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**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,  
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,  
INCLUDING THE RIGHT TO DEVELOPMENT**

**Report of the independent expert on the issue of human rights  
obligations related to access to safe drinking water and  
sanitation, Catarina de Albuquerque**

## Summary

The independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque, submits this report to the Human Rights Council in accordance with Council resolution 7/22. The report focuses on the human rights obligations related to sanitation. After reviewing the inextricable links between sanitation and a range of human rights, the independent expert concludes that an analysis of sanitation in a human rights context must go beyond linking it to other human rights, because this would fail to fully capture all of the dimensions of sanitation. She suggests that, although there is an ongoing discussion on whether sanitation should be recognized as a distinct right, recent developments at the international, regional and national levels demonstrate a trend towards recognition; specifically, considering the right to sanitation as an explicit component of the right to an adequate standard of living.

While opinions may differ on whether to recognize sanitation as a distinct right, the independent expert asserts that there are clear human rights obligations related to sanitation because it is inextricably linked to, and indispensable for, the realization of many other human rights. She outlines a definition of sanitation in human rights terms, and explains the human rights obligations related to sanitation, as well as the content of those obligations. The report ends with conclusions and recommendations.

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## I. INTRODUCTION

1. This report is presented by the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation in accordance with Human Rights Council resolution 7/22, which tasks her with further clarifying “the content of human rights obligations, including non-discrimination obligations, in relation to access to safe drinking water and sanitation”. She decided to focus the first year of her mandate on clarifying the human rights obligations related to sanitation.
2. From 27 to 28 April 2009, the independent expert organized an expert consultation on the human rights obligations related to sanitation, with experts in human rights law and in the area of sanitation from all regions of the world. On 29 April, she held a public consultation on the same topic which was attended by numerous States, civil society organizations and other actors. The perspectives and expertise offered during these meetings were extremely helpful to the independent expert in drafting the present report.
3. The report examines sanitation in the context of human rights and identifies human rights obligations related to sanitation. It begins by highlighting the enormity of the sanitation crisis, then briefly examines existing definitions of sanitation, and goes on to explain the inextricable links between sanitation and a wide variety of human rights. The report subsequently offers a definition of sanitation in human rights terms, explores the scope and content of human rights obligations related to sanitation, and finishes with conclusions and recommendations.

## II. THE SANITATION CRISIS

4. The current sanitation crisis has dire implications for the lives and livelihoods of billions of people around the world, yet it remains one of the most neglected issues at the international and national levels. The United Nations estimates that about 2.5 billion people still lack access to improved sanitation and 1.2 billion practice open defecation.<sup>1</sup> An estimated 1.6 million people, mostly children under the age of 5, die each year from water and sanitation-related diseases;<sup>2</sup> research suggests that poor sanitation may be linked to as much as a quarter of all under-five deaths.<sup>3</sup>
5. Recognizing the fundamental importance of sanitation for human development, the Millennium Development Goals aim to halve the proportion of people without access to basic

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<sup>1</sup> See the WHO and UNICEF Joint Monitoring Programme for Water Supply and Sanitation (JMP) report on “Progress on drinking water and sanitation: special focus on sanitation” (2008), p. 2.

<sup>2</sup> See <http://www.unmillenniumproject.org/documents/WaterComplete-lowres.pdf>.

<sup>3</sup> See WaterAid, “Tackling the silent killer: the case for sanitation”, p. 7 (2008).

sanitation by 2015, but progress even towards this limited target is slow. The Joint Monitoring Programme, run by the World Health Organization (WHO) and the United Nations Children's Fund (UNICEF), estimates that, unless efforts are greatly accelerated, the target on sanitation will be missed by over 700 million people.<sup>4</sup> Even if this target was met, 1.8 billion people would still not have access to improved sanitation,<sup>5</sup> which is an intolerable situation. 2008 was declared the International Year of Sanitation, which helped to put sanitation in the spotlight and led to the launch of several initiatives to more vigorously address the current crisis. However, despite commendable efforts by United Nations agencies and other actors, sanitation remains severely underfunded and neglected at all levels.

6. In her report to the tenth session of the Human Rights Council, the independent expert briefly explained that lack of access to sanitation has disastrous consequences for people's health, education, the economy, gender equality, and overall development.<sup>6</sup> Lack of access to sanitation is overwhelmingly a problem of the poor, with women and children suffering the most. In fact, for industrialized nations, ensuring access to sanitation was a turning point in their development, having a profound effect on reducing child mortality and improving overall public health. In this regard, there is a strong correlation between lack of access to sanitation and a low rating on the human development index. Investing in sanitation has a remarkable impact on overall poverty reduction, particularly helping to reduce the number of work and school days lost due to illness. Recent research estimates that, for every dollar invested in sanitation, there is about a nine-dollar benefit in costs averted and productivity gained.<sup>7</sup>

7. With such a positive impact, why does the sanitation sector still suffer from such a lack of attention? The taboo surrounding sanitation is one of the biggest obstacles it faces. For most people, sanitation is a highly private matter and an uncomfortable topic for public discussion. As a result of the failure to prioritize sanitation, there is also a lack of effective national policies, diverse and fragmented responsibilities for sanitation across government ministries, and a general lack of understanding of the positive effects of investing in sanitation. It is important to bring this issue to the fore and tackle the taboo that surrounds it. Speaking honestly and openly about faeces and defecating may indeed change the lives, and restore a sense of dignity, of millions of people.

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<sup>4</sup> JMP report (2008) 1, p. 8.

<sup>5</sup> See the United Nations Development Programme (UNDP) Human Development Report 2006, "Beyond scarcity: power, poverty and the global water crisis", p. 4.

<sup>6</sup> See A/HRC/10/6 (providing a detailed explanation of the decision to focus on sanitation).

<sup>7</sup> See the WHO and UNDP report on "Economic and health effects of increasing coverage of low cost household drinking-water supply and sanitation interventions to countries off-track to meet MDG target 10" (2007), p. 20.

### III. DEFINITIONS OF SANITATION

8. Existing definitions of sanitation are an important starting point for understanding the human rights aspects of sanitation. Having said this, one of the challenges of examining sanitation is its numerous definitions. For example, an English dictionary defines sanitation as follows:

- (a) Formulation and application of measure designed to protect public health;
- (b) Disposal of sewage.<sup>8</sup>

9. Other definitions have focused on the process of making something sanitary. For example, during the International Year of Sanitation, a definition of sanitation was developed, which stated that “sanitation is the collection, transport, treatment and disposal or reuse of human excreta, domestic waste water and solid waste and associated hygiene promotion”.<sup>9</sup> The term “basic sanitation” is also used, which is defined as the disposal of human excreta to prevent disease and safeguard privacy and dignity.<sup>10</sup>

10. Definitions have also been developed for the purpose of monitoring access to sanitation, particularly in the context of the Millennium Development Goals. For example, the Joint Monitoring Programme uses the term “improved sanitation”, referring to types of technology and levels of services that are more likely to be sanitary than unimproved technologies.<sup>11</sup> It considers excreta disposal systems as “adequate” as long as they are private and separate human excreta from human contact.<sup>12</sup>

11. There are many other technical definitions of sanitation, some of which include a much larger concept of a sanitary environment. The wide variety of definitions of sanitation, depending on the context in which one is working, is one of the challenges attached to this issue. People and institutions often use the same word to mean very different things, sometimes creating considerable confusion.

