



**HUMAN RIGHTS TO
WATER AND SANITATION**



**THE HUMAN RIGHTS TO WATER AND SANITATION
IN SPHERES OF LIFE BEYOND THE HOUSEHOLD
WITH AN EMPHASIS ON PUBLIC SPACES**

A/HRC/42/47

*Report of the UN Special Rapporteur
on the human rights to safe drinking
water and sanitation*

Léo Heller

SPACES BEYOND THE HOUSEHOLD

Although the obligations of States to respect, protect and fulfil the human rights to water and sanitation extend to all persons without discrimination, national policy and practice regarding the progressive realization of those rights has had a tendency to be limited, wholly or mostly, to the implementation of projects aimed at improving access within formal households. In most societies, however, many groups and individuals rely on places beyond the scope of the household to live and enjoy their rights, including their rights to water and sanitation.

Different definitions can be adopted for spheres of life beyond the household, particularly when looking at relevant global gaps in the access to water and sanitation. These spheres may include spaces where people live and that are different conventional households (streets, prisons, dormitories, refugee camps); places where people work; places where people habitually spend time (public spaces, schools, places of worship); and places where people go occasionally and might spend significant time (stores, public transit hubs, health care facilities, government offices, other public buildings, parks, mass gatherings, restaurants, public buildings). All those spheres of life require attention in relation to the enjoyment of the human rights to water and sanitation, but they constitute a heterogeneous landscape, differing substantially in terms of needs and appropriate approaches.



SCHOOLS

The WHO/UNICEF JMP report on access to water and sanitation in schools highlighted that drinking water should be available and come from an improved source, whilst sanitation facilities must be single-sex, functional, private, improved and available.



STREETS

In situations where public spaces are utilised as dwellings, for instance by people who are homeless, States are also obligated to ensure a level of access that is adequate to fulfil domestic needs, including for cleaning property and clothes and preparing food.



PRISONS

The Standard Minimum Rules for the Treatment of Prisoners, also known as the Mandela Rules, stipulate that "drinking water shall be available to every prisoner whenever he or she needs it" (Rule 22.2).



HOSPITALS AND HEALTH CARE CENTERS

The WHO/UNICEF JMP report on healthcare facilities outlines the need for access to water on the premises, as well as at least one staff toilet, one sex-separated toilet, with facilities for menstrual hygiene, and one accessible toilet for persons with disabilities.



WORKPLACES

The Committee on Economic, Social and Cultural Rights has made clear that the right to just and favourable conditions of work includes ensuring that water and sanitation are available for all workers, and has acknowledged that these rights also extend to people working informally.

THE SDG_s AND WATER AND SANITATION IN THE SPHERES OF LIFE BEYOND THE HOUSEHOLD



A number of SDG goals and targets speak to the need to ensure water and sanitation services are available in **all** relevant spheres of life



- 3.3** End the epidemics of AIDS, tuberculosis, malaria and neglected tropical diseases and combat hepatitis, water-borne diseases and other communicable diseases
- 3.9** Substantially reduce the number of deaths and illnesses from hazardous chemicals and air, water and soil pollution and contamination



- 4.A** Build and upgrade education facilities that are child, disability and gender sensitive and provide safe, non-violent, inclusive and effective learning environments for all



- 6.1** Achieve universal and equitable access to safe and affordable drinking water for all
- 6.2** Achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations



- 8.8** Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment



- 11.7** Provide universal access to safe, inclusive and accessible, green and public spaces, in particular for women and children, older persons and persons with disabilities



- 10.2** Empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status.

The Special Rapporteur emphasizes that in order to achieve universal and equitable access to safe and affordable water and sanitation for all, as stated in SDGs 6.1 and 6.2, it is essential to reflect the importance of the requirements of **'universal'** and **'for all'** in policy and practice - and to ensure the inclusion of a wide range of spheres beyond the household.

WHY PUBLIC SPACES?

