
WATER INTEGRITY AND THE HUMAN RIGHTS TO SAFE DRINKING WATER AND SANITATION

HUMAN RIGHTS ARE INCOMPATIBLE WITH CORRUPTION

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INTRODUCTION

Human rights are incompatible with corruption and will never be achieved in a sector where corruption is accepted as part of the landscape. The mechanisms and alliances which work to achieve the human rights to water and sanitation must be closely allied with those that work to increase transparency and protect the integrity of the sector.

Efforts to combat corruption and realize human rights are always mutually reinforcing: both are necessary.



Photo: GMB Akash, Winner of WIN photo competition 2011

The Water Integrity Global Outlook 2016 demonstrates that integrity in water sector governance is central to the delivery of sustainable development and to achieving the human rights to water and sanitation. It calls on policy-makers, governments, international agencies, institutions, citizens and the private sector to collaborate to build integrity in policies, investments, decisions, implementation and monitoring and evaluation.

Delivering on global commitments to human rights goes to the core of what we mean by integrity, which is fundamentally about matching actions to words and about keeping promises. A rights-based approach has sharpened the lens through which the negative impact of corruption on water and sanitation can be evaluated (Bailat 2013).

Corruption leads to loss of efficiency, sustainability and trust; it breeds cynicism, undermines public confidence and pushes up costs. It is an assault on human rights.

COMMITMENTS OF THE HUMAN RIGHTS TO WATER AND SANITATION

The UN General Assembly declared the human right to water to be 'essential for the full enjoyment of life and all human rights' on 28 July 2010 (UN General Assembly, 2010b). In September the same year, the UN Human Rights Council clarified that the right was part of existing, binding international human rights obligations, affirming:

"The human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity."

(UN General Assembly, 2010a)

This underlined, as many had argued, that these rights were already enshrined in international human rights law. In 2002 the UN Committee on Economic, Social and Cultural Rights stated: "The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights." (CESCR, 2003)

It took time for the UN to recognize the rights to water and sanitation as distinct and independent of each other. On 17 December 2015, the UN General Assembly accepted that the rights to safe drinking water and sanitation are separate rights, while maintaining that both are derived from the right to an adequate standard of living (UN General Assembly, 2016).

The right to water requires "sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use", and the right to sanitation means having "physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity..."

States are required to bring about the progressive realization of these rights while eliminating inequalities for at-risk and marginalized groups.

Several resolutions pertaining to the the right to sanitation have highlighted the importance of hygiene promotion, water resource management, improved wastewater treatment and reduced surface and groundwater pollution. The UN also emphasizes that such efforts need women's leadership and full partnership in decision-making. It calls for programmes to reduce the time women spend collecting water and the threats they face including sexual violence. Lack of menstrual hygiene management in schools damages girls' right to education.

HUMAN RIGHTS NOT BEING MET

In 2015, 663 million people were still without access to an improved drinking water source, while more than 2.4 billion – almost a third of the people on earth – were without access to improved sanitation facilities. The rights to water and sanitation are far from being met.

The 2015 UN resolution calls on States to monitor and analyse progress towards these rights and identify patterns of failure and address structural causes of violations in policymaking and budgeting.

The sector lacks capacity for monitoring and evidence-based decisions. The vast majority of surveyed countries have no comprehensive process in place to track funding to water and sanitation. Consequently, countries are unable to confirm whether funding has been directed to investment needs, nor credibly report back on whether they have met financial allocation targets (UN-Water and WHO, 2014). Fewer than half the countries reporting on the MDG goals tracked progress in extending sanitation and drinking water services to the poor (UN-Water and WHO, 2015).

THERE IS NO “VICTIM-FREE” CORRUPTION

The main victims of corruption are the poor and the powerless, who lack the means to assert and enforce their rights.

- Globally, about 2,000 children under the age of five die every day from diarrhoeal diseases, and 90 per cent of these linked to water, sanitation and hygiene (WASH) (UNICEF, 2013).
- Women usually manage household water but have little say in how services are provided.
- Poor households may be expected to bribe officials to secure water.
- The urban poor often pay more for water than the rich.
- Those who rely on land or water for their livelihoods – farmers, fishers and pastoralists – lose out when water resources are annexed or polluted.
- Schoolchildren, girls especially, are affected by the lack of clean water and basic sanitation in schools, including menstrual hygiene management.
- Discrimination in access to water is a form of corruption that disproportionately affects minorities and vulnerable groups.

MEETING THE OBLIGATIONS

The human rights to safe drinking water and sanitation entail three levels of obligation: the obligation to respect; the obligation to protect; and the obligation to fulfil (CESCR, 2003). Reports from UN appointed Special Rapporteurs have highlighted specific issues that block realization. In 2014, the then Rapporteur (Catarina de Albuquerque) published a series of guides to realizing these rights.