12. Understanding sanitation in a human rights context poses an added challenge because human rights bring certain principles to the fore and have specific requirements. The following sections examine sanitation in the context of human rights and, based on this analysis, a definition of sanitation in human rights terms is offered in section VI.

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<sup>8</sup> See *The American Heritage Dictionary of the English Language*, 4th edition (2000), updated in 2003.

<sup>9</sup> See [http://www.unece.org/env/water/meetings/wgwh/Firstmeeting\\_2008/IYS.pdf](http://www.unece.org/env/water/meetings/wgwh/Firstmeeting_2008/IYS.pdf).

<sup>10</sup> Ibid.

<sup>11</sup> See the report of the Joint Monitoring Programme (2008), p. 6.

<sup>12</sup> See the Joint Monitoring Programme website, available at [http://www.wssinfo.org/en/122\\_definitions.html](http://www.wssinfo.org/en/122_definitions.html).

#### IV. THE INTERRELATEDNESS OF HUMAN RIGHTS: SANITATION

13. Sanitation is an integral part of numerous human rights and has been identified under these rights in various treaties, political declarations, national constitutions and legislation, international and domestic case law, and expert work. These include the rights to an adequate standard of living, adequate housing, health, education, water, work, life, physical security, the prohibition of inhuman or degrading treatment, gender equality, and the prohibition against discrimination.

##### A. The right to an adequate standard of living

14. Considering the profound impact that the lack of sanitation has on an individual's quality of life, sanitation has frequently been understood to be indispensable for achieving an adequate standard of living.

15. For example, article 14, paragraph 2 (h), of the Convention on the Elimination of All Forms of Discrimination against Women, addressing the specific situation of rural women, provides that States parties shall take all appropriate measures to ensure to women "the right ... to enjoy adequate living conditions, particularly in relation to ... sanitation ..."

16. Article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights provides for "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". While this article does not include sanitation explicitly, the Committee on Economic, Social and Cultural Rights clarifies that "the use of the word 'including' indicates that this catalogue of rights was not intended to be exhaustive".<sup>13</sup> Under this interpretation, other essential components of an adequate standard of living, including sanitation, could be understood under article 11, paragraph 1. The Committee recently included sanitation in an extended list of elements of the right to an adequate standard of living in its general comment No. 19 (2008) on the right to social security.<sup>14</sup> Additionally, in its concluding observations, the Committee has addressed the issue of sanitation under the right to an adequate standard of living on numerous occasions.<sup>15</sup> The Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination have also referred to sanitation under the right to an adequate standard of living.<sup>16</sup>

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<sup>13</sup> The Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water, E/C.12/2002/11, para. 3.

<sup>14</sup> See E/C.12/GC/19, para. 18.

<sup>15</sup> See E/C.12/1/Add.83 (Georgia), para. 31; E/C.12/1/Add.107 (China), para. 59; E/C.12/1/Add.104 (Azerbaijan), para. 52; and E/C.12/1/Add.90 (Israel), para. 27.

<sup>16</sup> See CRC/C/AZE/CO/2 (Azerbaijan), para. 56; CRC/C/TKM/CO/1 (Turkmenistan), para. 58; CRC/C/BEN/CO/2 (Benin), para. 59; CRC/C/SVK/CO/2 (Slovakia), para. 56;

17. In political declarations, States have included sanitation in the list of elements of the right to an adequate standard of living. For example, the Programme of Action adopted in 1994 at the Cairo International Conference on Population and Development provides, in principle 2, as follows: “Human beings ... have the right to an adequate standard of living for themselves and their families, including ... sanitation.”<sup>17</sup>

18. Principle 11 of the 1996 Habitat Agenda adopted by the Second United Nations Conference on Human Settlements contains similar wording.

19. United Nations human rights special procedures have also interpreted sanitation as part of the right to an adequate standard of living. For example, the Guiding Principles on Internal Displacement (1998), drafted by the Representative of the Secretary-General on the human rights of internally displaced persons, provide, under principle 18, paragraph 1, that “all internally displaced persons have the right to an adequate standard of living”, and goes on to state in paragraph 2 that “competent authorities shall provide internally displaced persons with and ensure safe access to ... [e]ssential medical services and sanitation”.<sup>18</sup>

### **B. The right to adequate housing**

20. The right to adequate housing has generally been understood to include access to sanitation facilities. Indeed, it is difficult to imagine characterizing a habitation as adequate if sanitation facilities are not available within the vicinity or are inadequate or unsafe to use. The Committee on Economic, Social and Cultural Rights’ general comment No. 4 (1991) on the right to adequate housing stipulates that an “adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to ... sanitation and washing facilities ...”<sup>19</sup>. The Committee has also referred to sanitation under the right to adequate housing in its recently adopted reporting guidelines.<sup>20</sup> The Committee on the Rights of the Child has similarly referred to sanitation under the right to housing.<sup>21</sup>

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CRC/C/DOM/CO/2 (Dominican Republic), para. 77; CRC/C/15/Add.233 (Panama), para. 23; and CERD/C/DOM/CO/12 (Dominican Republic), para. 18.

<sup>17</sup> A/CONF.171/13.

<sup>18</sup> E/CN.4/1998/53/Add.2.

<sup>19</sup> E/1992/23 annex III at 114, para. 8 (b).

<sup>20</sup> E/C.12/2008/2 (adopted on 24 March 2009).

<sup>21</sup> See, e.g. CRC/C/MHL/CO/2 (Marshall Islands), para. 59; and CRC/C/KAZ/CO/3 (Kazakhstan), paras. 55-56.



21. The Special Rapporteur on the right to adequate housing has emphasized that “full realization of the right to adequate housing is closely interlinked with and contingent upon fulfilment of other rights and services, including access to safe drinking water and sanitation”.<sup>22</sup>

22. At the regional level, the European Committee of Social Rights has consistently held in its conclusions on State reports<sup>23</sup> that, for the purpose of article 31 of the European Social Charter guaranteeing the right to housing, “adequate housing” is a dwelling which, inter alia, is safe from a sanitary and health point of view. The Committee has further explained that this is the case “if it possesses all basic amenities, such as water, heating, waste disposal; sanitation facilities; electricity etc.”. The Committee has also dealt with lack of sanitation under social, economic and legal protection for vulnerable families. For instance, in its conclusions concerning one State, the Committee noted that “the housing situation of many Roma communities remains serious, since numerous dwellings lack basic facilities, e.g. water, sanitation and electricity”.<sup>24</sup>

### C. The right to health

23. The links between access to sanitation and health are well documented. WHO estimates that 88 per cent of diarrhoeal disease is caused by unsafe water and sanitation,<sup>25</sup> leading to the death of about 1.8 million people annually. Where people have no or limited access to sanitation, they can also develop kidney and liver problems, and constipation, as well as psychological trauma. Furthermore, if hospitals do not have sex-segregated toilets, women will not seek treatment there, both because of the lack of toilets, and the lack of women doctors working there.

24. International treaties also specifically recognize the link between sanitation and the right to health. For example, article 12 of the International Covenant on Economic, Social and Cultural Rights, recognizing the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, provides that States should take steps for “the improvement of all aspects of environmental and industrial hygiene”. In addition, in its general comment No. 14 (2000) on the right to the highest attainable standard of health, the Committee on Economic, Social and Cultural Rights explained that the right to health is “an inclusive right extending not only to timely and appropriate health care but also to the underlying

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<sup>22</sup> E/CN.4/2002/59, para. 56.

