

The Right to Sanitation in International Law

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Abstract

More than two billion of people in the world are living without access to an adequate sanitation services necessary for reducing an exposure sanitation-related diseases. Failure of international aid to satisfy this basic human need has led to a substantial human suffering. This piece argues that access to a basic sanitation service is a fundamental right that is explicitly and implicitly supported by the international law, declarations and state practices. Despite the implicit and the explicit recognition of the right to water and sanitation, its implementation still falls slightly short of it. All stakeholders should work towards providing all humans with a basic sanitation requirement and by guaranteeing the right to sanitation. Recognizing the right to sanitation and expressing the willingness to meet this right to those that are deprived of these facilities, will be a useful tool in addressing one of the fundamental failures of recent years.

Keywords: Human Rights, International Law, National Constitution

1. Introduction

In order to survive, every human being needs to be void of urine and faeces and to survive every human being needs to live in conditions where disease-causing elements are kept below a level where the immune system defence can fight off infection and illness¹. The universality of this human need, its importance to everyday survival is of no controversy, but what must be done to meet this need on a daily basis, is a subject of international debate. A new approach has been developing in the human rights arena in recent years, through the introduction of the human right to water and sanitation², and the United Nations Human Rights Council (UNHRC)

¹ Ellis Keris and Loretta Feris (2014). The right to sanitation: Time to delink from the right to water. *Human Rights Quarterly*. Vol. P. 23

² The United Nations General Assembly in July 2010 recognized the right to safe and clean drinking water and sanitation and declared it as a human right that is essential for the full enjoyment of life and all human rights. UN. Doc. A/64/L.63/Rev.1.

adopted a resolution on the right to water and sanitation that same year³. The Human Rights Commission appointed the Special Rapporteur to ensure member States implementation of the right to water and sanitation international scene⁴. The increasing recognition of sanitation as a human right creates an opportune moment to examine how to best conceptualize this emerging right in order to facilitate the normative development and effective implementation.

By articulating sanitation in human rights terms, health practitioners, and human rights activists, hope that there would be a paradigm shift of sanitation from one that is charity to one of justice⁵. By framing sanitation as a legal entitlement, the place of public policy and practice could be significantly shifted while the inclusion of a sanitation target in the Millennium Development Goals (MDGs) in 2002 represented an important global political commitment, there have been a consistent call to strengthen and reframe that pledge through prioritizing human rights⁶. This is in particular, sanitation target that has been slow in progress in terms of the official target of halving the lack of access to sanitation⁷, but the distribution of the progress with little movement in the indicators for marginalized and low income groups⁸.

Sanitation is also a basic need and a way to ensure a healthy population. Even though having access to an improved sanitation is a basic need, 611 million people in the urban and 2 billion people living in the rural areas did not have access to an improved sanitation by the year 2004⁹. Lack of a proper a sanitation poses a serious health risk and a problem to human dignity. Thus, many people around the world and Africa are forced to open defecation, due to the lack of an improved sanitation services¹⁰. In the absence of water, sanitation is a threat to people's health, dignity and security. Despite the progress made in providing an improved sanitation

³ United Nations Human Rights Commission (UNHRC) (30th September 2010). *Human right to access safe drinking water and sanitation*. UN. Doc. A/HRC/Res/15/9.

⁴ Catarina de Albuquerque (2015). *On the right track: Good practices in realizing the right to water and sanitation., statement at the 1st consultation on post. 2015. Monitoring of drinking water and sanitation*. Berlin. P. 223.

⁵ Centre of Housing Rights and Eviction (COHRE), UN-Habitat, WaterAid and Swiss Development Cooperation (SDC) (2008). *Sanitation: A Human Right imperative*. Geneva. COHRE. P. 5.

⁶ Malcolm Langford (2010). 'A poverty of rights: Six ways to fix the Millennium Development Goals'. *IDS Bulletin*. No. 1. Vol. 41. P. 83-91. See also the United Nations Office of the High Commissioner for Human Rights (OHCHR) (2008). *Claiming the Millennium Development Goals(MDG)*. Geneva. OHCHR.

⁷ The Millennium Development Goals (MDGs) was held in 2010, and it was intended to create a global partnership. This partnership was aimed at reducing by halve of the number of people without sustainable access to safe drinking water and basic sanitation by 2015.

⁸ united Nations Children Fund *progress for children: Achieving the Millennium Development Goals (MDGs) with Equity*. Report No. 9. New York.

⁹ World Health Organization (WHO) and UNICEF, Joint Monitoring Programme (2006). *Meeting the Millennium Development Goals (MDGs) water and sanitation targets: The urban and the rural challenge of the decade*. Available at: <https://apps.who.int/iris/handle/10665/43488>. (Accessed 13th January 2023)

¹⁰ World Health Organization and UNICEF (2021). *Progress on household drinking water and sanitation and hygiene 2000-2020*. Geneva. World Health Organisation. P. 164.

globally and notably an increase in the number of people who have a sanitation services, over 2.3 billion people in the world lack access to adequate sanitation and 892 million still practice open defecation¹¹. Limited access to sanitation services is frequent in Africa and in the world at large, and this has a direct consequence on human health. While access to sanitation services is an urgent concern for many groups of women and girls, lack of infrastructures are also limited in addressing the lack of sanitation. Although the right to sanitation has received less attention before now, its existence is now widely recognized and has solid basis in international legal documents¹². It is importance to examine the legal basis of the right to sanitation and the recognition of this right but in the regional and national laws¹³.

