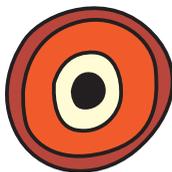


Introduction



REALISING THE HUMAN RIGHTS TO WATER AND SANITATION:
A HANDBOOK BY THE UN SPECIAL RAPPOREUR
CATARINA DE ALBUQUERQUE

Introduction





Realising the human rights to water and sanitation:
A Handbook by the UN Special Rapporteur
Catarina de Albuquerque

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01.

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02.

Preface

by Catarina de Albuquerque, UN Special Rapporteur
on the human right to safe drinking water and sanitation



I am very proud to present this Handbook, which represents the accumulated lessons I have learnt during the six years of my mandate as United Nations Special Rapporteur. It embodies the expectations that I have seen among the many people I have met, decision-makers as well as activists, and the excitement of exploring new ways of resolving the persistent problem of poor water and sanitation service provision. It seeks to combine the demands of the human rights framework with practical approaches, providing guidance on how to implement the human rights to water and sanitation and pointing towards solutions that have been tested and proved to be successful.

These past six years as Special Rapporteur have shown me the immense hope and political investments that both individuals and States place in the UN system, but also the distance and sometimes the disjuncture between decisions taken at the Human Rights Council in Geneva or at the General Assembly in New York and the practical realities of the lives of people around the world. To have true impact, these decisions made at the

international level must be translated into practical action at the national and local levels. The explicit recognition of the human right to water and sanitation by the UN General Assembly and Human Rights Council in 2010 has stimulated immense interest in, as well as a positive attitude towards, the human rights to water and sanitation, with States and development actors exploring how understanding and enforcing these rights can help to improve access to water and sanitation, and particularly help to address inequalities in access to these services. Nevertheless, there are still misunderstandings and uncertainties regarding what needs to be done to realise the human rights to water and sanitation, by States, as well as by NGOs and by the individuals themselves. I have seen it as my responsibility – one that I have taken on with great pleasure – to address these misconceptions, to respond to calls to provide practical guidance, and to translate the sometimes distant language of human rights into practical steps to be taken to improve people’s lives.

States are often willing to focus on the good practices that they can demonstrate through their policies and legislation, such as formally recognising rights in their constitutions and laws, and even putting processes in place to ensure that services are affordable and of good quality. They may however be less able to recognise and address violations of the human rights to water and sanitation. The more countries I visited, and the more complaints of alleged violations of the human rights to water and sanitation I received over the years, the more I realised that the good practices that countries demonstrated represented only a part of the story. All too often, States are also facing bad practices, and are not acknowledging that they have an obligation to address these.

This Handbook attempts to clarify not only the good practices, but also those practices that may lead to

violations of the human rights to water and sanitation. Challenges exist and persist which still need to be addressed and overcome. Being guided by the human rights to water and sanitation requires States to be self-critical and open to admitting their limitations, failures and even violations of the human rights to water and sanitation, so that they may devise strategies and actions to overcome these, including strategies to ensure the full justiciability of these rights.

I have valued my time as Special Rapporteur, both for the positive and for the negative experiences. As the Portuguese poet Pessoa once wrote: “Stones in the way? I collect them all. One day I will build a castle”. And this is what this Handbook represents: using problems, difficulties, challenges, obstacles, uncertainties, and lack of knowledge as starting points, and transforming them into positive tools, as well as using good practices and examples to demonstrate that it is feasible to address all of these challenges. The resulting guidance will help the human rights to water and sanitation become reality for all.

Catarina de Albuquerque
UN Special Rapporteur on the human right to safe
drinking water and sanitation.



03.

Foreword

by the UN High Commissioner for Human Rights, Navi Pillay



Access to water and sanitation is a human right. This human right is in itself essential for life and dignity, but it is also the foundation for achieving a wealth of other human rights, including the right to health and the right to development.

The human right to water and sanitation was explicitly recognized only in 2010 by the United Nations General Assembly and the Human Rights Council. Three years later, the Human Rights Council agreed on the comprehensive normative content of this right, and by now many States have incorporated this human right in their constitutions and national legislation. Moreover, at the international level, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights entered into force in 2013. The Protocol created a complaint mechanism allowing individuals or groups to file formal complaints on violations of the human right to water and sanitation, among other rights.

The real challenge now is to translate human rights obligations into meaningful action on the ground. We must place the human right to water and sanitation firmly at the centre of legislation, policies and regulations.

We must also ensure that those who do not fully enjoy this human right have access to justice.

I am delighted to introduce this Handbook, which provides direction and concrete examples to help us understand how the human right to water and sanitation can be made real for everybody – whether they are people living in informal settlements, children belonging to ethnic minorities, migrants, refugees, women living in rural areas or people living in extreme poverty. This Handbook offers clear, practical guidance, including checklists, to assist in implementing the human right to water and sanitation. It is the culmination of six years of work by Catarina de Albuquerque, the first United Nations Special Rapporteur on the human right to safe drinking water and sanitation.

In her country missions and dialogue with States, Ms. de Albuquerque's passion has inspired not only water and sanitation sector specialists, but also policy-makers. Her focus has been consistent: she has given a voice to the most marginalized groups in society who lack access to water and sanitation. She has articulated how this right can be used to attain greater equality in virtually every United

Nations Member State. And she has challenged politicians and other policy makers to acknowledge that water and sanitation are indeed human rights.

The increasing demand from stakeholders for guidance on how to apply human rights principles in their work is a sign of commitment. With the help of this Handbook, I am confident that we can work together to ensure access for all to water and sanitation, and thus promote human dignity and equality, in all countries and for all people.

