Power, Poverty and the Global Water Crisis, page 4.

Human rights law obliges States to progressively realize access to water and sanitation to the *maximum of their available resources*. They have to move towards the goal of full realization *as quickly and efficiently as possible*, within available resources and resorting to international cooperation and assistance. Therefore human rights oblige States – and even those States that have already reached the MDG target – to continue to take steps to ensure the full realisation of human rights obligations related to access to water and sanitation. Benchmarks on the way to ensure full realization of these obligations have to be adapted to national contexts. They could be integrated in the national MDG target setting process and national development plans.

Human rights also have process requirements which are in line with development efforts to achieve sustainable interventions and reach the most marginalized populations, especially the poorest people. For example, human rights require participation that is *active, free and meaningful* and thus has to go beyond mere consultation and information. It requires a genuine opportunity to express demands and concerns and influence decisions. Also, it is crucial to include all individuals and groups concerned. Ensuring full participation is also a way to increase ownership and contribute to the sustainability of projects.

The requirement of non-discrimination requires special attention to the most marginalized and disadvantaged groups - frequently this overlaps with development objectives to reach out to the poorest communities. Where certain groups lack access, it is frequently a symptom of larger societal discrimination and exclusion. The UNDP Human Development Report focusing on water in 2006 drew particular attention to lack of access to water and sanitation for the poor, concluding that “scarcity is manufactured through political processes and institutions that disadvantage the poor.” Women, children, the elderly, persons with disabilities, refugees and IDPs, indigenous groups and others have also been identified as groups requiring special attention.

The Independent Expert hopes to capitalize on the momentum behind the MDGs to highlight the importance of using the human rights framework.

### **C. Good practices**

The mandate will take the following steps in its efforts to identify “good” practices:

- **Identify criteria** for identifying a “good” practice. It seems critical to first elaborate criteria against which to judge a practice, and then apply the same criteria to all practices under consideration.
- The Independent Expert hopes to organize an expert **consultation** on criteria for good practices in October of this year. This would be an opportunity to benefit from the experience of people who have a broad overview of how human rights obligations related to water and sanitation have been realized. In consultation with these experts, the Independent Expert hopes to develop criteria which would enable her to classify a practice as a good one.
- Organize **“stakeholder consultations”**. The Independent Expert considers that it will be a useful next step to talk with different sectors of stakeholders and consider their good practices in light of the criteria, recognizing that there are many different type of actors in the areas of water and sanitation. For instance, she envisages consultations with Governments, with civil society, with development cooperation agencies, with the private sector, with UN agencies, and perhaps others. By bringing people from the same sector together to talk about good practices related to human rights, and water and sanitation, she hopes to facilitate exchange of these good practices into settings where they might be able to be replicated.
- In addition to stakeholder consultations (which depend upon available funding), questionnaires and other means for collecting information will be circulated to try to gather as many contributions as possible.
- The vision thereafter is to organize a larger conference, with all stakeholders to share experiences and address further challenges.
- Finally, the Independent Expert hopes to publish two books concerning good practices, on water and sanitation respectively.

#### **D. Priorities for 2010**

In 2010, the mandate will focus on the issues of privatization and the responsibilities of the private sector, including State obligations to regulate. It is of interest to note that the OHCHR study reiterates that “the human rights framework does not dictate a particular form of service delivery and leaves it to States to determine the best ways to implement their human rights obligations.” Nevertheless, the duty to protect requires States to regulate and monitor private water providers. Additionally, private entities as water users will be examined, as well as the potential of private entities to contribute to technological innovation which will impact the realization of the rights to water and sanitation.

## **VI. Collaboration**

The Independent Expert welcomes the opportunity to collaborate with UNESCO and other interested parties, and looks forward to further exploring such opportunities, for example collaboration during official country missions of the mandate holder in countries in which UNESCO has a presence (e.g. UNESCO Water Centres). The Independent Experts looks forward to fruitful discussions on these opportunities during the UNESCO Paris Seminar and beyond.

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*Further information on the mandate can be found on the website:*

*<http://www2.ohchr.org/english/issues/water/iexpert/index.htm>*