<sup>23</sup> See conclusions on Lithuania (c-2005-en1, sect. 163/165). The Committee applied the same definition in its conclusions on Norway (c-2005-en2, sect. 76/140); France (c-2003-en1, sect. 95/163); and Italy (c-2003-en1, sect. 158/163).

<sup>24</sup> Conclusions on the Slovak Republic XVIII-1 (2006).

<sup>25</sup> See the WHO report, “Water, sanitation and hygiene links to health: facts and figures (2004).

determinants of health, such as access to safe and potable water and adequate sanitation”.<sup>26</sup> The recently adopted reporting guidelines of that Committee also include sanitation under the right to health.<sup>27</sup>

25. Article 24 of the Convention on the Rights of the Child explicitly refers to sanitation, stating that States shall take appropriate measures “to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition ... hygiene and environmental sanitation ...” The Committee on the Rights of the Child further includes sanitation under the right to health in its general comment No. 11 (2009) on indigenous children and their rights under the Convention,<sup>28</sup> and general comment No. 7/Rev.1 (2005) on implementing child rights in early childhood,<sup>29</sup> and has also regularly linked sanitation to the right to health in its dialogues with States parties.<sup>30</sup>

26. The Special Rapporteur on the right to the highest attainable standard of physical and mental health affirmed that water and sanitation are underlying determinants of health, and provided detailed guidance on the implications for the realization of the right to health.<sup>31</sup>

27. At the regional level, article 39 of the Arab Charter on Human Rights (2004)<sup>32</sup> recognizes “the right of every member of society to the enjoyment of the highest attainable standard of physical and mental health ...” Paragraph 2, outlining measures for implementation of the right, provides in subparagraph (f) that this includes “providing proper sanitation systems”. The Organization of American States has also referred to sanitation in the context of health and human rights.<sup>33</sup>

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<sup>26</sup> E/C.12/2000/4, para. 11.

<sup>27</sup> See note 20.

<sup>28</sup> CRC/C/GC/11, para. 25.

<sup>29</sup> CRC/C/GC/7/Rev.1, para. 27.

<sup>30</sup> See e.g. CRC/C/15/Add.238 (Dominica), paras. 38-39; CRC/C/15/Add.237 (Myanmar), paras. 53-54; CRC/C/GHA/CO/2 (Ghana), para. 49; CRC/C/THA/CO/2 (Thailand), paras. 55-56; CRC/C/15/Add.225 (Armenia), para. 50; and CRC/C/15/Add.244 (Kyrgyzstan), para. 50.

<sup>31</sup> A/62/214, paras. 45-102.

<sup>32</sup> Reprinted in 12 International Human Rights. Rep. 893 (2005). Entered into force on 15 March 2008; signed by 15 States and ratified by 8 States.

<sup>33</sup> Water, Health and Human Rights, AG/RES. 2349 (XXXVII-O/07), adopted at the fourth plenary session held on 5 June 2007.

28. In the European region, the United Nations Economic Commission for Europe Protocol on Water and Health (1999) provides for the protection of human health and well-being, and calls upon States parties to “pursue the aims of ... sanitation for everyone within a framework of integrated water-management systems aimed at sustainable use of water resources, ambient water quality which does not endanger human health, and protection of water ecosystems”.<sup>34</sup>

29. At the national level, sanitation has also been linked to the right to health. For example, the Constitution of Ecuador links sanitation and the right to health. In Costa Rica, the Constitutional Chamber recently held that the inundation of dwellings, due to the overcharge and lack of maintenance of the sewerage system, and the discharge of wastewater directly in rivers amounted to violations of the constitutional rights to health and to a safe and ecologically balanced environment.<sup>35</sup>

#### **D. The right to education**

30. Lack of access to sanitation can also have serious negative impacts on the enjoyment of the right to education. Each year, 443 million school days are lost due to sickness caused by poor water and sanitation conditions.<sup>36</sup> Diseases caused by lack of access to sanitation and drinking water also affect students’ ability to learn. Furthermore, where schools do not have sanitation facilities, children’s exposure to disease is exacerbated, and they may not attend school; where toilets are not sex-segregated, girls often drop out of school, notably at the age of menstruation.

31. The Committee on the Rights of the Child has specifically referred to sanitation in educational settings in its general comment No. 4 (2003) on adolescent health and development, which states that “considering the importance of appropriate education for the current and future health and development of adolescents, as well as for their children, the Committee urges States parties ... to ... provide well-functioning school and recreational facilities which do not pose health risks to students, including water and sanitation ...”<sup>37</sup> That Committee has also regularly linked sanitation to education in its concluding observations.<sup>38</sup>

32. Furthermore, the Special Rapporteur on the right to education has recommended, with regard to school sanitation for girls, that States allocate resources to school infrastructure,

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<sup>34</sup> Art. 6, para. 1 (b) of the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, London, (MP.WAT/2000/1. EUR/ICP/EHCO 020205/8Fin).

<sup>35</sup> Sala Constitucional, decisions Nos. 11796 of 17 August 2007 and 17007 of 21 November 2007.

<sup>36</sup> See the UNDP Human Development Report 2006, p. 6.

<sup>37</sup> CRC/GC/2003/4, para. 17.

<sup>38</sup> See e.g. CRC/C/TZA/CO/2 (Tanzania), para. 55; CRC/C/MHL/CO/2 (Marshall Islands), para. 62; and CRC/C/KEN/CO/2 (Kenya), para. 57.

specifying “that infrastructure must be sited within communities and include a drinking water supply and separate, private, safe sanitation services for girls” as well as “establish efficient mechanisms for supplying sanitary towels to adolescent girls who so wish, especially in rural areas, and ensure they can always have the use of the sanitation facilities they need”.<sup>39</sup>

### **E. The right to water**

33. Sanitation has also been linked with the right to water, with now-common reference to the right to water and sanitation. The connection between water and sanitation is clear: without proper sanitation, human excreta contaminate drinking water sources, affecting water quality and leading to disastrous health consequences. Water is further linked to sanitation because waterborne sewerage systems are common in many parts of the world.

34. In its general comment No. 15 (2002) on the right to water, the Committee on Economic, Social and Cultural Rights states that “the water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene”.<sup>40</sup> The Committee specifies that “personal sanitation” means disposal of human excreta and “personal and household hygiene” means personal cleanliness and hygiene of the household environment. General comment No. 15 further notes that “ensuring that everyone has access to adequate sanitation is not only fundamental for human dignity and privacy, but is one of the principal mechanisms for protecting the quality of drinking water supplies and resources ... States parties have an obligation to progressively extend safe sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children”.<sup>41</sup>

35. While both the Special Rapporteurs on the right to health and on the right to adequate housing refer to sanitation in the context of the rights falling under their mandates, they both also specifically refer to a “right to water and sanitation”.<sup>42</sup> The Sub-Commission on the Promotion and Protection of Human Rights adopted in 2006 guidelines on the realization of the right to drinking water and sanitation, also treating the two issues together. Regarding sanitation, they specifically provide that “everyone has the right to have access to adequate and safe sanitation that is conducive to the protection of public health and the environment”.<sup>43</sup> The guidelines further specify that sanitation must be physically accessible, culturally acceptable, safe, and affordable.

