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

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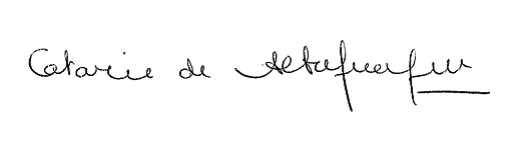
**Responses to Questions from Interactive Dialogue**

**Human Rights Council, 27th session**

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1. I would like to thank all State delegations and other stakeholders who participated in the interactive dialogue that followed the presentation of my four reports during the 27th session of the Human Rights Council (the main thematic report on common violations of the human rights to water and sanitation, two mission reports on Jordan and Brazil, and the addendum on the handbook on the implementation of the human rights to water and sanitation). In the course of this discussion, many interesting and important points were raised. I regret that there was not sufficient time to respond to these questions, in spite of the already extended time allotted. As indicated in my concluding statement, I present herewith a succinct note addressing those issues.
2. Violations of the human rights to water and sanitation are common across the globe, including in developing and in developed countries. Over the last years, I have increasingly received complaints from people who allege violations of their human rights due to measures being taken in the context of austerity. Where retrogressive measures cannot be justified, they amount to violations of human rights. Moreover, in my experience, many countries have made great progress in ensuring access to water and sanitation at an aggregate level, but some individuals and groups continue to be left behind. In many developed countries, homeless persons, indigenous peoples, ethnic minorities such as the Roma, undocumented migrants, prisoners and others continue to face challenges in accessing adequate services. Where States have the resources to realize these people’s human rights, not doing so amounts to a violation of human rights. The specific groups and individuals whose rights are violated will vary across countries, but patterns of violations emerge, and people who are disadvantaged and marginalized in society at large tend to be disproportionately affected by violations of the human rights to water and sanitation. The prohibited grounds of discrimination, including the implicit grounds related to “other status”, provide a useful framework for identifying individuals and groups that are disadvantaged.
3. The framework of substantive equality is particularly useful in advancing access to water and sanitation for the unserved and underserved. It requires looking beyond whether certain groups and individuals are treated discriminatorily on paper, and requires redressing past disadvantage by prioritizing those who have been discriminated against in policies, resource allocation and implementation.
4. With regard to gender-specific violations, I think achieving gender equality – in access to sanitation and water as well as more broadly – is one of the great challenges faced in the realization of human rights. I think some progress has been made in the area of access to water and sanitation. For instance, there is much greater awareness of the burden girls and women face with regard to water collection. There is less awareness, however, of the challenges girls and women face with regard to sanitation and hygiene. Where women and girls have to leave the house to access sanitation facilities, they often risk sexual assault and violence. In other instances, there may be facilities in the home, but women and girls are not allowed to use them due to cultural prescriptions that reserve toilets for men. The lack of opportunity for adequate menstrual hygiene and the significant implications for women’s and girls’ ability to work, to attend school and to take part in public life largely remain taboos and are only slowly gaining attention. Moreover, raising awareness on these challenges is only the first step. What is needed is to tackle the social norms and stereotypes that contribute to perpetuating many of these practices. What is also needed is greater voice and influence of women and girls in decision-making processes that affect their lives. Beyond the challenges many women and girls face, violations of the human rights to water and sanitation related to an individual’s sexual orientation or gender identity affect lesbian, gay, bisexual, transgender and intersex persons, a situation that warrants greater attention.
5. Several States raised the right to development in their interventions. In my opinion, development and the realization of human rights need to go hand in hand. Efforts targeted at development must benefit the people, and I think that development and the progressive realization of human rights must be undertaken simultaneously. We cannot assume that first we have to promote “development” (while ignoring human rights), and then when “development is achieved” human rights will miraculously be realized. Experience has shown that certain parts of the population will continue to be discriminated against and left behind, unless deliberate measures are adopted to target them. Therefore, we need to think about what type of development we aim at. I think there is a need to redefine development with a focus on eliminating inequalities in general, and in access to water and sanitation more specifically. Only when no one is left behind can we truly speak of development. In that regard, access to justice is essential and must not be an afterthought. Where people’s human rights are violated, whether through projects pursued under the umbrella of development, whether through persisting inequalities, or other actions or omissions, people must be able to seek remedies.
