



# HUMAN RIGHTS AND ACCESS TO WATER AND SANITATION:

## Acting on the Report of the OHCHR

### Lack of Water and Sanitation: A Crisis in Slow Motion

More than a billion people lack the most basic water supply. More than 2.6 billion lack access to a clean toilet. An estimated ten thousand people die each day due to diseases caused by a lack of clean water and sanitation. These individuals are left with no choice but to consume water fetched from unsafe sources such as unprotected wells, ditches, rivers or lakes. For want of a toilet they are forced to defecate in buckets, plastic bags and public places in and around their communities. While lack of financial resources may be a cause of these issues, in many cases also at issue are discrimination; failure to involve communities in decision-making; and/or a lack of political will to implement plans and extend water and sanitation supply to deprived urban and rural areas.

Millions of women and young girls in Africa and Asia face walks of several hours every day to collect water from distant sources, depriving them of educational or other productive opportunities. Lack of adequate sanitary facilities is a major cause for girls dropping out of school, particularly after puberty. Diseases and produc-

tivity losses related to lack of clean water and sanitation are estimated to cost Sub-Saharan Africa 5% of GDP or \$28.4 billion per year, a figure that exceeds aid flow and debt relief into the region.

Providing clean water and sanitation creates a virtuous circle of better health and rising wealth. According to the World Health Organisation, each \$1 invested in water and sanitation would bring an economic return of between \$3 and \$34. According to conservative estimates, allowing the current crisis in water and sanitation to continue would cost roughly nine times more than resolving it.

In the Millennium Declaration and the Johannesburg Plan of Implementation of the World Summit on Sustainable Development, the international community pledged to halve by 2015 the proportion of people unable to reach or afford safe drinking water and basic sanitation. However, this commitment has not received with the necessary effort and resources and it is unlikely, if current trends persist, that these targets will be met.



## How might human rights address the water and sanitation crisis?

For the last few decades, water and sanitation has been seen as a purely development or technical issue, with the legal and political dimensions underplayed. Yet, as shown in the UNDP Human Development Report 2006 – Beyond scarcity: Power, poverty and the global water crisis, 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.

If implemented properly in national and international governance frameworks, the right to water and sanitation can help to:

- Generate the political will required to make the necessary reforms to laws, policies and practices;
- Increase pressure to raise the necessary resources, both at domestic and international level for basic water and sanitation;
- Ensure that such resources are utilised in a manner that focuses on the needs and aspirations of the poor and marginalized; and
- Monitor performance.

The main features of the right to water and sanitation that can add to current development efforts are:

### **Improved accountability**

The right to water and sanitation means that access to water and sanitation is viewed as a legal entitlement, rather than only a moral priority. National mechanisms, such as human rights commissions and courts, and

international human rights mechanisms can identify and address deficiencies in the implementation of water and sanitation policies, and recommend or require improvements. Communities and other organisations can also use the right to raise the political profile of the importance of access to water and sanitation and can lobby the responsible agencies for improvements.

### **Focus on vulnerable and marginalised groups**

The right to water and sanitation focuses attention on groups that have been traditionally discriminated against or historically neglected, such as persons living in informal settlements. It obliges governments to use available resources in a manner that prioritises the extension of access to basic water and sanitation services to all their people. This is in contrast to common practice where significant amounts of public resources are often used for the construction of infrastructure and provision of subsidies that benefit upper and middle-income groups to the exclusion of the poor.

### **Increased participation in decision-making**

The right to water and sanitation provides for genuine consultation and participation of communities in decision-making on service delivery and management of water resources. Although participation is now acknowledged as a development best practice, centralised planning processes remain prevalent, and can neglect the input of various users. The right to water and sanitation can help empower and enable communities to organise themselves and legitimately seek to take part in decision-making processes.

## Is the UN human rights system's response adequate?

Several international treaties, including the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination Against Women include commitments related to access to water. Several United Nations organs have recognised the right to water and sanitation. The UN General Assembly stated that the right to clean water is a fundamental human right. The Human Rights Commission adopted several resolutions on toxic wastes, which referred to the 'right to water.' The right to water and sanitation as a component of the right to an adequate standard of living was referenced in the Programme of Action of the 1994 Cairo Conference on Population and Development. Other bodies besides the United Nations have made similar declarations. The 116 member States of the Non-Aligned Movement recalled General Comment 15 and acknowledged the right to water in 2006. The 43 Governments represented in the Council of Europe stated in 2001 that international human rights instruments include the right to a minimum quantity of water of satisfactory quality from the point of view of health and hygiene. As a

result, every UN member State has at least once recognised the right to water and sanitation.

Recognition of the right to water and sanitation is a useful resource for governments and civil society. However, it may be insufficient on its own and there is widespread scepticism about the ability of United Nations treaties and declarations to bring about real change. It is therefore absolutely necessary to support words with actions, and to mobilise the expertise and independence of United Nations human rights bodies in support of implementation. At the present time, there is no Special Rapporteur on water and sanitation. The UN Special Rapporteurs on food, health, education and housing have tried to fill this gap by giving some attention to water and sanitation in the course of their work. However, as their core issues of food, health, education and housing have such a degree of breadth and complexity, existing Special Rapporteurs have not been able to address water and sanitation in any comprehensive or sustained manner. Similarly, the Office of the High Commissioner for Human Rights (OHCHR) does not have sufficient means to provide technical assistance to governments in relation to water and sanitation.