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<sup>39</sup> E/CN.4/2006/45, paras. 129-130.

<sup>40</sup> E/C.12/2002/11, para. 12 (a).

<sup>41</sup> *Ibid.*, para. 29.

<sup>42</sup> See A/HRC/7/16, paras. 26-29; and A/62/214, para. 63.

<sup>43</sup> E/CN.4/Sub.2/2005/25, para. 1.2.

36. At the regional level, the Abuja Declaration, adopted by 45 African and 12 South American States at the 1st Africa-South America Summit in 2006, commits to promoting “the right of our citizens to have access to clean and safe water and sanitation within our respective jurisdictions”.<sup>44</sup> The “Message from Beppu” adopted by 37 States from the wider Asia-Pacific region at the 1st Asia-Pacific Water Summit held in Beppu, Japan, in December 2007 recognizes “the people’s right to safe drinking water and basic sanitation as a basic human right and a fundamental aspect of human security”.<sup>45</sup> Similarly, the Delhi Declaration, adopted by eight South Asian States at the 3rd South Asian Conference on Sanitation (SACOSAN III) held in Delhi, in November 2008 recognizes “that access to sanitation and safe drinking water is a basic right, and according national priority to sanitation is imperative”.<sup>46</sup>

37. At the national level, the Constitutions of Bolivia and Uruguay recognize the right to water and sanitation, as does legislation in Algeria, Paraguay, and South Africa. In Argentina, a court ordered a municipality to adopt all necessary measures to improve the functioning of the sewage treatment plant and minimize the effects on the environment where untreated wastewater was contaminating the drinking water of the community of Chacras de la Merced.<sup>47</sup>

#### **F. The right to work and the right to just and favourable working conditions**

38. The right to work can also be negatively affected by lack of access to sanitation. Workplaces which do not provide sanitation facilities, which have prohibitively long waiting times for the use of facilities, or where employees are pressured not to interrupt work for toilet breaks, may prevent employees from keeping their jobs, or raise serious concerns about their right to work in safe and healthy working conditions. Women are particularly affected, especially during menstruation and pregnancy.

39. In its general comment No. 14 on the right to the highest attainable standard of health, the Committee on Economic, Social and Cultural Rights specifies that, with regard to the right to healthy natural and workplace environments, “‘the improvement of all aspects of environmental and industrial hygiene’ (art. 12.2 (b)) comprises, inter alia ... the requirement to ensure an adequate supply of safe and potable water and basic sanitation ... [and it embraces] safe and hygienic working conditions”.<sup>48</sup>

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<sup>44</sup> See <http://www.africa-union.org/root/AU/Conferences/Past/2006/November/SummitASA/summit.htm>.

<sup>45</sup> Available at <http://www.apwf.org/project/result.html>.

<sup>46</sup> Available at <http://www.ddws.nic.in/infosacosan/ppt/Delhi%20Declaration%207.pdf>.

<sup>47</sup> Primera Instancia y 8 Nominación en lo Civil y Comercial, Ciudad de Córdoba, Argentina, *Marchisio José Bautista y Otros*, Acción de Amparo (Expte. No. 500003/36), 19 October 2004 (referring explicitly to general comment No. 15 on the right to water).

<sup>48</sup> E/C.12/2000/4, para. 15.

40. The International Labour Organization (ILO) Convention concerning Hygiene in Commerce and Offices provides in article 13 that “sufficient and suitable washing facilities and sanitary conveniences shall be provided and properly maintained”.<sup>49</sup> The ILO Recommendation concerning Hygiene in Commerce and Offices provides further detailed guidance on sanitation in the workplace,<sup>50</sup> and the ILO Recommendation concerning the Protection of the Health of Workers in Places of Employment specifically refers to sanitation, explaining that “measures should be taken by the employer to ensure that the general conditions prevailing in places of employment are such as to provide adequate protection of the health of the workers concerned [including] sufficient and suitable sanitary conveniences and washing facilities ... provided in suitable places and properly maintained”.<sup>51</sup>

### G. The right to life

41. Considering the potentially fatal impact of poor sanitation on people’s health, some assert that it is integrally linked to the right to life. In its general comment No. 6 (1982) on the right to life, the Human Rights Committee stated that the right to life should not be interpreted in a restrictive manner. In this context, it said that “the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics”.<sup>52</sup>

42. At the regional level, the Inter-American Court of Human Rights has interpreted the meaning of article 4 (the right to life) and article 5 (the right to humane treatment) of the American Convention on Human Rights<sup>53</sup> to encompass the right to harbour a project of life, addressing essential elements of, inter alia, the rights to education, food, adequate housing, health and sanitation.<sup>54</sup> The Indian judicial system has taken a similarly broad approach to interpreting the right to life, and has made specific links with sanitation in this regard.<sup>55</sup>

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<sup>49</sup> ILO Convention No. 120 (1966).

<sup>50</sup> ILO Recommendation No. 120 (1964), para. 38.

<sup>51</sup> ILO Recommendation No. 97 (1953), para. 2 (e).

<sup>52</sup> CCPR/C/21/Rev.1, para. 5.

<sup>53</sup> OAS Treaty Series No. 36, 1144 UNTS 123 (entered *into force* on 18 July 1978).

<sup>54</sup> See e.g. *Yakye Axa Indigenous Community v. Paraguay*, judgement of 17 June 2005, Series C No. 125.

<sup>55</sup> “Maintenance of health, preservation of the sanitation and environment falls within the purview of article 21 [concerning the right to life] of the Constitution as it adversely affects the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen.” Rajasthan High Court, *L.K. Koolwal v. State of Rajasthan and Others*, writ petition No. 121 of 1986, 19 September 1986, AIR 1988 Raj 2.

## H. The right to physical security

43. For many people, the simple act of “relieving oneself” is a risky affair. Women and girls especially are vulnerable to attack when they must walk a long way to access sanitation facilities or when they are forced to defecate in the open. In addition, women without access to sanitation often defecate under the cover of darkness in order to ensure a minimum of privacy, but at considerable risk to their physical security.

44. Protection of physical integrity is at the core of human rights, and must also be taken into account when considering sanitation. The International Covenant on Civil and Political Rights protects the right to security of person,<sup>56</sup> and the Committee on the Elimination of Discrimination Against Women argues that violence against women, in the absence of due diligence on the part of the State, is a form of discrimination based on sex and is thus a violation of human rights, including violence committed by private actors.<sup>57</sup> The Convention on the Rights of the Child also provides that States must protect children from all forms of violence.<sup>58</sup> In the World Report on Violence against Children, it was specified that “in locations such as shanty towns and refugee camps, particular emphasis [must be] placed on creating safe routes to communal water collection, and to bathing and toilet facilities”.<sup>59</sup>

## I. Prohibition of inhuman or degrading treatment

45. The lack of access to sanitation can also be tantamount to inhuman or degrading treatment in certain circumstances, especially in the context of detention. In a 2005 report focused on water, sanitation, hygiene and habitat in prisons, the International Committee of the Red Cross highlighted that “waste water and refuse disposal is often the most intractable sanitation problem in places of detention. A large proportion of the diseases observed among the inmates of such establishments is transmitted by the faecal-oral route”.<sup>60</sup>

46. The Human Rights Committee and the Committee against Torture have regularly expressed concern about unsatisfactory conditions of detention, including poor sanitation, in their concluding observations.<sup>61</sup> The Special Rapporteur on torture has expressed concern about sanitation in his country missions,<sup>62</sup> as has the Working Group on Arbitrary Detention.<sup>63</sup>

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<sup>56</sup> Art. 9 of the International Covenant on Civil and Political Rights.