6. Violations can also take place in extraterritorial settings. For instance, States may contribute to human rights violations in the context of development cooperation activities, including by imposing conditions that undermine human rights. States in a capacity to do so also have an obligation to provide international assistance, and conversely, States that require assistance have to seek and accept such assistance. Where States fail to comply with these obligations, this may amount to violations of human rights. Generally speaking, violations of human rights in an extraterritorial setting require more attention. More work could and should be done at the normative level to clarify what States obligations are in these contexts, including by considering civil, cultural, economic, political and social rights in a comprehensive manner. I think bilateral development agencies could and should do more work on the integration of human rights into their policies and actions. They could develop a Guide – namely based on the work I did in the framework of my Handbook - to help them in that endeavour.
7. Another question relates to large-scale projects, extractive industries and other industrial activities. States have an obligation to protect individuals from human rights violations through such activities and to regulate companies under their jurisdiction accordingly, regardless of whether these companies undertake their activities domestically or abroad. The UN Guiding Principles on Business and Human Rights provide an important consensus clarifying both the State’s obligation to protect and the companies’ responsibility to respect human rights. For non-State actors, the responsibility to respect in their core activities must be the starting point. A failure to respect human rights in core activities can never be offset through initiatives companies undertake that seek to contribute to the fulfilment of the human rights to water and sanitation, e.g. by contributing to service provision. Moreover, where companies take such initiatives to support the fulfilment of human rights, they should ensure that these are in line with human rights standards and principles, such as non-discrimination and sustainability, which they can seek to ensure by working in partnership with the State. Generally, for companies to respect human rights and to avoid human rights abuses, they should exercise due diligence; they should conduct human rights impact assessments; they should put in place complaint mechanisms and must never obstruct access to State mechanisms. They should engage with the affected communities and take the communities’ participation seriously, even where the result of community participation implies an expectation on the company to adjust its plans.
8. With regard to corruption, I agree that uncovering and combatting corruption is essential for preventing human rights violations. Courts have played some role in exposing and combatting corruption, and they could play a much greater role in doing so and in explicitly framing corruption as a human rights violation. In terms of good practices in combatting corruption, I have highlighted several in the book on Good Practices that I published in 2012. For instance, in 2003, Transparency International Pakistan successfully assisted the Karachi Water and Sewerage Board in developing an integrity pact during the procurement process for the Greater Karachi Water Supply Scheme. In Tanzania, Norwegian Church Aid, in collaboration with several local partners, has responded to a need for communities to monitor how and where government resources are being spent. Through the Public Expenditure Tracking System (PETS), they aim to help individuals and groups root out malfeasance and support more responsive and accountable governance of community water services. The PETS has received the explicit support of the Tanzanian government, which has promulgated a series of national guidelines for other organisations that would like to participate.
9. With regard to the allocation of water, the human rights framework requires that the most basic needs be prioritized. This applies to water for personal and domestic uses guaranteed by the human right to water and well as water used for other essential activities such as subsistence agriculture, which is linked to the human right to food.
10. Some States also mentioned the framework for disaster risk reduction and the challenges that low-lying islands face. Increasing water stress in some areas and salt water intrusion in other areas have an impact on water availability and quality. Obviously, these are complex issues. From a human rights perspective, even in the context of climate change and in times of disaster, it must be stressed that the question is one of prioritization. The human rights framework demands that the most basic human needs are prioritized, in particular when water availability is low, and that the most vulnerable populations are specifically targeted. The best way to avoid human rights violations is through long term planning that allows States to build resilience.
11. Other States referred to situations of armed conflicts. The human rights to water and sanitation cannot be derogated in times of conflict. With regard to refugees, General Comment No. 15 by the Committee on Economic, Social and Cultural rights explicitly mentions that States should take steps to ensure that “refugees, asylum-seekers, internally displaced persons and returnees have access to adequate water whether they stay in camps or in urban and rural areas. Refugees and asylum-seekers should be granted the right to water on the same conditions as granted to nationals.” Moreover, international humanitarian law applies in times of armed conflict. The First Additional Protocol to the Geneva Conventions from 1977 sets forth in Article 54 that it is “prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as . . . drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party . . .”. Where international mechanisms of investigation are in place to address these situations, I call on all parties to cooperate with these mechanisms.