2. The Legal Status of the Right to Sanitation in International Law

The United Nations Resolutions that is, the General Assembly and the Human Rights Council brought a breakthrough for the recognition of the right to sanitation. In legal terms, these resolutions do not create international human rights law by themselves, but they must be seen in the context of existing human rights obligations to determine the legal status of the right to sanitation. Is the right to sanitation part of the international human right law? and is it legally binding? Alston argues that the challenge is to achieve an appropriate balance between, on the one hand, the need to maintain the integrity and the credibility of human rights tradition and on the other hand, the need to adopt a dynamic approach that fully reflect the challenging needs, perspectives and respond to the emergence of new threats to human dignity and wellbeing¹⁴. The General Assembly provides that international instruments in the field or domain of human rights should *inter alia* be of fundamental character and that is derived from the inherent dignity of the human person and to be sufficiently precise in order to give rise to practicable rights and obligation¹⁵. Sanitation is essential for human life dignity and wellbeing and there has been an increasing recognition of this right in the international community. International instruments have explicitly enshrined the right to sanitation, while other provisions must be interpreted to include sanitation implicitly.

¹¹ World Health Organization/UNICEF (2017a). *progress on drinking water, sanitation and hygiene*. 2017 Update and Sustainable Development Goals Baselines. Geneva. Available at: <http://www.washdata.org>. (Accessed 10th February 2022)

¹² United Nations General Assembly (2010). *Resolution on the human right to water and sanitation*. Geneva. UN Doc A/RES/64/292, UNHRC (2010). *Resolution on the human right to water and sanitation*. Geneva. UN Doc A/HRC/RES/15/9.

¹³ For example, see the 2010 Kenyan Constitution. Article 43 (1) (b), Section 73 (1) (a) of the constitution of Zimbabwe.

¹⁴ Philip Alston (1987). 'Conjuring up new human rights: A proposal for quality control'. *American Journal of International Law*. vol. 78. P. 607-609.

¹⁵ United Nations General Assembly Resolution 41/120. *Setting international standards in the field of human rights*. Para. 4(b-c). UN. Doc. A/RES/41/120. (4 December 1986).

2.1. The Explicit Provisions for the Right to Sanitation

Human rights treaties refer to sanitation such as Article 14(2)(h) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Sanitation is explicitly mentioned in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) with water supply as an elements of the right of rural women to the equal enjoyment of adequate living conditions¹⁶. The aim of the Convention on the Elimination of All Forms of Discrimination against Women is to eliminate discrimination in the enjoyment of human rights, and the treaty tailors existing human rights to the specific challenges faced by women particularly rural women. It emphasizes that states should take measures in order to prevent and eliminate discrimination. Including sanitation in the right to an adequate standards of living demonstrates that sanitation is seen as a fundamental human right that is guaranteed to all individuals¹⁷.

The Convention of the Right of the Child (CRC) provides a more expansive view. In implementing the right to health, States are required in Article 24(2) of this convention to take appropriate measures or steps to: (c) to combat diseases and malnutrition, including within the framework of primary health care, through *inter alia*, the application of readily available technology and through the provision of adequate nutritious food and clean drinking water, taking into consideration the dangers of risk of environmental pollution ... (e) to ensure that all segments of the society in particular, parents and children, are informed, having access to education and are supported in the use of basic knowledge of the child's health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents¹⁸.

In terms of regional human rights instruments, the Protocol of San Salvador can be interpreted to include sanitation through its guarantee of the right to have access to basic public services¹⁹. Also, the Arab Charter on human rights details the right to the highest attainable standards of health by including the provisions of proper sanitation systems²⁰. Similarly, the African Charter on the Right and Welfare of the Child refers to environmental sanitation in the context of children's right to health²¹. It requires states parties 'To ensure that all sectors of the society ... are informed and supported in the use of ... hygiene and environmental sanitation'.

¹⁶ Convention on the Elimination of all Forms of Discrimination Against Women, Article 14(2).

¹⁷ Winkler T. Igna (2016). The human right to sanitation. *Journal of International Law*. No. 4. Vol. 37. P. 60-61.

¹⁸ Malcolm Langford, Jamie Bartram and Virginia Roaf Revisiting dignity: The human right to sanitation. P. 6-7.

¹⁹ See the Protocol of San Salvador Article 11

²⁰ See Article 39(2)(f) of the Arabic Charter of Human Rights.

²¹ article 14(2)(h) of the African Charter of the Rights and Welfare of the Child.

2.2. Implicit references of the right to sanitation

While the International Covenant on Economic, Social and Cultural Rights (ICESCR) does not mention sanitation explicitly, it is highly relevant for the right to an adequate standard of living, as established in Article 11, as well as for the right to health found in Article 12. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees the right to an adequate standards of living. It consists of several components and refers to the right to food, clothing and the right to housing. By using the word including, it means the non-exhaustive components of the right. while food, clothing and housing are very necessary for achieving an adequate standards of living, they are not sufficient by themselves. Article 11 of this Covenant and other provisions on the right to an adequate standards of living is open to the further identification of implicit components. For example the right to water is implicitly provided for in this Covenant²².

It is impossible to realize the adequate standard of living without sanitation, since ill-health, sanitation, poverty and insecurity are interrelated. Sanitation is a critical component of an adequate standards of living as food, clothing and housing and water²³. For example, open defecation is a risk to health due to the lack of hygiene. The Committee on Economic, Social and Cultural Rights (CESCR) list sanitation besides other elements of an adequate standards of living in it General Comment (GC) No. 19 on the right to social security²⁴. The Committee on Economic Social and Cultural Rights (CESCR) in it General Comments No. 15 finds that the right to health and the right to an adequate housing implies that, states have the obligation or responsibility to progressively extend safe sanitation services, especially in rural areas and deprived urban areas²⁵. The Committee further emphasizes that access to adequate sanitation is fundamental for human dignity and privacy, as well as a mechanism for protecting the quality of water resources²⁶. This right to was also included in the United Nations Sub-Commission Guidelines 2005²⁷.

²² Committee on Economic, Social and Cultural Rights (CESCR) (2003). General Comment No. 15. *The right to Water* Para. 29

²³ Catarina de Albuquerque (2010). *The human right to Sanitation-Essential for survival, health and a life in dignity*. 9(3). Human Rights Defenders. 3 and 4. It examine the extent of sanitation crisis and its significant implications for billions of people in the world.