<sup>57</sup> A/47/38(SUPP).

<sup>58</sup> Art. 19 of the Convention on the Rights of the Child.

<sup>59</sup> Paulo Sérgio Pinheiro, independent expert for the Secretary-General’s Study on Violence against Children, “World Report on Violence against Children”, p. 324 (2006).

<sup>60</sup> “Water, Sanitation, Hygiene and Habitat in Prisons”, International Committee of the Red Cross (2005), p. 58.

<sup>61</sup> See, e.g. CCPR/C/HND/CO/1 (Honduras), at para. 15; CCPR/CO/84/THA (Thailand), para. 16; CCPR/C/UKR/CO/6 (Ukraine), para. 11; CCPR/CO/82/BEN (Benin), para. 17;

47. Furthermore, paragraph 15 of the Standard Minimum Rules for the Treatment of Prisoners of 1955<sup>64</sup> provides that “prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness”. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty of 1990 also refer to “sanitary installations”, specifying that they “should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner”.<sup>65</sup>

48. At the regional level, the Inter-American Commission on Human Rights has heard several cases involving the State duty to ensure general conditions of health, hygiene and sanitation in prison or custodial facilities.<sup>66</sup> In Europe, in the case of *Melnik v. Ukraine*,<sup>67</sup> the European Court of Human Rights found that the overcrowding of prison cells, inadequate medical care and unsatisfactory conditions of hygiene and sanitation, taken together with the duration of detention, amounted to degrading treatment.

49. At the national level, a court in Fiji found lack of access to adequate sanitation in prisons to amount to cruel, inhuman and degrading treatment, finding a breach not only of the Fijian Constitution, but also of the Standard Minimum Rules for the Treatment of Prisoners.<sup>68</sup>

50. International humanitarian law also particularly refers to access to sanitation for detainees.<sup>69</sup>

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CCPR/C/79/Add.120 (Mongolia), para. 12; CCPR/CO/83/KEN (Kenya), para. 19; CCPR/C/COD/CO/3 (Democratic Republic of the Congo), para. 20; CCPR/C/79/Add.121 (Guyana), para. 17; CCPR/C/79/Add.83 (Jamaica), para. 13; CAT/C/CR/33/3 (United Kingdom), para. 4; and CAT/C/NPL/CO/2 (Nepal), para. 31.

<sup>62</sup> Mission to Indonesia, A/HRC/7/3/Add.7, para. 68; Mission to Togo, A/HRC/7/3/Add.5, paras. 42; Appendix, paras. 3, 31, 46-47, 70 and 95; and Mission to Nigeria, A/HRC/7/3/Add.4, paras. 37, Appendix, paras. 41, 95, 101 and 110.

<sup>63</sup> Mission to Equatorial Guinea, A/HRC/7/4/Add.3, para. 83.

<sup>64</sup> The United Nations Economic and Social Council resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

<sup>65</sup> General Assembly resolution 45/113 of 14 December 1990, para. 34.

<sup>66</sup> Inter-American Commission on Human Rights, *Paul Lallion v. Grenada*, report No. 55/02, Merits, Case 11.765, 21 October 2002; and *Benedict Jacob v. Grenada*, report No. 56/02, Merits, Case 12.158, 21 October 2002.

<sup>67</sup> Case of *Melnik v. Ukraine*, European Court of Human Rights, Application No. 72286/01, judgement of 28 March 2006.

<sup>68</sup> *Sailasa Naba and others v. the State*, High Court of Fiji, No. HAC0012 of 2000L, judgement of 4 July 2001.



## **J. Equality of women and men**

51. The disproportionate impact of lack of access to sanitation on girls and women has been well researched. Girls often drop out of school when their menstruation begins since schools frequently lack “girls only” or otherwise appropriate sanitation facilities. When relatives become sick from sanitation-related diseases, women and girls often stay home to care for them, missing work and school. Furthermore, women and girls face security risks when they are forced to relieve themselves or to defecate in the open, or walk to toilets in the dark. Because of widespread discrimination against women, they are not included in the formulation of relevant policies and, therefore, their needs tend to be neglected.

52. Most core human rights articles prohibit discrimination based on sex. Thus, all rights related to sanitation must be guaranteed without discrimination based on sex. As already mentioned above, the Convention on the Elimination of All Forms of Discrimination against Women specifically refers to sanitation with regard to rural women and the Committee overseeing that treaty has regularly addressed the issue of sanitation in its concluding observations.<sup>70</sup> The Special Rapporteurs on torture and on the right to education have also specifically referred to the sanitary needs of menstruating women.<sup>71</sup>

## **K. Prohibition of discrimination**

53. More broadly, discrimination and exclusion play a significant role with regard to access to sanitation. It is often the poorest and the most marginalized groups who lack access to sanitation. According to UNDP, the majority of people without access to sanitation live on less than 2 United States dollars a day.<sup>72</sup> Minority groups, migrants, indigenous peoples, refugees and internally displaced persons (IDPs), prisoners and detainees, and persons with disabilities also suffer discrimination which may affect their access to sanitation. Sanitation workers face particular stigmatization for having a job which is perceived as “unclean” or lowly. Such groups often have little influence on policy formulation and resource allocation at the national and local levels, making it difficult for them to improve their access to sanitation.

54. The International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, in their articles 2, both provide that the rights contained in those Covenants should be enjoyed without discrimination. Article 26 of the International Covenant on Civil and

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<sup>69</sup> See for example, article 85 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949, 75 UNTS 287. Adopted on 12 August 1949 and entered into force on 21 October 1950.

<sup>70</sup> See e.g. CEDAW/C/THA/CO/5 (Thailand), para. 33; CEDAW/C/SUR/CO/3 (Suriname, 2007), para. 31; A/60/38(SUPP) (Gabon), para. 247; A/60/38(SUPP) (Israel), para. 259 bis; and CEDAW/C/PAK/CO/3 (Pakistan), paras. 42-43.

<sup>71</sup> A/HRC/7/3, para. 41; and E/CN.4/2006/45, paras. 129-130.

<sup>72</sup> See the UNDP Human Development Report 2006, p. 49.

Political Rights further provides for equal protection under the law, including “effective protection against discrimination”. The treaty bodies have raised the issue of sanitation in the context of discussions on discriminatory treatment in their dialogues with States parties. For example, they have expressed concern about sanitation for Roma people,<sup>73</sup> Dalits,<sup>74</sup> refugees and asylum-seekers,<sup>75</sup> indigenous peoples,<sup>76</sup> religious minorities,<sup>77</sup> and migrants.<sup>78</sup> The Special Rapporteur on torture has also specifically addressed sanitation with regard to persons with disabilities.<sup>79</sup>

## V. SANITATION AS A DISTINCT RIGHT

55. The above analysis demonstrates that access to sanitation is indispensable, and has been recognized as such under international law, both by States and experts, for the enjoyment of numerous human rights.<sup>80</sup> However, it does not provide a complete picture of the human rights dimensions of sanitation. Sanitation is not just about health, housing, education, work, gender equality, and the ability to survive. Sanitation, more than many other human rights issue, evokes the concept of human dignity; consider the vulnerability and shame that so many people experience every day when, again, they are forced to defecate in the open, in a bucket or a plastic bag. It is the indignity of this situation that causes the embarrassment. The Supreme Court of India eloquently described the indignity of lack of access to sanitation where the Court found that the failure of the municipality to provide basic public conveniences was driving “the miserable slum-dwellers to ease in the streets, on the sly for a time, and openly thereafter, because under Nature’s pressure, bashfulness becomes a luxury and dignity a difficult art”.<sup>81</sup> It is such infringements on the very core of human dignity that are not wholly captured by considering sanitation only as it relates to other human rights.