Navi Pillay

UN High Commissioner for Human Rights



04.

Foreword

By the Executive Director of UNICEF, Anthony Lake



The right to safe water and decent sanitation is, at heart, the right of every individual to better health and human dignity. It is also fundamental to a healthier, safer society.

Although we have made significant progress toward the drinking water and sanitation targets set out in Millennium Development Goals, in 2012 nearly 2.5 billion people still lacked sanitation and nearly 750 million people still lacked access to an improved water source. This has had a devastating effect on the health of millions of children, especially the most disadvantaged. Unsafe water and inadequate sanitation are the top sources of diarrheal disease – a leading cause of death in children. And lack of access to water and sanitation also has significant consequences for the realization of other human rights, including the right to education, since children – especially girls – are often kept home from school because of inadequate hygiene facilities.

The United Nations General Assembly, the UN Human Rights Council, and the UN Special Rapporteur on the human right to safe drinking water and sanitation – together with many partners in government, international

organizations, civil society, and communities – have helped drive greater global awareness of the importance of safe water and sanitation to all our development goals. The conclusion of the MDGs and the advent of the Post-2015 era must serve as a challenge to build on the progress we have made. That means focusing greater attention, investment, and effort on reaching the children, families, and communities whose right to these fundamental necessities has not yet been fulfilled.

This Handbook reflects that goal. It emphasizes the practical work still to be done to promote the human right to water and sanitation. The recommendations provided here can assist States in their effort to translate the right to water and sanitation into law, policy, budgets, and service provision. The Handbook focuses special attention on the critical necessity of increasing investment and effort on realizing the rights of the most disadvantaged and marginalized groups, including children with disabilities and girls, who face particular barriers to accessing safe water and sanitation. This equity-based approach to human development and human rights is both a moral and

a strategic imperative, helping achieve greater results for children and their societies.

UNICEF is proud to have supported the mandate of the UN Special Rapporteur on the human right to safe drinking water and sanitation, and looks forward to our continued work together to make safe water and sanitation available to every child – not only in this generation, but future generations.

Anthony Lake
UNICEF Executive Director





05.

What is the Handbook for realising the human rights to water and sanitation?

This Handbook has been developed to:

- clarify the meaning of the human rights to water and sanitation;
- explain the obligations that arise from these rights;
- provide guidance on implementing the human rights to water and sanitation;
- share some examples of good practice and show how these rights are being implemented;
- explore how States can be held to account for delivering on their obligations;
- provide its users with checklists, so they can assess how far they are complying with the human rights to water and sanitation.

The target audiences for this Handbook are governments at all levels, donors and national regulatory bodies. It provides information that will also be useful to other local, regional and international stakeholders, including civil society, service providers and human rights organisations.

5.1. How the Handbook was conceived

In 2010, the United Nations General Assembly recognised the human right to safe drinking water and sanitation¹ and the Human Rights Council reaffirmed this recognition.² Since the adoption of these resolutions, the UN Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, has received many requests from States (national and local authorities), United Nations agencies, service providers, regulators and civil society organisations to provide more concrete and comprehensive guidance and to clarify what the implications of these human rights are for their work and activities.

The Special Rapporteur has been working closely with many different stakeholders – including State institutions (such as national ministries and local governments), national human rights institutions and regulatory bodies – and with international organisations, including the Office of the High Commissioner for Human Rights; UNICEF; the World Health Organisation; the UN Economic Commission for Europe; the World Bank Water and Sanitation Programme; the Water Supply and Sanitation Collaborative Council; the Sanitation and Water for All partnership; the International Water Association; WaterAid; Freshwater Action Network; Helvetas; the International Commission of Jurists; Amnesty International, and several academic institutions and other groups, all of which are interested in implementing the human rights to water and sanitation in order to translate these human rights into reality. This engagement and interest in transforming principles into practice and human rights into reality led the Special Rapporteur to develop this Handbook to help States and other stakeholders to meet their obligations and responsibilities where the human rights to water and sanitation are concerned.

The Special Rapporteur developed this Handbook collaboratively, first identifying the key barriers, dilemmas, challenges and opportunities that stakeholders face in realising the human rights to water and sanitation, and then testing and verifying the guidance, checklists and recommendations featured in the Handbook. This collaborative approach was followed to make the Handbook relevant and helpful to people at all levels of government who are working on the implementation of these human rights.

The Special Rapporteur organised a series of consultations both online and in person, and held countless discussions with interested parties. These consultations included an initial meeting with the Advisory Group for this Handbook in September 2012, and a brief survey to identify the main issues that key stakeholders wanted to

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THE SPECIAL
RAPPORTEUR
FOLLOWED A
COLLABORATIVE
APPROACH TO
MAKE THE
HANDBOOK
RELEVANT
AND HELPFUL

see analysed. This online survey was undertaken in January 2013 and received 850 responses from five continents. The Special Rapporteur then convened a strategy meeting in April 2013 to discuss the content of the Handbook in detail.

In late 2013 and early 2014, she convened two regional consultations (a Latin-American and Caribbean consultation in Bolivia, about local authority responsibilities, and an Asian consultation in Nepal, covering financing and budgeting), as well as a shorter meeting in Kenya at which the specific concerns affecting the implementation of the human rights to water and sanitation in urban areas were discussed. In late 2013

the Special Rapporteur also sent a *note verbale* to all UN member States, asking them to share any relevant information and experience in realising the human rights to water and sanitation. She organised two e-discussions in collaboration with the Rural Water Supply Network and with HuriTALK, focusing on specific issues to be addressed in the Handbook, including non-discrimination, sustainability, and the roles and responsibilities of the different actors. The first draft of the Handbook was shared online, hosted by www.righttowater.info; it received comments and ideas from around the world.