²⁴ Committee on Economic, Social and Cultural Rights (CESCR) (2008). General Comment No. 19. *The right to social security*. Article 9 of the Covenant. Para. 18. UN. Doc. E/C.12/GC/1.

²⁵ Committee on Economic, Social and Cultural Rights, General Comment 15. Para. 29

²⁶ Ibid. See note 340 above

²⁷ United Nations Sub-Commission Guidelines (2005). Article 1.2 states that “Everyone has the right to have an access to an adequate and safe sanitation that is conducive to the protection of public health and the environment”.

The Special Rapporteur on the right to safe drinking water and sanitation states in her report that States must ensure without discrimination that everyone has physical and economic access to basic sanitation, in all spheres of life, which is safe, hygienic, secured, socially and culturally acceptable, provides privacy and dignity²⁸. Sanitation does not only concern one's own right to use a latrine, but also the rights of other people to access them, in particular the right to health, which can be negatively impacted if excreta and wastewater are not properly managed²⁹. Lack of sanitation facilities is a widespread phenomenon, that is experienced by the poor urban women as well as in the rural areas. Having established the scope of the right to sanitation in international law, we shall proceed to look at the right to sanitation in the national laws.

2.3. The Right to Sanitation in National Laws

The right to sanitation have been enshrined in many constitutions of the world. This is particularly true for developing countries with their recognition of the right sanitation. An example is Kenya in its 2010 Constitution³⁰, which explicitly include the right to clean and safe water in adequate quantities and the right to a reasonable standard of sanitation. The 1996 Constitution of the Republic of South Africa also provides for that “everyone has the right to have access to (...) sufficient (...) water”³¹. In one of its leading cases on social and economic rights, the South African Constitutional Court in the case of *Mazibuko and others v the City of Johannesburg and Others*³². The applicants had alleged for the violation of the right to have access to sufficient water under section 27 of the South African constitution. In 2009³³, the Bolivian constitution provides for everyone's right to a universal access to basic water and sanitation. It provides that the provision of water and sanitation services must meet the criteria of universality, accountability, continuity, quality, efficiency, effectiveness, fair and necessary coverage rate with participation and social control³⁴. The Uruguayan constitution provides that

²⁸ United Nations Human Rights Council (2013). *The human right to safe drinking water and sanitation*. UN. Doc. A/HRC/Res/24/18.

²⁹ Anna Zimmer, Igna. T. Winkler and Catarina. de Albuquerque (2014). Governing wastewater, curbing pollution, and improving water quality for the realisation of human rights. *Waterlines*. No. 33. Vol. 4. P. 340. (it provides further information on the consequences of inadequate treatment and management of faeces and wastewater as a source of contamination and responses from the human rights perspective).

³⁰ Article 43(1)(b) and (d) of the 2010 Kenyan constitution

³¹ article 27(1)(b) of the 1999 South African constitution.

³² *Mazibuko and Others V City of Johannesburg and Others* (2010). 4 SA.1 (CC)

³³ Article 20(1) of the 2009 Bolivian constitution.

³⁴ Article 20(1) of the 2009 Bolivian constitution.

access to drinking water and sanitation is a human right³⁵. Different formulations of the right to sanitation are recognized in a significant number of constitutions across the world³⁶.

When it comes to the implementation of the right to water and sanitation, South Africa is one of the pioneers³⁷. With article 27(1), it has established a comprehensive legal framework for the implementation of the right to water and sanitation. This comprises the 1997 Water Service Act³⁸, and the National Water Act of 1998³⁹. While the National Water Act governs and integrate water resource management, the Water Service Act was drafted to regulate the provisions of water services throughout the country and its first objective is to give an effect to the constitutional guarantee and to ensure that everybody has access to basic water supply and sanitation services⁴⁰. In 2002, South Africa adopted the Free Basic Water Implementation Strategy devising a free minimum amount of 6.000liters safe water per household per month⁴¹. Likewise, it also adopted a Free Basic Sanitation Implementation Strategy in 2009, with the aim of guiding water service authorities in providing all citizens with free basic sanitation⁴².

3. Soft Law Instruments Recognizing the Right to Sanitation

The recognition of the right sanitation has been open in international declarations and resolutions in the context of the United Nations. Soft law instruments are statements policy that do not possess formal legal enforceability. This follows the doctrine of international law, endorse by the International Court of Justice (ICJ) in the celebrated Lotus case⁴³, States cannot be bound without their consent. Soft law instruments such as resolutions and declarations are not subject to signing and ratifications, as such, do not create a binding effects. It is important to note that soft law instruments can create latter binding instruments and further the definition of policy and principle in a given area⁴⁴. It is important to note that soft law such as the General

³⁵ Article 47 of the constitution of the Republic of Uruguay 2004.

³⁶ Article 48 of the Constitution of the Democratic Republic of Congo 2006, the 1994 constitution of Ethiopia, 1992 constitution of Malawi, 2005 constitution of Mozambique, 1999 constitution of Nigeria.

³⁷ Tracy Humby and Maryse Grandbois (2011). "The human right to water in South African and the Mazibuko Decision". *Journal Les Cahiers de Droit*. No. 3-4. Vol. 51. P. 540.

³⁸ The South African Water Service Act (1997). Act No. 108. Government Gazette. No. 18522. Vol. 390.

³⁹ South African National Water Act (1998). Act. No. 37. Government Gazette No. 19182. Vol. 398.

⁴⁰ Khalfan and Kiefer Torsten (2008). *The human right to water and sanitation, legal basis, practical, rationale and definition*. Centre for Housing Rights and Evictions (COHRE). Geneva. No. 1. Vol. 1. Available at: <http://www.cohre.org>. (Accessed 20th February 2023)

⁴¹ The Department of Water Affairs and Forestry. Free Basic Water Implementation Strategy. Version 2 of August 2002.