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<sup>73</sup> E/C.12/HUN/CO/3 (Hungary), para. 48; E/C.12/1/Add.97 (Greece), para. 44; E/C.12/1/Add.108 (Serbia and Montenegro), para. 57; and E/C.12/MKD/CO/1 (the former Yugoslav Republic of Macedonia), para. 43.

<sup>74</sup> CEDAW/C/IND/CO/3 (India), para. 29.

<sup>75</sup> E/C.12/UKR/CO/5 (Ukraine), para. 49; and CRC/C/15/Add.246 (Angola), para. 59.

<sup>76</sup> CERD/C/VEN/CO/18 (Venezuela), para. 17; CEDAW/C/PHI/CO/6 (Philippines), paras. 29-30; CRC/C/15/Add.233 (Panama), para. 64; and CRC/C/KEN/CO/2 (Kenya), para. 69.

<sup>77</sup> CEDAW/C/PHI/CO/6 (Philippines), paras. 29-30.

<sup>78</sup> CERD/C/DOM/CO/12 (Dominican Republic), para. 18.

<sup>79</sup> A/63/175, paras. 53 and 66.

<sup>80</sup> For a full legal analysis of sanitation and human rights, see [http://www2.ohchr.org/english/issues/water/iexpert/docs/table\\_legal\\_standards.htm](http://www2.ohchr.org/english/issues/water/iexpert/docs/table_legal_standards.htm).

<sup>81</sup> Supreme Court of India, Municipal Council, *Ratlam v. Shri Vardhichand and Others*, 29 July 1980, (1981) SCR (1) 97.

56. The notion of dignity permeates all modern human rights instruments. The preambles to the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights explicitly recognize that all human rights derive from the inherent dignity of the human person. The Universal Declaration of Human Rights includes several references to human dignity, including article 22, which states that “everyone ... is entitled to realization ... of the economic, social and cultural rights indispensable for his dignity ...”.

57. Dignity relates to the intrinsic worth of each human being, which should be recognized and respected by others. There are certain fundamental conditions upon which we insist to have a “minimum definition of what it means to be human in any morally tolerable form of society”.<sup>82</sup> It can be argued that “degrading living conditions and deprivation of basic needs” fall below this minimum definition.<sup>83</sup> Dignity closely relates to self-respect, which is difficult to maintain when being forced to squat down in the open, with no respect for privacy, not having the opportunity to clean oneself after defecating and facing the constant threat of assault in such a vulnerable moment. Therefore, the independent expert believes that lack of access to sanitation constitutes demeaning living conditions; it is an affront to the intrinsic worth of the human being and should not be tolerated in any society.

58. One might argue that, because dignity pervades the issue of sanitation and sanitation cannot be entirely subsumed into any other existing human right, it should be considered a distinct human right. While it has been warned that a proliferation of rights runs the risk of undermining existing human rights, standards must be adapted to address new (or only recently recognized) threats to the human person. The General Assembly in its resolution 41/120 stated that standard-setting activities in the field of human rights should relate to standards that are, inter alia, “of fundamental character and derive from the inherent dignity and worth of the human person” and “[are] sufficiently precise to give rise to identifiable and practicable rights and obligations”.<sup>84</sup> Due to the essential importance of sanitation for maintaining a life with human dignity, it could be argued that it is as important as other explicit components of the right to an adequate standard of living, such as food, clothing and housing, and could be implied under that right. The independent expert has found considerable precedents - both in international political declarations as well as in the work of United Nations human rights mechanisms - for this position.<sup>85</sup>

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<sup>82</sup> See Jerome J. Shestack, “The philosophical foundations of human rights”, vol. 20, *Human Rights Quarterly*, p. 201 at p. 216 (1998).

<sup>83</sup> See Oscar Schachter, “Human dignity as a normative concept”, *American Journal of International Law*, vol. 77 (1983), 848, p. 852.

<sup>84</sup> See General Assembly resolution 41/120 on setting international standards in the field of human rights, 4 December 1986.

<sup>85</sup> At the national level, Bolivia and Uruguay have included a right to sanitation in their Constitutions. Kenya has also included the right to sanitation in its Draft Constitution (draft of 23 August 2005).

59. After evaluating the current state of international law as well as evolving practice at the national and regional levels, the independent expert notes, at this point, that there is an ongoing discussion about sanitation as a distinct right. She sees that there is momentum behind this issue, and recent developments in human rights law concerning sanitation suggest a trend towards recognition of such a distinct right. Convinced that there are unique aspects to sanitation that evoke the inherent dignity of all human beings and which make it impossible to address satisfactorily through other human rights, the independent expert supports and encourages developments in line with this trend.

## **VI. HUMAN RIGHTS OBLIGATIONS RELATED TO SANITATION**

60. Whether one accepts arguments that sanitation should be considered as a distinct human right, it is indisputable that there are human rights obligations related to access to sanitation, because sanitation is inextricably linked to the enjoyment of so many other human rights.<sup>86</sup>

61. The human rights obligations related to sanitation described in this section are based on the preceding legal analysis of the status of sanitation under international law. The independent expert has identified these human rights obligations specifically to highlight how human rights obligations apply in the context of sanitation. However, the roots of these obligations lie in well-recognized human rights obligations associated with the rights outlined above, which cannot be fully realized without specific attention to sanitation.

### **A. Defining sanitation in human rights terms**

62. Understanding the human rights obligations related to sanitation requires a working definition of sanitation in human rights terms. This definition is drawn from elements related to sanitation as addressed under international human rights law. The independent expert considers that this definition may evolve as the understanding of the human rights obligations related to sanitation continues to develop.

63. The independent expert is of the view that sanitation can be defined as a system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene.<sup>87</sup>

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<sup>86</sup> A/HRC/RES/7/22 emphasizes “that international human rights law instruments, including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child entail obligations in relation to access to safe drinking water and sanitation”.

<sup>87</sup> The independent expert considers that domestic wastewater, which flows from toilets, sinks and showers, is included in this description of sanitation insofar as water regularly contains human excreta and the by-products of the associated hygiene. The independent expert further recognizes that, in some places, existing solutions for human excreta management make it inseparable from solid waste management.

States must ensure without discrimination that everyone has physical and economic access to sanitation, in all spheres of life,<sup>88</sup> which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity.