STATES ARE ENCOURAGED ULTIMATELY TO SURPASS THE STANDARDS SET BY INTERNATIONAL HUMAN RIGHTS LAW

5.2.

What the Handbook covers and the approach taken

Human rights texts adopted by the United Nations frequently seem quite vague, making it hard for States to understand exactly what they must do. Even when committed to realising human rights, States find it difficult to translate the abstractness of universal human rights norms into an appropriate course of action. This Handbook has been developed to fill that gap.

The main focus of this Handbook is to provide guidance for State actors. This does not reflect a lack of understanding or of respect for the crucial and central role that civil society, service providers and others play in ensuring the realisation of the human rights to water and sanitation. However, all States have an obligation to create an enabling environment for the realisation of human rights.

This Handbook gives guidance on the implementation of the human rights to water and sanitation as defined by the international human rights legal framework, which provides a minimum universal standard. Given the range of different local, regional and national standards that exist around the world, the Special Rapporteur cannot give detailed and differentiated guidance for each country, but States can use these international standards to define how these rights can best be implemented nationally. States

are encouraged ultimately to surpass the standards set by international human rights law, by preparing national legislation, regulations and policies that go beyond these minimum legal requirements.

The international legal norms can be incorporated into national laws, regulations and policies, into national and sub-national budgets and into the planning processes for service delivery. Human rights can be provided for in complaints procedures administered either by service providers or by regulators or equivalent bodies, as well as by ensuring people with access to justice for violations.

The Handbook also seeks to identify common challenges and obstacles and how these can be overcome, in order to respond to the practical problems that States face when realising the human rights to water and sanitation.

Examples of problems and possible solutions will be given wherever possible, to provide a concrete understanding of how States can bring about the realisation of the human rights to water and sanitation.

The Handbook also provides checklists for States and discusses the different roles of the various actors and the essential partnerships between them that are necessary to bring about the realisation of the human rights to water and sanitation.

Water and sanitation as two separate human rights

The 2010 United Nations General Assembly resolution that explicitly recognises the human right to water and sanitation, along with the UN Human Rights Council resolution of the same year and the 2011 Human Rights Council resolution renewing (and renaming) the mandate of the Special Rapporteur on the human right to safe drinking water and sanitation³, all refer to a single human right. However, the Special Rapporteur argues that water and sanitation should be treated as two distinct human rights with equal status, both included within the human right to an adequate standard of living.

There are pragmatic reasons for this approach: all too often, when water and sanitation are mentioned together, the importance of sanitation is downgraded because of the political and cultural preference given to the right to water. Defining the human rights to water and sanitation as separate and distinct allows governments, civil society and other stakeholders to create standards specifically for the human right to sanitation and for its realisation. Distinguishing between these two rights also makes it easier for States and other stakeholders to understand the distinct responsibilities, obligations and roles implicit in the realisation of each of them.

The situation of people who lack sanitation differs from that of people who lack water. One household's lack of adequate, safe and hygienic sanitation can have a negative impact on the health not just of the people in that dwelling, but also on others living nearby (even where these neighbours do have access to sanitation). This means that people have a responsibility to improve their sanitation, for the sake of those around them as well as their own. One household's lack of access to water, on the other hand, would not generally have such an impact on the health and access to water of its neighbours.

This Handbook will therefore refer to the human rights to water and sanitation in the plural, except when directly quoting from the language contained in official documents adopted by the United Nations.

UN Special Procedures and the UN Special Rapporteur on the human right to safe drinking water and sanitation

The Human Rights Council has a mandate to promote the realisation of human rights. One of the ways that the Human Rights Council does this is through the appointment of Special Procedures mandate-holders (called Special Rapporteurs, Independent Experts, Special Representatives of the Secretary-General, and Working Groups). These are human rights experts who report to the Human Rights Council, and often also to the UN General Assembly, on a particular human right or a particular country's human rights situation.⁴ Special Rapporteurs are also advocates for the human right they are in charge of monitoring.

The mandate of Special Rapporteur on the human rights to water and sanitation was created in 2008; Catarina de Albuquerque is the first incumbent. In the course of her work she has undertaken fact-finding missions to fifteen countries and visited many more, prepared fourteen thematic reports, advocated for the recognition and realisation of these human rights, and worked closely with different stakeholders in the water and sanitation sectors, clarifying and promoting the human rights to water and sanitation. She has also sent several Allegation Letters and Urgent Appeals to States that were alleged to be violating the human rights to water and sanitation and she has issued dozens of press releases raising awareness on issues related to the human rights to water and sanitation.

06.

Introduction to the structure of the Handbook

This Handbook is organised into booklets relating to five main areas relevant to States working towards realisation of the human rights to water and sanitation. These areas are:

Legislative, policy and regulatory frameworks

In order to implement the human rights to water and sanitation, States must ensure that existing legal, policy and regulatory frameworks incorporate human rights considerations, and reform them where this is not the case. These frameworks clarify the commitments of the State with respect to human rights principles in general and access to water and sanitation in particular. Without a clear legal framework, the State cannot be held accountable by the individuals, or 'rights-holders', who live within its jurisdiction.

Financing and budgeting

States must take their human rights obligations into account when developing financing strategies and budgets for water and sanitation. This helps States to ensure that those areas or populations that lack adequate access to water and sanitation receive targeted funds to address inequalities. Financing strategies and budgets must also be monitored to ensure that they have been developed and executed in compliance with the human rights to water and sanitation.