Access to water and sanitation in public spaces is an essential element of the enjoyment of the human rights to water and sanitation for all, and in all spheres of life. However, there is often an evident neglect of the provision and promotion of these vital services in such places, where the responsibilities for water and sanitation provision, as well as the consequences of their absence, can be unclear.

As a result of that neglect, potential violations of international human rights occur all too frequently and disproportionately impact members of vulnerable and marginalized groups, such as homeless people, informal workers in public spaces and persons deprived of their liberty. Inadequate access to water and sanitation in places outside formal households can have a negative impact on a multifarious range of economic, social, cultural and political outcomes, affecting health, educational and employment prospects, and access to social and communal opportunities. Each of those is, in and of itself, a potential breach of human rights arising out of the breach of the human rights to water and sanitation.

DEFINING PUBLIC SPACES

The physical characteristics of a space, who owns and controls it, and its primary use, are all ways in which public spaces are defined. More nuanced, progressive definitions are also emerging, however. The New Urban Agenda adopted by the General Assembly in 2016, for example, situates the definition of public space in the outputs that these places are capable of achieving, defining them as “multifunctional areas for social interaction and inclusion, human health and well-being, economic exchange and cultural expression [...], and that are designed and managed to ensure human development and build peaceful, inclusive and participatory societies, as well as to promote living together, connectivity and social inclusion.”

The report takes into account elements of the latter definitions that relates to the access to water and sanitation services, under the idea that public spaces are places that facilitate positive social, economic, and cultural effects on individuals, societies and States. However, the Special Rapporteur is of the view that the concept of public space must also recognise the vital role of these places as spheres where people can exercise their human rights, and where those rights are respected, protected and fulfilled. By reflecting that element in definitions of public space, policy decisions on those spaces will be required to acknowledge their importance to human rights and, accordingly, proper consideration given in such decisions as to how best to ensure human rights.

WHO IS LEFT BEHIND?

STREET WORKERS

Inadequate water and sanitation poses a threat to the health of street workers, often causing them to have to take time off to recover. In the context of informal and self-employment, being unable to work inevitably leads to a complete loss of earnings over the period of convalescence.

HOMELESS

The inability to ensure personal hygiene due to a lack of alternative options can lead to negative self-image, and discrimination. Additionally, homeless people may be criminalised for finding alternatives to water and sanitation that is lacking in public spaces.

TRANSGENDER PERSONS

Studies on the experiences of transgender and gender non-conforming persons show that they are commonly denied access to public toilets which match their gender identity, forcing them to use those that match the gender they were assigned at birth. This discrimination makes them vulnerable to abuse.

WOMEN AND GIRLS

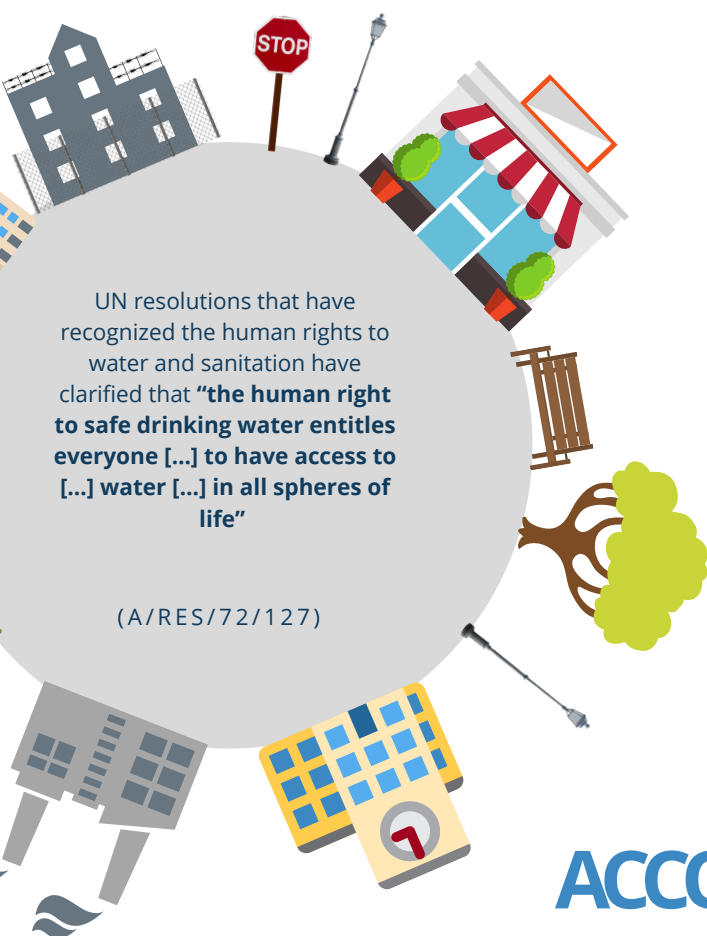
Numerous studies have highlighted that women and girls must spend around twice the amount of time accessing public toilets than men require, and must also access sanitation facilities more frequently. Their specific needs mean that they are disproportionately impacted in case of lack of access to water and sanitation.