12. Where violations take place, victims can use different mechanisms that can address such violations. The most adequate and efficient way will depend on the circumstances. In many instances, complaints that are easy to resolve can be addressed directly, for instance by the service providers. From a human rights perspective, it is essential that people have access to justice to seek remedies and access to the courts as a last resort when other mechanisms fail to adequately resolve the issue. The handbook on the implementation on the human rights to water that I prepared addresses the importance of access to justice in more depth (available on my website).
13. As I have highlighted in my report, I think that a remedial approach is important. To me, identifying violations is not about identifying who is to blame, but about a constructive and participatory dialogue about how to best remedy such violations. Many violations of the human rights to water and sanitation are at a systemic level. In order to address the structural causes of violations I consider transformative remedies to be essential. Such transformative remedies can move claimants and others in a similar situation further towards the full enjoyment of human rights. Different factors contribute to enabling the courts to craft such remedies. For instance, broad provisions on standing often enable courts to address structural challenges. In India, many court orders are based on public interest litigation. For instance, on 18 October 2011, the Supreme Court of India ordered all states and union territories to build toilets, especially girls’ toilets, in all public schools by the end of November 2011, on the basis of public interest litigation. Another way of introducing broader arguments into a particular case are *amicus curiae* briefs. These are submissions by ‘friends of the court’ who are not parties to a given case, but can offer additional information and arguments. *Amicus curiae* briefs are increasingly common and are a way to introduce matters of broader concern into a particular case, so that it is relevant for people other than the two parties. The booklet on access to justice in the handbook I have published includes more detailed information on addressing systemic violations and crafting appropriate remedies.
14. To enable judges to adjudicate cases related to the human rights to water and sanitation and to craft appropriate remedies, awareness of the applicable human rights law is essential. Creating such awareness should start by strengthening human rights education for the population at large and more specifically by ensuring that human rights are embedded in law school curricula as well as by providing on-going training. More exchange between lawyers, judges and prosecutors in different countries may also be very fruitful.
15. With this report, I have sought to raise greater awareness of violations of the human rights to water and sanitation that persist across countries, not only in regard to the need to remedy violations where they take place, but also to prevent such violations. I think the UN can play an important role in increasing the understanding of violations of economic, social and cultural rights. The treaty bodies already greatly contribute to the understanding of common violations, for instance through including a section on violations in their General Comments. At an individual level, the Optional Protocols to the ICESCR, the CRC and the CRPD will greatly enhance the capacity of the treaty bodies to address violations on a case-by-case basis. Through the incorporation of the reasonableness standard, these Optional Protocols clearly show that the obligation to progressively realize human rights is justiciable and subject to scrutiny through the treaty bodies. Once more cases reach the Committees, their decisions will also trigger greater awareness for violations. In the context of Special Procedures, I think it is important to take a balanced approach. Work on good practices and providing guidance on the implementation of human rights is extremely important, and personally, I have greatly enjoyed these work streams of my mandate. However, at the same time, I think we must shed light on-going human rights violations and must work towards identifying, preventing and remedying them. Ideally, all Special Procedures would be mandated to take such a balanced approach. To support such work, the OHCHR requires more resources. Finally, we have to look beyond the UN human rights mechanisms and bodies, to the UN and its agencies, funds, peacekeeping missions and other bodies more broadly. The human rights framework permeates all these other activities, and the UN should lead by example in respecting human rights and in providing remedies where human rights have been violated.
16. Some States also asked about the post-2015 process. Here again, I think it is essential to integrate human rights in development processes. It is not about adopting a certain approach to development, it is about integrating legally binding standards in relevant policy fields and ensuring policy coherence. Human rights should be reflected in the new development agenda, they should be explicitly referenced, but more importantly human rights principles and standards must be integrated in goals, targets and indicators. For water and sanitation, this implies, for instance, properly monitoring water quality and wastewater management, including the adequate management of human faeces. It also means that we need to focus on progressively eradicating inequalities. As I said above, we need to redefine development progress beyond aggregate outcomes and toward the achievement of substantive equality. Finally, the integration of human rights in the development agenda also requires a clear focus on accountability.