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STATES HAVE AN
OBLIGATION TO
CREATE AN ENABLING
ENVIRONMENT FOR
THE REALISATION OF
THE HUMAN RIGHTS
TO WATER AND
SANITATION

Services

To comply with the human rights to water and sanitation, the delivery of water and sanitation services requires clear planning processes, institutions with a clear mandate, and the necessary financial and human resources. Different settlement types will require different approaches in terms of technology and management, but must still meet the necessary standards of the human rights to water and sanitation. States must set appropriate targets to ensure that services are sustainable, available, accessible, safe, affordable and culturally acceptable, without discrimination.

Monitoring

Monitoring compliance with the human rights to water and sanitation is essential, not only to understand the extent to which the State has been successful in realising these rights, but also to gather the necessary data for future planning and resource allocation. Monitoring includes collecting data on service levels (such as quality, accessibility and affordability) and on who has (or does not have) access to water and sanitation, in order to assess discriminatory practices and levels of inequality. With accurate data on who has access to water and sanitation, and at what level of service, States can prioritise the provision of services to the people who need them the most.

Access to justice

States must ensure that people whose human rights are either not realised or being violated have access to justice. There is a wide range of different remedies available, from administrative processes such as complaints procedures, managed by service providers, to quasi-judicial and judicial procedures, potentially leading to court cases at the national, regional or international level.

Principles

One further booklet highlights State obligations relating to specific human rights principles: participation, non-discrimination and equality, access to information and sustainability. This booklet underlines the importance of these principles for the realisation of the human rights to water and sanitation.

Each booklet provides guidance for States on their obligations and on how they can implement the human rights to water and sanitation, and is accompanied by a checklist.

There are two reference booklets, one compiling all the checklists of the different areas, and another containing the bibliography, resources and index.

07.

The legal foundations and recognition of the human rights to water and sanitation

When the United Nations General Assembly adopted the Universal Declaration of Human Rights in 1948, the human rights to water and sanitation were not explicitly included in the text. This omission can be understood in the context of a time when colonialism was still a dominant force. Many countries whose populations suffered from a lack of access to water and sanitation were not directly represented at the negotiating table.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) consecrates economic, social and cultural rights within the international human rights framework. Negotiated within the Commission on Human Rights, the text of this Covenant was submitted to the UN General Assembly in 1954 and adopted, practically unchanged, in 1966. Both the Universal Declaration and the International Covenant on Economic, Social and Cultural Rights provide for the human right of all people to an adequate standard of living⁵, including food, clothing and housing. It has been argued that to include food, clothing and housing specifically, without explicitly mentioning water, can only be explained by an assumption that water, like air, was already freely available to all.

RECOGNITION OF WATER AND SANITATION AS HUMAN RIGHTS WAS REAFFIRMED BY THE UN GENERAL ASSEMBLY AND HUMAN RIGHTS COUNCIL IN 2010

As the water and sanitation crisis became more pronounced in the final decades of the twentieth century, bringing negative health and economic consequences with it, the development and human rights community became increasingly aware of the growing importance of water and sanitation. Several recent international human rights treaties refer explicitly to the importance of water and sanitation (separately or together) in realising human rights, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁶, the Convention on the Rights of the Child (CRC)⁷, and the Convention on the Rights of Persons with Disabilities (CRPD).⁸

In 2002, the Committee for Economic, Social and Cultural Rights (CESCR), the treaty body responsible for monitoring State compliance with the International Covenant on Economic, Social and Cultural Rights, adopted General Comment No. 15 on the human right to water. General comments are authoritative interpretations of the ICESCR, clarifying the content of human rights; they are used to help monitor the compliance of States parties to the agreements. The human rights to water and sanitation are derived from several provisions of the ICESCR and their analogues in customary international law. General Comment No. 15 found that the human right

to water is implicitly included in the human right to an adequate standard of living and the right to health (articles 11 and 12 of the ICESCR). While article 11 does not explicitly mention water or sanitation, the use of the term “including” in the Covenant requires the incorporation of all aspects that are indispensable for reaching an adequate standard of living.

Further, following the Special Rapporteur’s 2009 report outlining human rights obligations relating to sanitation⁹, in November 2010 the ICESCR stated: “The Committee is of the view that the right to sanitation requires full recognition by States parties in compliance with the human rights principles.”¹⁰

Access to water and sanitation is required for the realisation of other human rights, including the right to adequate housing, the right to the highest attainable standard of health, and the right to life.¹¹ Recognition of water and sanitation as human rights was reaffirmed by the UN General Assembly in July 2010¹² and by the Human Rights Council in September 2010.¹³ In 2013, the UN General Assembly and the Human Rights Council both reaffirmed recognition of the human rights to water and sanitation in consensus.¹⁴

08.

State obligations in realising the human rights to water and sanitation

The human rights to water and sanitation include some specific obligations for States.

8.1.

Progressive realisation and maximum available resources

“Article 2 (1) of the ICESCR requires States to take steps to progressively realise economic, social and cultural rights; such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognised in the Covenant.”¹⁵

States have an obligation to move as quickly and effectively as possible towards full realisation of the human rights to water and sanitation, using the maximum available resources. The failure to do so would be contrary to the obligations of States under the Covenant.¹⁶ While recognising that the full realisation of human rights may take a long time, and faces many technical, economic and political constraints¹⁷, the notion of progressive realisation is not intended to provide States with an excuse not to act; rather, it acknowledges that full realisation is normally achieved bit by bit.¹⁸

Progressive realisation requires not only an increase in the number of people with access to water and sanitation, with a view to achieving universal access, but also an improvement in the general levels of service for present and future generations.¹⁹

.....

WATER MUST
NEVER BE USED AS
AN INSTRUMENT
OF POLITICAL OR
ECONOMIC PRESSURE

.....