PERSONS WITH DISABILITIES

Persons with disabilities often struggle to find water and sanitation facilities which are appropriate to meet their needs, with this reality greatly limiting their ability to utilise public spaces and engage in social activities therein, which is particularly worrying for persons with disabilities.



HUMAN RIGHTS GAPS IN PUBLIC SPACES



UN resolutions that have recognized the human rights to water and sanitation have clarified that **“the human right to safe drinking water entitles everyone [...] to have access to [...] water [...] in all spheres of life”**

(A/RES/72/127)

LEGISLATIVE FRAMEWORK

Although some States have developed and implemented legislative framework, evidence of effective regulation relating to the provision of water and sanitation services in public spaces is generally lacking and consistency regarding the introduction of legislative and regulatory frameworks relating to services in public spaces is troublingly absent.

Despite there being some examples of regulatory frameworks governing access to water and sanitation in public spaces, no State seemingly yet regulates such access from a human rights perspective, constructing their regulations around the normative content of the rights to water and sanitation

Where regulatory regimes fail to provide for the essential elements of access to services in public spaces, such as compliance monitoring, those weaknesses may have an impact on the realization of the human rights to water and sanitation.

ACCOUNTABILITY FRAMEWORK

ROLES AND RESPONSIBILITIES

Although responsibility for the provision of water and sanitation facilities in public spaces was traditionally held by States, particularly local authorities, in recent years the delegation of all or part of this role to private providers or non-governmental organizations has increased. Where the authorities have complete control of water and sanitation facilities in public spaces to private and non-governmental entities, the ability to determine who has responsibility for their operation can be hampered by the veil of corporate responsibility. Where the operation of water and sanitation services is delegated to a private actor by the State, it is commonly achieved through a contract that may or may not include provision for water and sanitation in public spaces.

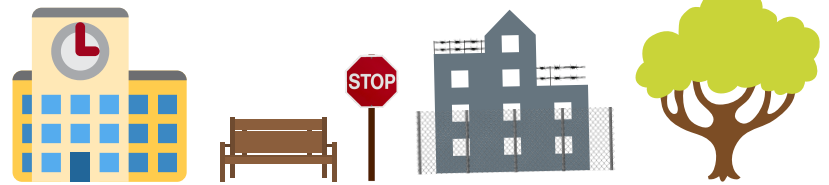
ENFORCEABILITY

States must have the ability to ensure compliance with standards through enforceability, a notion which comprises the establishment of bodies capable of overseeing compliance, as well as the provision of forums in which people may bring challenges regarding the decisions or inactions of the actor concerned and which are capable of satisfying claimants' right to an effective remedy (A/73/162, para. 59). Without the establishment of an adequate accountability framework, claims to ensure rights are respected, protected and fulfilled in this context become significantly harder, if not impossible, to make effectively.