In 2015, her successor identified corruption and poor governance as significant factors in increasing the cost of water and sanitation services. Léo Heller told the UN Human Rights Council: “Corruption tends to disproportionately affect poor and disadvantaged individuals and groups, as they lack the necessary power to oppose the vested interests of elites, and do not have the necessary resources to pay bribes.” (UN General Assembly, 2015)

The 2010 UN Resolution noted the responsibility of states “to ensure full transparency of the planning and implementation process in the provision of safe drinking water and sanitation and the active, free, meaningful participation of the concerned local communities and relevant stakeholders”. (UN General Assembly, 2010a)

TRANSPARENCY, ACCOUNTABILITY, AND PARTICIPATION

“Corruption violates the core human rights principles of transparency, accountability, non-discrimination and meaningful participation in every aspect of life of the community. Conversely, these principles, when upheld and implemented, are the most effective means to fight corruption.”

Navi Pillay, UN High Commissioner for Human Rights (OHCHR, 2013)

Transparency, accountability and participation are recognized as essential for combatting corruption and to enabling the right to development. In 2013, the Human Rights Council included the need for accountability, in guidance to States on incorporating the human rights to water and sanitation, including the means for citizens to enforce rights and seek remedies through effective courts and tribunals. (de Albuquerque and Roaf, 2012)

The Special Rapporteur underlined the role of participation in a report to the Human Rights Council, noting that “participation is a human right in itself” and that “violations may arise from direct denial of participation as well as indirect, by failure to take reasonable steps to facilitate participation, including by ensuring the right to access to information.” (de Albuquerque, 2014)

To be effective, participation must be active, free and meaningful. “It must go beyond mere information-sharing and superficial consultation, and involve people in decision-making, providing real opportunities to influence the planning process.” (de Albuquerque, 2011). The 2015 UN Resolution on the rights to water and sanitation emphasizes the importance of consultation and coordination with communities, civil society, the private sector and other stakeholders on the need for effective accountability mechanisms to ensure that service providers respect these rights and do not cause violations or abuses.

HUMAN RIGHTS MUST BE AFFORDABLE

The lead responsibility for delivering on human rights rests with governments. They remain accountable regardless of whether they are directly involved in water and sanitation service delivery or delegate this to commercialized, civil society or private providers.

The UN Special Rapporteur has explained that the rights to water and sanitation do not mean that services have to be free but they do have to be affordable for all, including for those in severe poverty. Water supply tariffs should reflect the costs of producing and distributing water but also address affordability, and likewise for sanitation services.

The Special Rapporteur stated: “Economic perspectives and human rights perspectives are not impossible to reconcile, but human rights require ensuring affordable service provision for all, regardless of ability to pay, and economic instruments must be (re-)designed to achieve this objective” (UN General Assembly, 2015).

The Special Rapporteur pointed out that subsidies often fail to support the poor, but instead benefit the better off: ‘Subsidies are “hidden” when public financing is used to construct infrastructure and services that are intended to be used by all, but in fact are only available to middle- and high-income households’ (UN General Assembly, 2015). These are clear breaches of integrity, especially where political interference leads to reduced tariffs at election times or to neglected services in poor areas.

An international grouping of CSOs that make up The Article 2 and Government Budgets Project has published suggestions for how civil society can engage with governments to ensure that budgets support human rights. It explains what is meant by key phrases such as “achieving progressively”, “to the maximum of its available resources” and “without discrimination” (Blyberg and Hofbauer, 2014).

LEGAL SYSTEMS HAVE A ROLE TO PLAY

The judiciary has a role to play in enforcing these rights. In Colombia, for example, article 365 of the constitution notes that addressing “unsatisfied drinking water needs” is one of the basic objectives of the state. The Administrative Tribunal of Cundinamarca declared that the Capital District had a constitutional obligation to provide services to under-served informal settlements near Bogotá, in conjunction with the public water service provider and residents (Bohórquez Forero, 2012).

When States make commitments to improve their records on meeting the rights to water and sanitation, there is a need for follow-up action to be monitored. At the Sanitation and Water for All High Level Meeting in Washington in 2014, 43 developing countries made commitments, two thirds of them (35 countries) to eliminate inequalities and improve sustainability, and more than half (23 countries) to achieve universal access to water and sanitation by 2030. Government ministers, donors and development banks agreed to report annually on the progress made in implementing the commitments. In August 2015, a mid-term review reported that significant progress had been made on 56 per cent of commitments tabled at the High Level Meeting.

Other sector stakeholders have an important role to play in ensuring that human rights law is followed. The UN Global Compact lists ten principles that the private sector should adopt based on human rights conventions, including: “Business should work against corruption in all its forms, including extortion and bribery.”

The Water Integrity Global Outlook (WIGO) makes a number of recommendations that arise in part from the human rights to water and sanitation. It calls for steps to strengthen water integrity to support the implementation of the sustainable development goals (SDGs) and ensure the realization of the human rights to water and sanitation. In particular WIGO highlights the need to develop and enforce water policies that incorporate transparency, accountability and participation (TAP) principles along with anti-corruption measures to meet these obligations. It calls for stronger enforcement mechanisms and cooperation between anti-corruption, judicial and water institutions.

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