Retrogression in the enjoyment of the rights contained in the Covenant therefore frustrates the object and purpose of the treaty. The Committee recognises that the resources available to States for the implementation of economic, social and cultural rights will vary with time and economic cycles. Even if resources are very limited, as during financial or economic crises, States should, as a matter of priority, seek to ensure that everyone has access to, at the very least, minimum levels of rights. States should also take measures to protect poor, marginalised and disadvantaged individuals and groups by using targeted programmes, among other approaches.²⁰

For the Committee, “any deliberately retrogressive measures require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources”.²¹

This obligation to access and use the maximum available resources includes the State’s duty to raise adequate revenues, through taxation and other mechanisms, and to seek international assistance where necessary.²² This clause is flexible and merely acts as a safeguard, to ensure that States do not attempt to meet their international obligations with mere empty promises and half-measures.

Although the progressive realisation of economic, social and cultural rights may be a gradual and continuous process, there are also immediate obligations. The obligation to respect, protect, and fulfil human rights in a participatory, accountable and non-discriminatory way is a duty that is immediately binding.²³

8.2. The obligations to respect, protect and fulfil the human rights to water and sanitation

All human rights impose three types of obligations on States: they must respect, protect and fulfil human rights. These obligations are clarified in General Comment No. 15 on the human right to water²⁴ and the Special Rapporteur’s 2009 report on the right to sanitation.²⁵

The obligation to respect the human rights to water and sanitation means that States may not prevent people from enjoying their human rights to water and sanitation; for example, by selling land with a water source on it that is used by the local population without providing an adequate alternative, thus preventing users from continuing to access the source.

.....

The obligation to protect the human rights to water and sanitation requires that States must prevent third parties from interfering in any way with people's enjoyment of the human rights to water and sanitation.

The obligation to fulfil the human rights to water and sanitation requires States to ensure that the conditions are in place for everyone to enjoy the human rights to water and sanitation. This does not mean that the State has to provide the services directly, unless there are individuals or groups of people who cannot access their human rights through other mechanisms.

The obligation of States parties to guarantee that the human rights to water and sanitation are enjoyed without discrimination pervades all three obligations.

8.3. Extraterritorial obligations

General Comment No. 15 on the human right to water identifies that States have obligations beyond their borders.²⁶

Extraterritorial obligations require States parties to the relevant agreements to respect the human rights of people in other countries. Water must never be used as an instrument of political or economic pressure, and States must not impose embargoes or similar measures that prevent the enjoyment of the human rights to water and sanitation.

With regard to the obligation to protect, States must prevent third parties, for example, a company based in one State and functioning in another, from violating the human rights to water and sanitation in other countries.

Furthermore, States in a position to do so must assist in the full realisation of the human rights to water and sanitation in other countries.²⁷ In disaster relief and emergency assistance, economic, social and cultural rights, including the human rights to water and sanitation, should be given due priority in a manner that is consistent with other human rights standards, and that is sustainable and culturally appropriate.

The latest development in this area, spelling out these obligations in detail, are the "Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights", adopted by a group of experts in international law and human rights in 2011.²⁸

Agreements concerning trade and investment must not limit or hinder a country's capacity to ensure the full realisation of the human rights to water and sanitation.



09.

Human rights principles as they relate to the human rights to water and sanitation

The human rights principles of non-discrimination and equality, access to information, participation and accountability must be ensured in the context of realising all human rights, not just the human rights to water and sanitation; these principles are clarified here in the context of water and sanitation.

9.1.

Non-discrimination and equality

Equality and non-discrimination²⁹ are the bedrock principles of human rights law. The Universal Declaration of Human Rights (UDHR) proclaims in article 1 that “All human beings are born free and equal in dignity and rights”, and article 2 explains that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status [...]”.

Discrimination is either *de jure* (direct), meaning that it is enshrined in discriminatory laws, or *de facto* (indirect), resulting from policies or actions that are purportedly neutral, but have a discriminatory impact. Both of these forms of discrimination are prohibited, although the second can be harder to identify and address.

States are also required to ensure that individuals and groups enjoy substantive equality, which means that States must take active and affirmative measures to ensure that all people enjoy their full human rights and their right to equality, in terms both of opportunity and of results, whatever their position in society.

The principles of non-discrimination and equality recognise that people face different barriers and have different needs, whether because of inherent characteristics or as a result of discriminatory practices, and therefore require differentiated support or treatment. Human rights law will sometimes require States parties to take affirmative action to diminish or eliminate conditions that cause or perpetuate discrimination.

In order to reach equality of water and sanitation service provision, States must work towards eliminating existing inequalities. This requires knowledge of disparities in access, which typically exist not only between and within groups with different incomes, but also between and within rural and urban populations. There are further disparities based on gender and the exclusion of disadvantaged individuals or groups.

.....
 'ALL HUMAN BEINGS
 ARE BORN FREE AND
 EQUAL IN DIGNITY
 AND RIGHTS'

— ARTICLE 1, UDHR

9.2.

Access to information and transparency

To fully realise human rights, States must be transparent and open, realising the human right to access to information.³⁰ This is an integral part of ensuring access to water and sanitation services for all.³¹

Individuals must both be aware of their rights and also know how to claim them. States must therefore ensure that information relating to standards, as well as progress towards meeting those standards, is available and accessible, and that the mechanisms (including service delivery options) used to ensure that these standards are indeed met are available and accessible to all.

Transparency establishes openness of access to information without the need for direct requests; for example, through the dissemination of information via the radio, internet and official journals.