⁴² The Department of Water Affairs and Forestry. Free Basic Sanitation Implementation Strategy. Final version 1 of October 2008.

⁴³ SS Lotus (France v Turkey) (1927). Permanent Court of International Justice (Series A). No. 10. The court stipulates that: "the rule of law binding upon States therefore, emanate from their own free will".

⁴⁴ Salman, Salman M. A, and McInerney-Langford, Siobhan (2004). "The human right to water: Legal and policy dimension. *Law, Justice and Development*".

Comments of the United Nations treaty bodies are elaborations of States Parties obligations as provided for under the binding treaties. Some measure soft law instruments will be discussed below ranging from resolutions and declaration of the United Nations (UN) bodies, Non-Governmental Organization (NGOs) at the international and regional levels. These instruments and treaties though not legally binding, are a reflection of the fact that the right to potable water and sanitation has generated at the international level.

3.1. United Nations Bodies Resolutions on the Right to Sanitation

Since the 1980s, the United Nations has been very active in proclaiming International Decades and international years related to freshwater and sanitation⁴⁵. The 2010 United Nations General Assembly (UNGA) Resolution⁴⁶, on the right to water and sanitation. This was the first time the General Assembly held an entire debate on the issue of human right to water and sanitation, and the outcome was declaring access to clean water and sanitation as a human right, that is essential for the enjoyment of life and all human rights by the General Assembly in July 2010⁴⁷. In the resolution, equitable access to water and sanitation services is acknowledged as an integral component of the realization of all Human Rights. The United States of America (USA) called for a vote and 122 voted for and 41 States abstained from the vote and 29 States were absent⁴⁸. This trend shows the growing concern about access to safe drinking water and sanitation⁴⁹.

In addition, the Water Supply and Sanitation Collaborative Council (WSSCC) was formally created in 1990 through a United Nations General Assembly (UNGA) Resolution in order to complete the unfinished work that was left at the International Drinking Water Supply and Sanitation Decade (1981-1990)⁵⁰. Its mandate was to accelerate progress towards safe water, sanitation and hygiene for all. As the Water Supply and Sanitation Collaborative Council has explained that, poverty cannot be eradicated without ensuring the right to water and its own

Available at: <https://openknowledge.worldbank.org/handle/10986/14893>. (Accessed 24th February 2023)

⁴⁵ Ibid. See note 247 above

⁴⁶ The United Nations General Assembly (UNGA) (2010). *The Human Right to Water and Sanitation*. UN Doc. A/RES/64/292.

⁴⁷ United Nations General Assembly Resolution 64/292. 2010.

⁴⁸ United Nations Press Release General Assembly. 10967. 28th July 2010. Also see Sharmila L, Murthy (2013). "Human rights to water and sanitation: history, meaning and the controversy over privatisation". *Berkeley Journal of International Law*. No. 31. Vol. 1. P. 89.

Available at: www.un.org/News/Press/docs/2010/ga10967.doc.htm (Accessed 7th March 2023)

⁴⁹ In November 1980, the United Nations proclaimed the period 1981-1990 as the International Drinking Water Supply and Sanitation Decade. General Assembly Res35/18.

⁵⁰ The water supply and Sanitation Collaborative Council's members meet every two to three years. Members use this meeting to discuss important sector priorities, coordinate activities, and set the Collaborative Council's operating agenda and goals. For a has been held in Oslo, Norway in 1991, Rabat, Morocco in 1993, Bridgetown, Barbados in 1995, Dakar, Senegal in 2004.

management⁵¹. The fact that some States abstained from voting did not necessarily mean that they did not recognize the right to water and sanitation. Many states were absent for procedural reasons, arguing that the resolution was tabled at a relatively short time of deliberation living insufficient time for considering its implications, and discussion on the issue was still ongoing at the Human Rights Council (HRC), and they did not want to pre-judge the findings of that process⁵².

In the Human Rights Council as seen with the original title of the mandate on water and sanitation, the resolutions use the language human right obligations relating to access to water and sanitation⁵³. This changed in 2010. After the recognition of the right to water and sanitation by the General Assembly, Spain and Germany followed up with an introduction of a resolution in the Human Rights Council. The resolution recalls the General Assembly Resolution⁵⁴, and reaffirm that the right to safe drinking water and sanitation is derived from the right to an adequate standard of living and it is inextricably related to the right to the highest attainable standards of physical and mental health as well as the right to life and human dignity⁵⁵.

The recognition of the right to water and sanitation was confirmed by the human rights council (HRC) on the issue of the human right to safe drinking water and sanitation⁵⁶. The United Nations General Assembly (UNGA) declared the year 2008 as the International Year of Sanitation⁵⁷, which is now celebrated each year. It is against this backdrop that the United Nations General Assembly for the first time in 2010 expressly declared the right to water and sanitation as a human right⁵⁸. In 2013, the United Nations General Assembly adopted another

⁵¹ Ibid. See note 247 above.

⁵² Explanation of votes contain in United Nations General Assembly. UN Doc. A/64/PV.108. See also Benjamin Mason Meier et al (2013). "Implementing and evolving human rights through water and sanitation policy". *Water Policy*. No. 15. Vol. 1. P. 116.

⁵³ United Nations Human Rights Council (2008). *Human rights and access to safe drinking water and sanitation*. Para. 2(b). Human Rights Council Resolution. 7/11, UNHRC (2011). *The human right to safe drinking water and sanitation*. Para. 4. UN Doc. A/HCR/RES/16/2, UNHRC (2013). *The human right to safe drinking water and sanitation*. Para. 16. UN Doc. A/HRC/RES/24/18.

⁵⁴ United Nations Human Rights Council (2010). *The human right to safe drinking water and sanitation*. Para. 2. UN Doc. A/HRC/RES/15/9.

⁵⁵ United Nations Human Rights Council (2010). *The human right to safe drinking water and sanitation*. Para. 3. UN Doc. A/HRC/RES/15/9.