64. States are obliged to respect, protect and fulfil human rights as they relate to sanitation. More concretely, States must, inter alia:

- Refrain from measures which threaten or deny individuals or communities existing access to sanitation. States must also ensure that the management of human excreta does not negatively impact on human rights.
- Ensure that non-State actors<sup>89</sup> act in accordance with human rights obligations related to sanitation, including through the adoption of legislative and other measures to prevent the negative impact of non-State actors on the enjoyment of sanitation. When sanitation services are operated by a private provider, the State must establish an effective regulatory framework.
- Take steps, applying the maximum of available resources, to the progressive realization of economic, social and cultural rights as they relate to sanitation. States must move as expeditiously and effectively as possible towards ensuring access to safe, affordable and acceptable sanitation for all, which provides privacy and dignity. This requires deliberate, concrete and targeted steps towards full realization, in particular with a view to creating an enabling environment for people to realize their rights related to sanitation. Hygiene promotion and education is a critical part of this obligation.
- Carefully consider and justify any retrogressive measures related to the human rights obligations regarding sanitation.
- Take the necessary measures directed towards the full realization of economic, social and cultural rights as they relate to sanitation, inter alia, by according sufficient recognition of human rights obligations related to sanitation in the national political and legal systems, and by immediately developing and adopting a national sanitation strategy and plan of action.
- Provide effective judicial or other appropriate remedies at both the national and international levels in cases of violations of human rights obligations related to sanitation. Victims of violations should be entitled to adequate reparation, including restitution, compensation, satisfaction and/or guarantees of non-repetition.

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<sup>88</sup> Including, inter alia, the home, public buildings and places, the workplace, schools, hospitals, refugee and IDP camps, prisons and detention centres.

<sup>89</sup> Including private individuals, private enterprises, civil society organizations, and any other entity which is not an agent of the State.

65. States must realize their human rights obligations related to sanitation in a non-discriminatory manner. They are obliged to pay special attention to groups particularly vulnerable to exclusion and discrimination in relation to sanitation, including people living in poverty, sanitation workers, women, children, elderly persons, people with disabilities, people affected by health conditions, refugees and IDPs, and minority groups, among others. Priority should be given to meeting the needs of these groups and, where necessary, positive measures should be adopted to redress existing discrimination and to ensure their access to sanitation. States are obliged to eliminate both de jure and de facto discrimination on grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status, or any other civil, political, social or other status.

66. States are also obliged to ensure that concerned individuals and communities are informed and have access to information about sanitation and hygiene and are enabled to participate in all processes related to the planning, construction, maintenance and monitoring of sanitation services. Full participation, including representatives of all concerned groups is key to ensuring that sanitation solutions answer the actual needs of communities and are affordable, technically feasible, and culturally acceptable. Participation is also crucial for achieving community ownership and dedication in order to bring about the required behavioural changes. All people must have full and equal access to information concerning sanitation and its effect on their health and environment. Information should be made available through various media and should be translated in all relevant languages and dialects to ensure the greatest possible circulation.

67. It is important to state clearly what is not required when considering sanitation in human rights terms:

- States are not obliged to provide everyone with access to a sewerage system. Human rights law does not aim to dictate specific technology options, but instead calls for context-specific solutions.
- States are not obliged to provide individual facilities in every home. This will also depend on the context - sometimes a safe and otherwise adequate facility in the close proximity would suffice as an intermediate step towards full realization of related rights.
- States are not obliged to construct toilets, rather they must create an enabling environment. In fact, it is often argued that demand-led sanitation projects enjoy considerable success. Only in certain conditions, such as extreme poverty or natural disasters, when people, for reasons beyond their control, are genuinely unable to access sanitation through their own means, is the State obliged to actually provide sanitation services.
- States are not obliged to provide sanitation free of charge - those who are in a position to pay must contribute financially or in kind, for example by offering labour for the construction of sanitation systems. Only when people are genuinely unable to pay for sanitation is the State obliged to provide sanitation services free of charge.

- States may decide to privatize sanitation services, but in that case must ensure - through adequate regulation, including effective and accessible complaints procedures - that private actors do not adopt approaches which result in human rights violations.
- States are not required to ensure the full implementation of their human rights obligations related to sanitation immediately. Rather, they must show that they are taking steps to the maximum of their available resources to ensure at least minimum essential levels of sanitation for all people, and they must ensure that they are not discriminating against certain groups in providing access.

68. Among professionals working on sanitation, it is commonly said that “with rights come responsibilities”, which alludes to the importance of individual behavioural change in ensuring the success of sanitation interventions. The State bears the primary human rights obligations related to sanitation and is under an obligation to ensure that non-State actors, including individuals, do not jeopardize the enjoyment of any human rights. Where the State is complying with its duties to ensure access to sanitation facilities which are safe, hygienic, secure, socially and culturally acceptable, provide privacy and ensure dignity in a non-discriminatory manner, individuals have a responsibility to use such facilities. The State has a crucial role to play, and is obliged under human rights law, to sensitize the population about the benefits of good sanitation and hygiene.

## **B. Content of human rights obligations related to sanitation**

69. In considering the content of human rights obligations, it is important to approach this framework with a degree of flexibility, recognizing that some elements may be understood under multiple categories depending on the perspective of the reader. In practice, the classification is of little importance. For example, whether we understand prohibitive waiting times for use of sanitation facilities as an issue of accessibility, or one of availability, does not change the fact that States must ensure that excessive waiting times are avoided. Furthermore, this elaboration of the content of human rights obligations related to sanitation is intended to offer some examples, not an exhaustive list.

### **1. Availability**

70. There must be a sufficient number of sanitation facilities (with associated services) within, or in the immediate vicinity, of each household, health or educational institution, public institutions and places, and the workplace. There must be a sufficient number of sanitation facilities to ensure that waiting times are not unreasonably long.

71. Although it is tempting to determine a specific minimum number of toilets needed to meet the requirement of availability, such determinations can be counterproductive in human rights terms. It is crucial that the assessment of the sanitation requirements of any community is informed by the context, as well as the characteristics of particular groups which may have different sanitation needs. In this regard, participation is a vital aspect of meeting human rights obligations related to sanitation, as referred to above.

## **2. Quality**

72. Sanitation facilities must be hygienically safe to use, which means that they must effectively prevent human, animal and insect contact with human excreta. Sanitation facilities must further ensure access to safe water for hand washing as well as menstrual hygiene, and anal and genital cleansing, as well as mechanisms for the hygienic disposal of menstrual products. Regular cleaning, emptying of pits or other places that collect human excreta, and maintenance are essential for ensuring the sustainability of sanitation facilities and continued access.

73. Sanitation facilities must also be technically safe to use, which means that the superstructure is stable and the floor is designed in a way that reduces the risk of accidents (e.g. by slipping). People must be enabled to use them safely at night, whether through lighted paths, flashlights, or other measures. Furthermore, special attention should be paid to the safety needs of persons with disabilities, as well as the safety needs of children. Maintenance is crucial to guarantee technical safety.

74. Ensuring safe sanitation requires adequate hygiene promotion and education to encourage individuals to use toilets in a hygienic manner that respects the safety of others. Manual emptying of pit latrines is considered to be unsafe (as well as culturally unacceptable in many places, leading to stigmatization of those burdened with this task), meaning that mechanized alternatives that effectively prevent direct contact with human excreta should be used.

## **3. Physical accessibility**

75. Sanitation facilities must be physically accessible for everyone within, or in the immediate vicinity of, each household, health or educational institution, public institutions and places, and the workplace. Physical accessibility must be reliable, including access at all times of day and night. The location of sanitation facilities must ensure minimal risks to the physical security of users. This has particular implications for the path leading to the facility, which should be safe and convenient for all users, including older people and persons with disabilities and it must be maintained in this state. Moreover, sanitation facilities should be constructed in a way that minimizes the risk of attack from animals or people, particularly for women and children.