9.3. Participation

The human rights to water and sanitation can only be realised effectively through full, free and meaningful participation³² in decision-making processes by people affected by the decisions. Participation ensures better implementation and enhances the effectiveness and sustainability of interventions, offering the possibility of social transformation.

Participation must be an integral part of any policy, programme or strategy concerning water or sanitation, and concerned individuals and groups must be made aware of participatory processes and how they function.³³

9.4. Accountability

Accountability is the process by which people living under a State's jurisdiction can ensure that States are meeting their obligations with respect to the human rights to water and sanitation.

Accountability covers two important areas: first, it establishes monitoring and other mechanisms for controlling the different actors responsible for ensuring access to water and sanitation services. This includes the monitoring of service levels and of compliance with standards and targets, as well as monitoring which individuals and groups have access to adequate water and sanitation services and which do not.

Second, accountability demands that individuals or groups who consider that their human rights have been violated should have access to courts or other independent review mechanisms, in order that their complaints may be heard and resolved. Access to justice can take many forms, from administrative complaints procedures to judicial processes at local, national, regional and international levels.

Building accountability into the realisation of the human rights to water and sanitation requires the definition of institutional mandates, clarifying exactly who is responsible for each step of the process. Actions taken and decisions made under those mandates must then be monitored or regulated.³⁴ Where service providers and State institutions fail to meet their duties, oversight institutions, such as regulators and courts, must have mechanisms, through complaints procedures or judicial processes, available to enforce the rules.

Accountability procedures can also challenge and lead to corrections in legislation, regulations or policies by identifying systemic failures that lead to discriminatory impacts or perpetuate inequalities in access to water and sanitation services.³⁵

9.5. Sustainability

Sustainability is a fundamental human rights principle; it is essential to the realisation of the human rights to water and sanitation. Human rights law requires States to take immediate steps towards progressively achieving the full realisation of the human rights to water and sanitation for everyone: once services and facilities have been improved, the positive change must be maintained and slippages and retrogression must be avoided.

Water and sanitation must be provided in a way that respects the environment and ensures a balance of the different dimensions of economic, social and environmental sustainability. Services must be available sustainably for present and for future generations, and the provision of services today should not compromise the ability of future generations to realise their human rights to water and sanitation.³⁶ Importantly, sufficient expenditure in operation and maintenance of existing services must be ensured.



10.

The content of the human rights to water and sanitation

International human rights law obliges States to work towards achieving universal access to water and sanitation, guided by human rights principles and their defined standards, while prioritising those most in need. The legal content of the human rights to water and sanitation encompasses the following dimensions: availability, accessibility, acceptability, affordability and quality. These are outlined below:

10.1.

Availability of water and sanitation

Availability requires that water and sanitation facilities meet people's needs now and in the future:

- **Water** supply must be sufficient and continuous for personal and domestic uses, which ordinarily include drinking, personal sanitation, washing of clothes, food preparation, and personal and household hygiene.³⁷
 - There must be a sufficient number of sanitation facilities to ensure that all of the needs of each person are met. Where facilities are shared, long waiting times should be avoided. In addition, the collection, transport, treatment and disposal (or reuse) of human excreta, and associated hygiene must be ensured.³⁸
-

- Facilities to meet **hygiene** requirements must be available wherever there are toilets and latrines, where water is stored and where food is being prepared and served, particularly for hand-washing, menstrual hygiene management and the management of children's faeces.³⁹

Water, sanitation and hygiene facilities and services must not only be available at the household level, but in all places where people spend significant amounts of time. This includes health and educational institutions such as schools and clinics, detention centres such as prisons, and workplaces, markets and other public places.

10.2.

Physical accessibility of water and sanitation

Water and sanitation infrastructure must be located and built in such a way that it is genuinely accessible, with consideration given to people who face specific barriers, such as children, older persons, persons with disabilities and chronically ill people. The following aspects are particularly important:

- **Design of facilities:** Water and sanitation facilities must be designed in such a way that users can physically access them. For example, the pump fitted to a public well must be easy to use for older persons, children and persons with disabilities, and the location must also be within reach and accessible to all at all times.
- The **time and distance** taken to collect water or to reach a sanitation facility determines the amount of water users will collect and whether they will use sanitation facilities or resort to defecating in the open. Water outlets and sanitation facilities must therefore be placed within, or in the immediate vicinity of, each household, workplace, educational and health institution, as well as any other place where people spend significant amounts of time.⁴⁰ Access at the household level is always preferable, but in the process of progressive realisation intermediate solutions, such as communally used water-points, may comply with human rights obligations in the short term.
- The location of facilities is also crucial in ensuring the **physical security** of users. Sanitation facilities in particular must be easily reachable via safe paths; it is preferable that these be well-lit at night.⁴¹

HUMAN RIGHTS DO
NOT REQUIRE SERVICES
TO BE PROVIDED FREE
OF CHARGE

10.3. Quality and safety

The quality and safety of water and sanitation services must be ensured to protect the health of users and the general public. From the perspective of the human rights to water and sanitation, the following considerations are important:

- **Water** must be of a quality that is safe to use for human consumption (drinking and the preparation of food) and for personal and domestic hygiene. It must be free from microorganisms, chemical substances and radiological hazards that constitute a threat to human health.⁴²
- **Sanitation** facilities must be safe to use and must effectively prevent human, animal and insect contact with human excreta, to ensure safety and to protect the health of users and the community. Toilets must be regularly cleaned, and provide hygiene facilities for washing hands with soap and water. Women and girls also require facilities to enable menstrual hygiene management, including the disposal of menstrual products. Ensuring safe sanitation further requires hygiene promotion and education, to ensure that people use toilets in a hygienic manner.⁴³

10.4. Affordability

People must be able to afford to pay for their water and sanitation services and associated hygiene. This means that the price paid to meet all these needs must not limit people's capacity to buy other basic goods and services, including food, housing, health and education, guaranteed by other human rights. While human rights laws do not require services to be provided free of charge, States have an obligation to provide free services or put adequate subsidy mechanisms in place to ensure that services always remain affordable for the poor.