⁵⁶ United Nations Human Rights Council (2012). *Human rights water and sanitation*. Human Rights Council (HRC) Resolution. 21/2, UNHRC (2011). *The human right to safe drinking water and sanitation*. United Nations Doc. A/HCR/RES/18/1, UNHRC (2014). *The human right to safe drinking water and sanitation*. UN Doc. A/HRC/RES/27/7.

⁵⁷ A/Res/61/192 of 20th December 2006.

⁵⁸ United Nations General Assembly (2010). Resolution A/Res/64/292.

resolution reaffirming the recognition of the human right to safe water and sanitation⁵⁹. There was a breakthrough for the right to sanitation in 2015, while the resolutions adopted before recognized the right to sanitation, it must be agreed that they always referred to safe drinking water and sanitation as a combined human right. Germany and Spain in 2015 introduced another resolution recognising the right to water and sanitation as two distinct rights⁶⁰.

3.2. International Conferences

The 1972 United Nations Conference on Human Environment identified water as one of the fundamental natural resources that needed to be safeguarded⁶¹, and elaborated a series of principles to inspire the people of the world in the preservation and enhancement of the human environment. The Stockholm Declaration did not directly recognize the human right to water and sanitation, but laid out the foundation for environmental rights, particularly the right to a healthy environment in water, air and soil⁶². Principle two of the Stockholm Declaration is of particular significance for the discussion of the right to water and sanitation. This provision provided that the earth's natural resources, including water, must be safeguarded for the benefit of present and future generations through careful planning and management⁶³.

The United Nations Water Conference 1997 in Mar del Plata, Argentina, recognized for the first time, the right to have access to safe drinking water and sanitation to meet basic human needs. It provides that 'All peoples, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantities and of a good quality equal to the satisfaction of their needs'⁶⁴. The Water Conference was devoted to discuss the emerging water resources problems⁶⁵, and it subsequently issued the Mar del Plata Action Plan, which sought to tackle the water challenges. The outcome of the conference was to proclaim through the United Nations General Assembly resolutions adopted in 1989, the period 1981-1990 as the International Drinking Water Supply and Sanitation Decade⁶⁶. According to

⁵⁹ United Nations General Assembly (2014). *Human rights and access to safe drinking water and sanitation*. Para. 1. UN Doc. A/RES/68/157, See United Nations General Assembly (UNGA) (2013). 68th Session. 70th plenary meeting. At 17/30. UN Doc. A/68/PV.70

⁶⁰ United Nations General Assembly (2015). *The human rights to safe drinking water and sanitation*. Para. 1. UN Doc. A/HRC/RES/70/169.

⁶¹ United Nations Conference on Human Environment Declaration. UN Doc. A/Conf/48/8. 1972.

⁶² Ibid. See note 284 above.

⁶³ United Nations (UN) Conference on Human Environment Declaration: Stockholm Declaration. UN Doc. A/Conf/48/8. 1972.

⁶⁴ United Nations Mar del Plata Water Conference Report (1997). UN Doc. No. E/Conf.70.29.

⁶⁵ See the United Nations Mar del Plata Water Conference Report (1997). UN Doc. No. E/Conf.70.29.

⁶⁶ The period 1981-1990 was declared as the International Drinking Water Supply and Sanitation Decade by the UN, during which member States assume a commitment to bring about a substantial improvement in the standards and levels of service of drinking water and sanitation by the year 1990. The UNGA followed up on the matter and issued resolution 40/171. See UN Doc. A/RES/40/171. 1985.

some authors or scholars the problem of water fell away during the 1980s⁶⁷. Nonetheless, the topic reappeared with determination in the international Agenda in the 1990s. At the Rio+20 Conference in 2012, States reaffirm their commitments regarding the human right to safe drinking water and sanitation⁶⁸.

The right to water was further recognized at the International Conference on Water and Environment held in Dublin 1992. The main aim or focus was on water as an 'economic good'. The focus of this conference was based on the following four values: (1) Freshwater is a finite and vulnerable resource, essential for sustaining life, in development and the environment. Since water sustains life, the effective management of water resource demands a holistic approach, linking economic, social development with the protection of natural ecosystem. (2) Water development and management should be based on a participatory approach, involving users, planners and policy makers at all levels. the participatory approach involves raising awareness of the importance of water among policy makers and the general public. It means that decisions are taken at the lowest appropriate level, with the full consultation and involvement of users in the planning and implementation of water projects. (3) Women play an important role in the provision, management and the safety of water. the pivotal role of women as providers and users of water of the living environment has seldom been reflected in institutional arrangement for development and management of water resources. The acceptance and the implementation of this principle requires positive policies to address women's specific needs and to equip, and empower women to participate at all levels in water resource programs, including decision making and implementation in ways that are define by them, and (4) Water has an economic value in all its competing uses and should be recognized as an economic good. Within this principle, it is important to recognize the basic right of all human being to have access to clean and sanitation at an affordable price

In 1992, at the United Nations Conference on Environment and Development held in Rio de Janeiro, Brazil, also called the Dublin Principles. States agreed on Paragraph 18.42 of

⁶⁷ Asit K. Biwas (2004). From Mal del Plata to Kyoto: An analysis of global water policy dialogue. *Global Environmental Change*. No. 14. Vol. 3. P. 88. During the 90s, the United Nations System decided to convene similar Conferences on issues that it considered to be important: Environment (Rio de Janeiro 1992), Food security (Rome, 1996: World Food Summit Plan of Action), Population (Cairo 1994), women (Beijing 1995), and the Human Settlements (Istanbul 1996). In 1992, the United Nations Conference on Environment and Development called on the United Nations General Assembly to establish an intergovernmental Negotiation Committee to prepare a convention on desertification with the United Nations Convention to combat desertification in those countries experiencing serious Drought particularly, in Africa (UNCCD). The International community recognized that desertification is a major economic, social and environmental problem to many countries of the world. This Convention frequently known as one of Rio Conventions alongside the United Nations Framework Convention on Climate Change (UNFCCC, 1992), and the Convention on Biological Diversity (CBD, 1992) was adopted in 1994 in Paris (France) and entered into force in 1996.