17. Over the last years, I have devoted significant time and energy to advocating for the integration of the human rights to water and sanitation in the post-2015 Sustainable Development Goals. The use of human rights principles to animate and fine-tune development monitoring frameworks results in a synergy between rights and development, but it does not displace the particularities of either. Measuring development progress will never replace human rights monitoring, since progress toward the realization of human rights entails a wide variety of obligations that are not captured by development goals and cannot be assessed solely using development indicators, no matter how rights-sensitive they are. Development frameworks should not be transformed in human rights monitoring tools, but they should reflect and integrate the fundamental standards and principles of the human rights framework. Such development monitoring should be complemented with contextualized and qualitative analysis. Human rights monitoring with its focus on the individual must retain its separate role.
18. Regarding the question on referring to the human rights to water and sanitation in the plural, as I have stated before, I would like to see the Human Rights Council to acknowledge that the human right to water and the human right to sanitation are two distinct human rights, derived from the right to an adequate standard of living. They are distinct components, just like the right to housing or the right to food. There is no reason to combine water and sanitation into one human right. In fact, linking them contributes to the perception of sanitation being attached to water, and to treating it as its “poor cousin.” If that perception does not change, sanitation will continue to be treated as an add-on failing to take into account its specificities and continuing to be under-funded compared to water and other fields of social policy. Sanitation does not necessarily have to be water-borne, but various alternatives for on-site sanitation exist. Apart from these technical considerations, improving sanitation requires a different type of interventions with a strong focus on creating or reinforcing demand for sanitation, hygiene education and behavior change.
19. This status as a distinct human right is also reflected in the statement adopted by the CESCR. The Committee did not opt to revise its General Comment on the right to water to add sanitation to the existing document, but declared itself of being in favour of considering sanitation distinct from water. It states that “sanitation has distinct features which warrant its separate treatment from water in some respects.” To take its consideration of the right to sanitation a step further and to delineate its content and the corresponding obligations in more detail, I encourage the Committee to adopt a separate General Comment on the right to sanitation. Moreover, to demonstrate its understanding of the right to sanitation as a distinct component of the right to an adequate standard of living, I also encourage the Committee to revise its Reporting Guidelines. Encouragingly, the guidelines already address sanitation, albeit only under the right to housing and the right to health. Taking up sanitation separately and on its own right would place it on an equal footing with other components of the right to an adequate standard of living and accord it more significance in the dialogue with State parties.
20. Regarding the future of the human rights to water and sanitation, I see a bright future. I think there is an on-going momentum and openness in the water and sanitation sectors to integrate human rights standards and principles. When I started my mandate in 2008, the focus was very much on the legal clarification and on advocating for the formal and explicit recognition of the human rights to water and sanitation. By now, not only has the human right to safe drinking water and sanitation been explicitly recognized, but I think there is a much greater understanding of what it means to put it in practice. There are great initiatives at all levels, from the local to the international, to work toward the full realization of the human rights to water and sanitation. Of course, many challenges remain. Many of these relate to the issues that I have sought to address throughout my mandate: the need to raise the profile of sanitation; achieving substantive equality and reversing patterns of marginalization and exclusion; achieving gender equality in particular, including by addressing a lack of adequate menstrual hygiene as a key barrier to the realization of women’s and girls’ human rights; taking steps to realize the human rights to water and sanitation to the maximum of available resources; integrating the human rights to water and sanitation in development processes; and instances of retrogressive measures and lack of sustainability, among others. However, the task to determine these challenges and priorities and to contribute to shaping this agenda will be my successor’s task. I am very much looking forward to following these developments and I am certain that the mandate and the realization of the human rights to water and sanitation will greatly benefit from new ideas, new approaches and new priorities.
21. Once again, I would like to extend my appreciation to all Governments, UN agencies, civil society organizations, academic institutions and others as well as all the people I have met, and who have supported my mandate through this important dialogue, as well as throughout the past six years. For me, these past years have been an extremely insightful, intense, memorable and pleasurable experience. I hope that I have contributed to working towards the full realization of the human rights to water and sanitation, and I wish the new mandate-holder every success in taking this work forward.

Please accept, Excellency, the assurance of my highest consideration,



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