10.5. Acceptability, dignity, privacy

The acceptability of any water and sanitation services provided is crucial: water and sanitation facilities will not be used if they fail to meet the social or cultural standards of the people they are meant to serve. Acceptability has important implications for dignity and privacy, which are themselves human rights principles that permeate international human rights law and are especially relevant to the human right to sanitation and associated hygiene.

- **Water** must be of an acceptable odour, taste and colour to meet all personal and domestic uses. The water facility itself must be acceptable for the intended use, especially for personal hygiene.⁴⁴
- **Sanitation** facilities will only be acceptable to users if the design, positioning and conditions of use are sensitive to people's cultures and priorities. Sanitation facilities that are used by more than one household should always be separated by gender and constructed in such a way that they ensure privacy. Toilets for women and girls must have facilities for menstrual hygiene management and for the disposal of menstrual materials.⁴⁵
- Particularly with respect to sanitation and associated **hygiene**, a number of practices exist that are unacceptable from a human rights perspective. These include manual scavenging (the manual emptying of pit latrines, which is associated with specific scheduled castes in the Indian subcontinent) and the taboos attached to women and girls during menstruation. States must ensure that these practices are eliminated, which will often require a range of measures, including changes to the physical infrastructure, concerted political leadership, awareness raising and legal and policy change.

11.

Links between the human rights to water and sanitation and other human rights

All human rights are indivisible, interrelated and interdependent, whether civil and political rights, such as the right to life, access to justice or the prohibition of torture; or economic, social and cultural rights, such as the rights to water, sanitation, health or education.⁴⁶

The indivisibility principle recognises that if a State violates the human rights to water and sanitation, this affects people's ability to exercise other rights as well, such as the right to life. This fact also makes it possible to adjudicate economic, social and cultural rights under the International Covenant on Civil and Political Rights.

The human rights to water and sanitation do not exist in isolation from other human rights and water and sanitation are also essential to the realisation of many other human rights. Priority should be given to the supply of water for domestic and personal use, as well as to the requirements of the other Covenant rights; for example, water for growing essential food crops and for health interventions that protect people from disease.⁴⁷

Water and sanitation are fundamental for life and are indispensable to human dignity. The impact of the lack of access to water and sanitation on people's health can be linked to the human right to life⁴⁸, as well as jeopardising the right to health.⁴⁹ For instance, unclean water or inappropriate sanitation often leads to diarrhoea, which remains the second-largest cause of mortality in children under five.

THE HUMAN RIGHTS TO WATER AND SANITATION DO NOT EXIST IN ISOLATION FROM OTHER HUMAN RIGHTS

For the realisation of the right to adequate housing⁵⁰, access to essential services such as water and sanitation is indispensable. Privacy and physical security⁵¹ are also an issue in situations where women and children have to go to shared latrines or open spaces to defecate, because this makes them particularly vulnerable to harassment, attacks, violence or rape.⁵²

Further, the right to education⁵³ cannot be guaranteed where water is not available at school and sanitary facilities are not separated by gender, because often girls will not attend school during their periods if sanitation is inadequate.

Access to water is essential for agriculture in order to realise the right to adequate food.⁵⁴ While the recognition of the human rights to water and sanitation has brought attention to the requirement to prioritise access to water for personal and domestic use for marginalised individuals and groups, there is also a requirement to ensure access to sufficient water for marginalised and poor farmers for subsistence and small-scale farming.

The right to work can be negatively affected if there is a lack of access to water and sanitation at the workplace, particularly for women during menstruation and pregnancy.⁵⁵

Article 9 of the ICESCR guarantees the right to social security, which encompasses the right to access and maintain social security or other benefits in order to be able to secure water and sanitation (among other

necessary goods) and to realise the rights of children and adult dependents.⁵⁶

The lack of access to water and sanitation may lead to inhuman or degrading treatment, particularly in the context of deprivation of liberty.⁵⁷ The International Committee of the Red Cross⁵⁸, the Human Rights Committee⁵⁹, the Committee against Torture⁶⁰, and the Special Rapporteur on torture⁶¹ have expressed concern about poor sanitation and water in detention, out of respect for the dignity of detainees and because many diseases among detainees are transmitted by the faecal-oral route. In these circumstances where people cannot provide their own services, the State must do so. This may also be relevant to homeless people, slum dwellers and refugees.⁶²

Human rights law includes environmental obligations. Finite resources must be protected from overexploitation and pollution⁶³, and facilities and services dealing with excreta and wastewater should ensure a clean and healthy living environment.⁶⁴

The prohibition of discrimination and the right to equality, including gender equality⁶⁵, the rights to information and to free, full and meaningful participation are also essential for the realisation of the human rights to water and sanitation, with realisation of each right having an impact on the others.

The human right to water vs. water rights

The human right to water is sometimes confused with water rights.

The human right to water is held by every individual, regardless of who he or she is, or where he or she lives, and safeguards his or her access to water for personal and domestic uses.

Water rights, on the other hand, are generally conferred to an individual or company through property rights or land rights, and are rights to access or use a water resource. These are generally gained through land ownership or through a negotiated agreement with the State or landowner, and are granted for a variety of water uses, including for industry or agriculture.