To its credit, one of the first decisions of the UN Human Rights Council, taken in November 2006, was to request the OHCHR to carry out a study on human rights obligations related to access to safe drinking water and sanitation. This study, it is hoped, will pave the way for more sustained attention by the UN Human Rights Council towards supporting implementation of the right.

The expert bodies of the United Nations have assisted in implementation by, firstly, confirming that the International



Covenant on Economic, Social and Cultural Rights (ICESCR) provides for the right to water and sanitation and, secondly, by providing a credible and workable definition of the right. In 2002, the UN Committee on Economic, Social and Cultural Rights (CESCR), which monitors implementation of the ICESCR, adopted General Comment No. 15 on the right to water. General Comment No. 15 states that the right to water, implied under the right to an adequate standard of living and the right to the highest attainable standard of health - Articles 11(1) and 12(1) of the ICESCR - entitles everyone to "sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses" and "access to adequate sanitation." It also indicates that States parties are obliged to ensure non-discrimination and special attention to groups that have traditionally faced difficulty in accessing water and sanitation services and are obliged to ensure that all people have access to relevant information and an opportunity to participate in decision-making relating to their right to water.

## CONCLUSIONS AND RECOMMENDATIONS OF THE OHCHR REPORT

The OHCHR study concludes that "it is now time to consider access to safe drinking water and sanitation as a human right" and calls upon States to prioritize personal and domestic water uses over other uses and to take steps to ensure that a sufficient amount of good quality water for personal and domestic uses is affordable for all and can be collected within a reasonable distance from a person's home.

While noting that UN special procedures and treaty bodies have made a contribution to clarifying human rights obligations regarding access to drinking water and sanitation, the report finds that "specific, dedicated and sustained attention to safe drinking water and sanitation is currently lacking at the international level, given the broad range of issues that special procedures and treaty bodies have

to address within their mandate and the specific questions that arise in relation to access to safe drinking water and sanitation."

The OHCHR encourages the Human Rights Council to continue its consideration of human rights obligations in relation to access to safe drinking water and sanitation and encourages States and other actors to identify good practices regarding safe drinking water and sanitation and make them available to OHCHR.

(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, UN Doc. A/HRC/6/3, 13 August 2007, available at: <http://www.ohchr.org/english/issues/water/index.htm>.)



In 2006, the UN Sub-Commission on the Promotion and Protection of Human Rights adopted Guidelines for the Realization of the Right to Drinking Water Supply and Sanitation, which set out urgent priorities for implementation of the right to water and sanitation. The Sub-Commission Guidelines are consistent with General Comment No. 15, but go further by clearly defining sanitation as a right in conjunction with water, and its components. General Comment No. 15 and the Sub-Commission Guidelines both recognise that the right is to be realised progressively depending on available resources, that affordable charges for water and sanitation are necessary and that the entitlement to water is limited to essential uses.

Recognition of the right to water and sanitation, and the definition of the right by UN expert bodies, has been of significant use for governments and civil society. Several countries have included the right into their national legislation or policies in the present decade. Examples include Algeria (2005), Democratic Republic of Congo (2006), Indonesia (2005), Mauritania (2005), Nicaragua (2007), Uruguay (2004), Kenya (2007). Several others, such as Costa Rica and Guatemala recognise the right in draft legislation.

However, in most countries, many decision-makers with responsibility for water and sanitation are not aware of (or choose to ignore) the beneficial role that human rights can play in extending access to water and sanitation. Human

rights is far too often used only for rhetorical effect. There is therefore a significant role for the United Nations to devote its expertise and independence towards the practical implementation of the right. It is important for the UN Human Rights Council to emphasise the need for implementation by all States of their commitments to the right to water and sanitation.

## A Test for the Human Rights Council

Each year, between 3 and 4 million people perish due to lack of access to water and sanitation. This issue is not being addressed with the urgency it deserves, including within the UN human rights system. As the primary UN body responsible for human rights, it is critical for the Human Rights Council to take steps to advance the right to water and sanitation which could include:

- Appointing a Special Rapporteur on water and sanitation to assist States understand their legal obligations, identify and disseminate best practices and to monitor the progressive realisation of the right to water and sanitation;
- Providing the OHCHR with the means to allow it to provide technical support to States and international organisations on the right to water and sanitation;
- Calling on all States to ensure that the right to water and sanitation is fully reflected within their national legislation; and
- Adopting the Sub-commission Guidelines and recommending them to all States as guidance on urgent priorities for implementation of the right to water and sanitation.

Will the UN human rights system give the water and sanitation crisis the urgent attention that it deserves? Is the UN Human Rights Council high on rhetoric and low on action or vice versa? Indeed, the decisions of the Council on the right to water and sanitation in its upcoming sessions will constitute one of its most important tests.