76. Sanitation facilities should be designed in a way that enables all users to physically access them, including, especially, those with special access needs, such as children, persons with disabilities, elderly persons, pregnant women, parents accompanying children, chronically ill people and those accompanying them. Considering the needs of these groups would have implications for the entrance size, the interior space, hand rails or other support mechanisms, the position of defecation, as well as other aspects.

## **4. Affordability**

77. Access to sanitation facilities and services, including construction, emptying and maintenance of facilities, as well as treatment and disposal of faecal matter, must be available at a price that is affordable for all people without limiting their capacity to acquire other basic goods and services, including water, food, housing, health and education guaranteed by other human rights. Water disconnections resulting from an inability to pay also impact on waterborne sanitation, and this must be taken into consideration before disconnecting the water supply.



78. Various systems and structures can be put in place to ensure affordability, including income support measures, and measures that aim to reduce the cost of sanitation services. One option might be subsidy schemes to ensure affordability. Governments could also consider setting targets which represent a percentage of the household income. Experience suggests that in-kind contributions (such as labour) are also effective in sanitation projects. Technology choice can also have an impact on affordability (as well as sustainability). Human rights do not dictate which policy is best, but insist on a context-specific consideration of the situation.

79. Concerning the cost of sanitation, there may be differences depending on the area. For example, in urban areas, a connection to the sewerage system will almost always be the cheapest and most convenient option for the user. However, as with water connections, the price of a connection to the sewerage system will often be prohibitive for users living in poverty, and governments should develop policies to address this. In remote areas, where sewerage is normally not available, on-site sanitation is likely to be the preferable option. This may require subsidies for construction, emptying of receptacles for the collection of human waste, and associated maintenance. Assistance should also be provided to families who are unable to afford soap and cleaning products, or sanitary products for women.

### 5. Acceptability

80. Sanitation facilities and services must be culturally acceptable. Personal sanitation is still a highly sensitive issue across regions and cultures and differing perspectives about which sanitation solutions are acceptable must be taken into account regarding design, positioning and conditions for use of sanitation facilities. In many cultures, to be acceptable, construction of toilets will need to ensure privacy. In most cultures, acceptability will require separate facilities for women and men in public places, and for girls and boys in schools. Women's toilets need to accommodate menstruation needs. Facilities will need to allow for culturally acceptable hygiene practices, such as hand washing and anal and genital cleansing.

## VII. CONCLUSIONS AND RECOMMENDATIONS

81. **International human rights law entails clear human rights obligations related to access to sanitation. The inextricable links between sanitation and so many human rights mean that international human rights law requires States to ensure access to sanitation that is safe, hygienic, secure, affordable, socially and culturally acceptable, provides privacy and ensures dignity in a non-discriminatory manner. However, only looking at sanitation through the lens of other human rights does not do justice to its special nature, and its importance for living a dignified life. In this regard, although the discussion about recognition of a distinct right to sanitation is ongoing, the independent expert supports the current trend of recognizing sanitation as a distinct right. In line with these conclusions, the independent expert offers the following recommendations:**

(a) **Legal recognition and respect:**

- **States are encouraged to support legal and political developments at all levels towards broader recognition of sanitation as a distinct human right**

- **States must abide by their human rights obligations related to sanitation at all times, including in emergency situations, in disaster response and during conflict**
- (b) **Information gathering:**
- **States should collect current, accurate and detailed information about sanitation coverage in the country and the characteristics of unserved and underserved households. Disaggregated data is necessary to determine which groups are particularly disadvantaged. This information should be made public and inform the design of policies for the sector and the allocation of budgets.**
- (c) **Plans, policies and responsibilities:**
- **States must adopt a national action plan on sanitation, endorsed at the highest levels, which duly reflects the State's human rights obligations related to sanitation, ensuring participation of all concerned individuals, communities and groups. States should promote the participation of national human rights institutions and sanitation experts in these endeavours**
  - **States should assign clear institutional responsibilities for sanitation at all levels and avoid fragmentation. Where responsibilities are assigned to different ministries, departments or institutions, all efforts should be made to ensure adequate coordination**
  - **States should adopt appropriate policies to expand access to unserved and underserved areas, taking an integrated approach that addresses the underlying structural reasons for discrimination in access to sanitation**
  - **States should include sanitation in their national poverty-reduction strategies and development plans**
- (d) **National budgets:**
- **The vital importance of sanitation should be reflected in national and subnational budgets, as well as in budgets for international assistance and cooperation**
- (e) **International assistance and cooperation:**
- **Development agencies should prioritize interventions in the sanitation sector and put the human rights obligations related to sanitation at the core of their projects. They should apply a human rights-based approach to sanitation, meaning that every intervention in the sanitation sector should comply with the human rights principles of non-discrimination, participation, and accountability, and should be aimed at the fulfilment of the relevant human**

**rights obligations related to sanitation. They should also empower local authorities and communities to comply with human rights obligations related to sanitation.**

**(f) International organizations:**

- **United Nations agencies, funds and programmes as well as international financial institutions should prioritize interventions on sanitation and put the human rights obligations related to sanitation at the centre of their projects**
- **At the national level, United Nations country teams should support governments in the preparation of national sanitation action plans, the revision of legislation, and other activities aimed at the fulfilment of their human rights obligations related to sanitation**

**(g) Private sector:**

- **The private sector, including members of the CEO Water Mandate of the United Nations Global Compact, should respect and support the realization of human rights related to sanitation**

**(h) Non-discrimination and gender equality:**

- **Legislation, policies, plans and programmes should aim to eliminate inequalities based on wealth, sex and location as well as other grounds. Measures to enhance access to sanitation must give particular attention to disadvantaged groups and individuals, such as the poor, as well as those living in remote areas and urban informal settlements, irrespective of their tenure status. Targeted measures should be taken to ensure affordability of sanitation services.**
- **States and non-State actors should adopt a gender-sensitive approach to all relevant policymaking given the special sanitation needs of women and the key role they often play in managing sanitation and hygiene in communities.**
- **States are encouraged to recognize the crucial role of sanitation workers and to take measures to raise the profile of their work and ensure their occupational health, safety and dignity.**

**(i) Awareness-raising and community mobilization:**

- **Large-scale public awareness campaigns should be organized both at the national as well as at the international level, aimed at promoting behavioural change regarding sanitation and to provide information, in particular on hygiene promotion. The independent expert believes that it is high time for vigorous and sustained efforts to tackle the persisting taboos around sanitation and personal hygiene**

- **States and other relevant actors should provide funding to support community mobilization and organization for actions towards the realization of the human rights obligations related to sanitation**

**(j) Monitoring and accountability:**

- **States and other relevant actors should monitor changes over time to gauge the effectiveness of interventions and the impact of policy reforms and investments at the national and subnational levels**
- **States should establish effective, transparent and accessible monitoring and accountability mechanisms, with power to monitor and hold accountable all relevant public and private actors**
- **States should include information on the fulfilment of their human rights obligations related to sanitation in their national reports to relevant treaty monitoring bodies**
- **Relevant treaty monitoring bodies and special procedures should address the human rights obligations related to sanitation where relevant in their activities**

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