Someone availing themselves of their water rights may be violating another person's human rights to water and sanitation, for example, in cases of over-extraction or pollution. This may be the case even where the water rights have been legally conferred. Priority must always be given to water required for the realisation of the human right to water, and water resources must be protected from over-use or pollution to this end.



12.

Focus of this Handbook

This Handbook is predominantly intended for State actors and other entities that have an obligation to realise the human rights to water and sanitation.

Recognising the crucial role that activists and other civil society actors play in realising human rights, including the human rights to water and sanitation, the UN Special Rapporteur carefully considered the possibility of providing practical advice for both State actors and civil society stakeholders in the same Handbook. Given the widely differing roles played by these various entities, she decided that it would not be possible to write a Handbook that would meet the needs of all the stakeholders, and decided to use this opportunity to provide guidance to States, as they are the main bearers of human rights obligations, and have a legal duty to the people living within their borders. However, the UN Special Rapporteur encourages and welcomes the development of additional guidance aimed at other stakeholders.

This Handbook is intended to provide advice on how the human rights to water and sanitation can be incorporated into the institutional regulatory and legal frameworks of the State, as well as into budgeting and service-delivery processes and accountability mechanisms.

This Handbook is not intended to provide specific technical guidance on appropriate technologies or tariff structures for each State. The Special Rapporteur respects the fact that States “may adopt a range of possible policy measures for

the implementation of the rights set forth in the Covenant”.⁶⁶ This Handbook seeks, instead, to provide guidance (without providing any ready-made “formula”) to what States must consider as they develop the institutions, legal frameworks, technologies and financing structures in order to fully integrate the human rights to water and sanitation. States must then determine what policies and measures are best to ensure the rights are realised. As far as possible, this Handbook will also refer readers to sources able to provide more details of technical solutions, and to examples of policies and approaches that have already been used to address issues discussed .

While it is evident that water is essential to the realisation of other human rights, including the human rights to food, health, education and work, this Handbook will limit its guidance to the human rights to water and sanitation, focusing on personal and domestic uses.



13.

Image credits and references

Image Credits:

Page 5 Mayanna washes her feet in a toilet constructed by AWED, Puthur village, Kanyakumari District, Tamil Nadu, India. WaterAid/Dieter Telemans.

Page 8 Catarina de Albuquerque on mission in Brazil 2013. Andrew Paterson.

Page 10 Navi Pillay, the UN High Commissioner for Human Rights. OHCHR Photo.

Page 12 Executive Director of UNICEF, Anthony Lake. UNICEF/NYHQ2010-0697/Markisz.

Page 14 Children washing their hands before a mealtime. UNICEF/India/2014.

Page 17 Mother and young boy in India, standing next to their self-constructed latrine. UNICEF/India/2014.

Page 28 Girl collects water at a protected spring, Democratic Republic of the Congo. UNICEF/DRC/2014.

Page 32 Girl washing her hands. UNICEF/Iraq/2014.

Page 40 Watering crops. UNICEF/Chad/2014.

Page 42 Bat-Ochir Tegshjargal, 8 visits the school toilet block at Zavkhan Soum school. UNICEF WASH programme assisted with its construction. Zavkhan Soum. Uvs Aimag, western Mongolia, 2007. UNICEF/MGLA2007-00839/Holmes.

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- 51** See article 9, ICCPR.
- 52** OHCHR, UN-Habitat and WHO, Fact Sheet No. 35: The right to water (2010), p. 13: <http://www.ohchr.org/Documents/Publications/FactSheet35en.pdf>.
- 53** Article 26, UDHR; articles 13 and 14, ICESCR.
- 54** Articles 11 (1) and (2), ICESCR.
- 55** Independent Expert on human rights obligations related to access to safe drinking water and sanitation, Human rights obligations related to sanitation, 2009 (A/HRC/12/24), para. 38.
- 56** CESCR, General Comment No. 19: The right to social security, 2008 (E/C.12/GC/19), para. f (18).
- 57** Article 7, ICCPR.
- 58** International Committee of the Red Cross, Water, sanitation, hygiene and habitat in prisons (2005), p. 58: http://www.icrc.org/eng/assets/files/other/icrc_002_0823.pdf.
- 59** See for example, Human Rights Committee, Concluding Observations: Ukraine, 2013 (CCPR/C/UKR/CO/6), para. 11. For more sources see also Independent Expert on human rights obligations related to access to sanitation, Human rights obligations related to access to sanitation, 2009 (A/HRC/12/24), footnote 61.
- 60** Committee Against Torture, Concluding Observations: United Kingdom, 2004 (CAT/C/CR/33/3), para. 4 and Concluding Observations: Nepal, 2007 (CAT/C/NPL/CO/2), para. 31.
- 61** UN Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Indonesia, 2008 (A/HRC/7/3/Add.7), para. 68; see also: Mission to Togo, 2008 (A/HRC/7/3/Add.5), para. 42 and Appendix, paras. 3, 31, 46-47, 70 and 95; and Mission to Nigeria, 2007 (A/HRC/7/3/Add.4), para. 37 and Appendix, paras. 41, 95, 101 and 110.
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- 64** Special Rapporteur on the human rights to water and sanitation, Managing wastewater and controlling pollution, 2013 (A/68/264), paras. 2, 13; Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment: Background paper No. 4 (2002): <http://www2.ohchr.org/english/issues/environment/envIRON/bp4.htm>.
- 65** OHCHR, UN-Habitat and WHO, Fact Sheet No. 35: The right to water (2010), pp. 12 – 13: <http://www.ohchr.org/Documents/Publications/FactSheet35en.pdf>.
- 66** Article 8 (4), Optional Protocol to the ICESCR.