⁶⁸ United Nations General Assembly (2012). UN Doc. A/RES/66/288. Para. 121.

Agenda 21, which reiterated the principle affirmed at the Mal del Plata Conference: all people, whatever their stage of development and their social and economic condition, have the right to have access to drinking water in quantities and of good qualities equal to their basic needs⁶⁹. Principle four also recognised the basic rights of all human beings to have access to water and sanitation at an affordable price. On the “Programme of Action for Sustainable Development”, included a separate chapter. Chapter eight on freshwater resources⁷⁰, Agenda 21 proclaimed that: “the overall objective laid down for freshwater resources is to the satisfaction of freshwater needs of all countries for sustainable development”. It further states that: “Water resource have to be protected (...) in order to satisfy and reconcile the needs for water in human activities, in developing and using water resource, priority has to be given to the satisfaction of basic human needs”⁷¹.

4. The Definition of the right to Sanitation

World Health Organization (WHO) considers sanitation as the provision of facilities and services, for the safe disposal of human urine and faeces and the maintenance of hygienic conditions through services such as garbage collection and wastewater disposal⁷². On the other hand, the Joint Monitoring Programme (JMP) defines improved sanitation as a facility which hygienically separate human excreta from human, animal and insects contact⁷³. The Special Rapporteur in her report offers a definition of sanitation in human rights terms as ‘A for the transportation, collection, treatment and disposal or reuse of human excreta and associated hygiene’⁷⁴. The definition has been endorsed by the Human Rights Council, and the Committee on Economic, Social and Cultural Rights (CESCR) in its statement on the right to sanitation⁷⁵. according to this definition, adequate sanitation is more than just access to and use of toilets or latrines. It requires the treatment and safe disposal of urine and faeces and associated wastewater in a way that would avoid direct contact with human so as to minimise health risks.

⁶⁹ Ibid. See note 287.

⁷⁰ The United Nations Conference on Environment and Development. (1992). Agenda 21 of the Rio Summit on programme on Action for Sustainable Development. Rio Summit Report. UN Doc. A/Conf.151/26/Rev.1. 1992. Para. 3.8(p).

⁷¹ Salman, Salman M. A, and McInerney-Langford, Siobhan (2004). “The human right to water: Legal and policy dimension. *Law, Justice and Development*”. available at: <https://openknowledge.worldbank.org/handle/10986/14893>. (Accessed 24th February 2023).

⁷² See <http://www.who.int/topics/sanitation/en/sanitation>. (Accessed 14th January 2023).

⁷³ World Health Organization, UNICEF Joint Monitoring Programme for water supply and sanitation (2015). *Monitoring of water, sanitation and hygiene Post 2014 Draft*. JMP Green Paper.

⁷⁴ United Nations Human Rights Council Report on Sanitation. UN. Doc. A/HRC/12/24. Para. 63.

⁷⁵ Ibid. note 17.

Sanitation does not only concern ones right to use a toilet or latrine but, also the right of others particularly the right to health.

4.1. The content of the Right to Sanitation

As for sanitation, the General Comment No. 15 and the Sub-Commission Guidelines do not give it a definition but, the description of the relevant entitlements and States obligations implies that sanitation comprises of at least a toilet, with associated services such as latrine exhaustion. The conducive criterions for the protection of the environment and public health in the Sub- Commission Guidelines indicates that wastewater drainage channels are required where pipe water is available in urban areas⁷⁶. The normative content of the right to sanitation can be specified through a number of criteria, that have been used by human rights bodies to define the content of human rights⁷⁷. The Human Right Council for the first time spelled out the content of the right to water and sanitation in 2013, and recognised that everyone without discrimination is entitled to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secured and ensures dignity⁷⁸. Each of these criteria will be analyse below.

4.1.1. Accessibility

Like water supply, sanitation facilities are also available within the immediate vicinity of each household. The requirement that sanitation facilities be accessible calls for the attention to the need of securing this facility⁷⁹. Accessibility means that people are able to gain the right to use sanitation services or facilities without having to compromise their capacity to acquire other essential goods and services such as, health services and education⁸⁰. Sanitation facility must be accessible to everyone, should be able to physically and economically access sanitation facilities.

⁷⁶ Ibid. See note 327 above. See also the Centre on Housing Rights and Evictions (COHRE), American Association for the Advancement of Science (AAAS), Swiss Development Cooperation (SDC), and UN-HABITAT (2007). *Manual on the Right to Water and Sanitation*. UN-HABITAT. P. 12.

⁷⁷ Winkler T. Igna (2016). The human right to sanitation. *Journal of International Law*. No. 4. Vol. 37. P. 1406.

⁷⁸ United Nations Human Rights Council (2013). *The human right to safe drinking water and sanitation*. UN. Doc. A/HRC/Res/24/18, also see UN. Doc. A/C.3/68/L.34/, October 2013 (defining the content of the human right to safe drinking water and sanitation), Amnesty International *Public Statement, UN: General Assembly makes progress on the human right to water and sanitation, but only as the USA permits*, See also the UNHR (2014). *The human rights to safe drinking water and sanitation*. UN. DOC. A/HRC/Res/27/7. (confirming the previous resolution, but slightly changing the wordings in the definition to include, socially and culturally accepted).

⁷⁹ This implies that, sanitation facilities should be within the vicinity of the household, educational institution, health institution and workplace. DOC. E/CN.4/Sub.2004/20.

⁸⁰ Committee on Economic, Social and Cultural Rights (CESCR). General Comment. 15. Para. 12(c)(ii), see also the Sub-Commission Guidelines. Para. 1.3(d)

As for physical accessibility, the location of toilet or latrine must guarantee the physical security of people, that is why the path to the toilet should be safe to walk especially at night. Physical accessibility within the context of sanitation means that sanitation facilities should be in a location where physical security can be guaranteed and convenient for all users. This is especially crucial for women, young girls and children. When a sanitation facility is far away and is located in an unsafe area, it becomes a major source of insecurity for women. Access to sanitation must be reliable. This means that the sanitation facilities should be constructed in a location that an individual and households can access this service during the day and at night without any fear of being threaten⁸¹, ensuring that toilets are open and the road lit at night in a poor urban area. For example, in Kenya, women's access to toilets at night are inhabited, either due to insecurity or simply because they are locked at night.

The former Special Rapporteur importantly states that toilets must be reliable, including access at all times of the day and night, and the location of sanitation facilities must ensure minimal risk to the physical security of users⁸². She also mentioned the needs of groups such as persons with disability and older persons. This condition is particularly important, given that development projects have often not taken account of the risk of violence against women and children designing placement of sanitation facilities or service. The integration of persons with disability into development planning has long been criticised on this basis⁸³. Rural women without sanitation facilities may choose to defecate in the open under the cover of darkness in order to ensure a minimum of privacy, but at considerable risk to their physical security⁸⁴. Sanitation must also be economically accessible.

As outline in the Committee on Economic, Social Cultural Rights (CESCR) in its General Comment No. 15 and the United Nations Sub-Commission Guidelines with regards to water, sanitation facilities must also be supplied at a price that everyone can afford sanitation services⁸⁵, and services should be accessible without discrimination⁸⁶. This also means that, sanitation facilities should be constructed in a way that it access is free or the price to access

⁸¹ United Nations DOC. A/HRC/12/24. Also see DOC. A/HRC/12/24. Para. 75, July 2009. According to C. de Albuquerque, sanitation is frequently defined as a system for the collection, transportation, treatment and disposal or reuse of human excreta and associated hygiene.

⁸² Catarina. de Albuquerque (2009). *Report of the special rapporteur on the issue of human rights obligations related to access to safe drinking water and sanitation*. A/HRC/12/24. Para. 43-44.

⁸³ Stein M, McClain-Nhlapo C, and Lord J. disability right, the Millennium Development Goals (MDGS) and Inclusive Development in Malcolm Langford, Andy Sumner and Alicia Ely Yamin. (2013) (eds). *Millennium Development Goals (MDGS) and human rights: past, present and future*. Cambridge University Press. P. 571. ISBN:9781107031913. Also see note 1 above.

⁸⁴ Ibid. See note 399 above.

⁸⁵ Committee on Economic, Social and Cultural Rights (2002). General Comment 15. Para. 12(c)(ii).

⁸⁶ United Nations DOC. E/CN.4/Sub.2/2004/20.

for everyone is affordable especially for the people living in poverty. The special rapporteur on the issue of Human Rights obligation related to access to safe drinking water and sanitation reemphasize on the obligation of States 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”⁸⁷. States are to make information accessible through various media such as newspapers, in all the relevant languages to ensure circulation⁸⁸. Information accessibility are important for it will ensure that sanitation solutions are consistent and durable, making sure that the needs of users, are culturally acceptable, affordable and technically viable.

4.1.2. Affordability of Sanitation

The right to sanitation demands that access to sanitation facilities be affordable for all people, sanitation services must be available at a price that is affordable to everyone, including the poor. This must cover all cost associated with sanitation, ranging from tariffs in the case of sewerage network, to connection fees that contribute to capital construction. Paying for sanitation services must not limit people’s capacity to acquire other basic services and goods guaranteed by the human rights such as food, health housing and education. Affordability does not necessarily require that services should be free, but the human right to sanitation requires people to contribute in the implementation and realisation according to their ability.

However, when people are unable, for reasons beyond their control, to access sanitation through their own means, the State is obliged to find a solution for ensuring their access to sanitation⁸⁹. Access to sanitation facilities or services includes the construction, maintenance and the emptying of facilities, as well as treatment and disposal of faecal matter⁹⁰, it must be available at a price that is affordable to 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.

4.1.3. Availability

Sanitation facilities must be available within each household or its immediate vicinity, health or educational institutions, public places or institutions and work places⁹¹. The facilities must be available on a reliable and a continuous basis, in other words, there must be a sufficient

⁸⁷ Ibid. Note 418.

⁸⁸ Ibid. Note 418.

⁸⁹ Ibid. see note 399 above. Para. 67.

⁹⁰ Ibid. See note 1 above.

⁹¹ The human right council report on sanitation. A.24/HRC/12/24, Ibid. See note 399 above. Para. 70.

number of such facilities or services to avoid excessive waiting time⁹². In order to meet up with the requirement during the day and night, including when not at home, sanitation facilities must always be available where people spend significant amount of time. This include health and educational institutions, workplaces, public places and prisons.

Case law demonstrated the connection between water and sanitation and the right to education and the right to housing. In the Case of *Environmental and Consumer Protection Foundation vs Delhi Administration and Others*⁹³ the Indian Supreme Court Ordered for, among others, the provisions of sanitation in schools and public places for the purpose of realising the right to education. The court provided that: “it is imperative that all the schools must provide toilet facilities. Empirical researches have indicated that wherever toilet facilities are not provided in schools, parents do not send their children (especially girls) to school. It clearly violates the right to free and compulsory education of children guaranteed under Article 12-A of the Constitution”. Where sanitation facilities are shared in public places or health and other institutions, there must be a sufficient number of facilities to avoid long waiting time. Determining a minimum number of toilets for a given population, the particularities of a given community and the special needs of each member must be taken in to consideration. For example, women, girls, and children, may have particular sanitation requirements⁹⁴

There have been some discussions on whether the sanitation facilities that are shared among several households meet human rights standards. Some have raised the concerns about the security and privacy of users⁹⁵, women and girls are often at risk of rape and harassment when accessing sanitation facilities outside the premises where they live⁹⁶. There is no standard or precise answer on whether shared facilities meet the human rights standards. It depends on the circumstances whether shared facilities ensures security and privacy to users. The Special Rapporteur concludes that States are not obliged to provide everyone with access to a sewerage system since Human rights law does not aim to dictate specific technology options but, requires

⁹² Ibid. See note 399 above. Para. 69.

⁹³ WaterAid (2012). Court case. Available at: <http://www.righttowater.info/rights-in-practice/legal-approach-case-study/court-cases>. (Accessed 12th October 2023)

⁹⁴ Catarina. de Albuquerque (2009). *Report of the special rapporteur on the issue of human rights obligations related to access to safe drinking water and sanitation*. A/HRC/24/12.

⁹⁵ Jamie Bartram (2008). Improving on haves and have-nots: All-or-nothing targets for global access to basic amenities such as drinking water and sanitation are outdated. The time has come, says Jamie Bartram, for a more fluid approach. *Nature*. No. 7185. Vol. 452. P. 283.

⁹⁶ Rashida Manjoo, United Nations Human Rights Council (2011). *Report of the special rapporteur on violence against women, its causes and consequences*. UN DOC. A/HRC/17/26, Amnesty International (2010). Risking, rape to reach a toilet, women experience in the slums of Nairobi, Kenya. Available at: <https://www.amnesty.org> (Accessed 24th April 2023).

minimising risk of attacks from people or animals during the day⁹⁷. These sanitation services must also be of good quality and hygienic.

4.1.4. Quality and Hygiene

The right to sanitation requires that facilities are hygienically safe and easy to clean, they must effectively prevent the contact human and animals with human excreta. As outline above, sanitation entails the treatment and safe disposal of faeces and urine, and associated wastewater. For water born sanitation, this implies the need for sewerage treatment to prevent people and the environment of being affected. Where on-site sanitation are used, pits and septic tanks are required to be constructed in a way that prevent leakage and overflow as well as regulations support, monitoring and oversight to ensure that contents are adequately collected and disposed⁹⁸.

Sanitation facilities must further ensure access to safe water for hand washing, genital cleaning and menstrual hygiene⁹⁹. Safe sanitation facilities also rely on the promotion of an adequate hygiene in order to encourage individuals to ensure their own health and to respect the security, safety and dignity of others by using toilets and latrines hygienically and properly. For example, in the Case of *Beja and Others vs Premier of the Western Cape and Others*¹⁰⁰ the South African High Court considered the lack of adequate and appropriate sanitation facility as a violation of the right to housing, right to privacy and dignity. While these standards appear reasonable they certainly represent a challenge, particularly to menstrual hygiene and cleansing where many toilets around the world are unable to meet these standards. Quality sanitation is also said to include the regular cleaning, emptying and the maintenance of latrines, to ensure sustainability of the sanitation facility and the continued access of the service¹⁰¹. Nevertheless, the State also has an obligation to ensure the implementation of these rights.

⁹⁷ Ibid. See note 399 above. Para. 67.

⁹⁸ Anna Zimmer, Winkler T. Igna and Catarina. de Albuquerque (2014). Governing wastewater, curbing pollution, and improving water quality for the realisation of human rights. *Waterlines*. No. 33. Vol. 4. P. 340. (it provides further information on the consequences of inadequate treatment and management of faeces and wastewater as a source of contamination and responses from the human rights perspective).

⁹⁹ United Nations Human Rights Council Resolution 27/7 (2014). The special rapporteur on torture and the right to education have also specifically referred to the sanitary needs of menstruating women as relevant to their mandates, see reference in the report of the special rapporteur on the issue of human rights obligations related to access to safe drinking water and sanitation. C. de Albuquerque (2009). A/HRC/12/24. Para. 51-52, see Winkler T. Igna and Virginia Roaf (2015). "Taking the bloody linen out of the closet: menstrual hygiene as a priority for achieving gender equality". *Gardozo Journal of Law and Gender*. P. 51.

¹⁰⁰ Case No. 21332/10. 29th April 2011.

¹⁰¹ Ibid. See note 399 above. Para. 72.

5. Conclusion

Sanitation is one of the most fundamental needs of a human being, we all have to relieve ourselves. Sanitation is a human need that we all share. At the same time, defecation is a very private matter and is considered as a taboo in some parts of the world. Sanitation is closely link to human dignity. The right to sanitation requires the guarantee of such privacy, the right to sanitation offers an opportunity to highlight support and legalize the continuing demands of the sanitation revolution. Making sanitation less of a taboo lead to the promotion of increasing attention and according sanitation a greater priority in law, policy and practice. International law, government declarations, and States practices is an evidence that access to sanitation is a fundamental human right

The major human rights treaties, statements and former covenants contain an element of explicit and implicit evidence of the right to sanitation. The explicit and implicit recognition of the right to sanitation bears a great potential in this regard. While the road towards the political recognition was slow, this process has also demonstrated opportunities may arise unexpectedly, resulting to explicit recognition such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the United Nations Resolution, and implicit recognition of the right to sanitation such as the International Covenant on Economic, Social, and Cultural Rights (ICESCR). From the normative perspective, sanitation has a legal basis in international human right law as a component of the right to an adequate standard of living. Fundamentally, it places equity at the centre of sanitation related efforts and brings a greater focus on dignity, focusing on demands such as privacy and security. The focus on affordability, quality and cultural acceptability brings into the foreground the need to ensure that sanitation systems are contextually appropriated, can be access in practice and will be use in practice.

Enforcing the right to sanitation does not mean that this right will provide a solution for addressing the sanitation crisis, and this does not mean that realizing the right to sanitation, states have to directly provided everyone with sanitation facilities free of charge. But adequate sanitation is largely the responsibility of an individual to construct, clean and maintenance of a sanitation facility. However, States have an important role to play in creating an environment that enables individuals to practice adequate sanitation. States have to facilitate access to safe sanitation, and have to create legislative, policy and regulatory measures for the effective implementation of the right to sanitation.

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