ANSWERABILITY

Water and sanitation providers must be answerable to the beneficiaries of their services, and be required to 'provide explanations and reasoned justifications for their actions, inactions and decisions to the people affected by them, as well as the public at large' (A/73/162, para.34). This is commonly hindered by a failure of those in control of public spaces to provide mechanisms to allow people to complain about breaches of their human rights to water or sanitation, or when they only do so in exclusionary and inaccessible ways.

COMPLYING WITH THE HUMAN RIGHTS TO WATER AND SANITATION IN PUBLIC SPACES



A human rights approach to managing water and sanitation in public spaces ensures comprehensive, inclusive coverage in a way that fully respects human rights and dignity, and, crucially, that leaves no one behind.

AVAILABILITY

When seeking to ensure availability of water and sanitation in public spaces, the precise quantitative features of provision will depend upon the circumstances on the ground (A/HRC/12/24, paras. 70-71), including the type of space being considered and its size, the usage of that space, in terms of the numbers of people present, the demographics of users, and the reasons for their attendance therein, as well as the length of time people typically remain within a particular space. Having considered these and other pertinent factors, it is essential that States ensure the construction and maintenance of water and sanitation facilities in those spaces in line with the needs of all users and in sufficient quantities to ensure their ease of access.

ACCESSIBILITY

Ensuring that water and sanitation facilities in public spaces are physically accessible requires that facilities in these places are available for use by all people at all times, and that the facilities are suitably located within the public space and designed so as to can be accessed safely and securely (E/C.12/2002/11, para 12(c)(i)). This includes considerations on the period when facilities are open, since many public toilets close at night, which is problematic for people who rely exclusively on them.

AFFORDABILITY

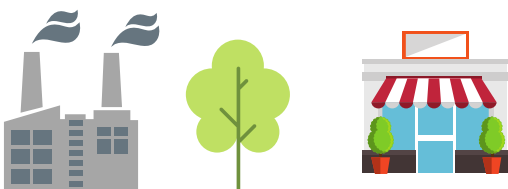
In many States, it is typical for fees to be charged to users in order to allow them access to public toilets and water points, with these fees often being used to offset the costs of operating and maintaining the facilities. But many people who rely on public spaces for their access to water and sanitation simply do not have the necessary means to pay such fees, so charging these can prevent the fulfilment of their human rights. Considering their financial vulnerability, the requirement to ensure affordability encourages States to either significantly reduce the cost of access fees to levels that are affordable for all, or, ideally, remove access fees for those users altogether and find alternative methods of ensuring sustainability of these facilities.

SAFETY/ QUALITY

In public spaces, failure to provide access to water and sanitation that is safe and of sufficient quality can have a highly detrimental impact on health and hygiene outcomes. Accordingly, states must provide and maintain water and sanitation facilities in public spaces to proper standards of cleanliness and technical safety. Sanitation amenities must be hygienic, properly cleaned and maintained, and safe for users. Efforts must also be taken to keep humans, animals and insects away from human excreta, so as to prevent the spread of disease. Water provided in public spaces must be safe and free from pathogens and harmful impurities (E/C.12/2002/11, para. 12(b)).

ACCEPTABILITY, PRIVACY AND DIGNITY

Water and sanitation services must be designed, constructed and maintained in ways that conform to users' personal and cultural needs. Many communities and cultures often have particular and important norms regarding sanitation practices and these can vary between and within cultures. Determining how to provide culturally acceptable water and sanitation facilities in public spaces may require States to engage in meaningful consultation with target populations regarding their requirements. Failure to provide public facilities which meet the cultural needs of users, and which ensure they are provided with privacy and dignity, can minimise usage by groups who feel unsafe as a result.



In order for States to realize their human rights obligations to ensure water and sanitation in public spaces, they must provide such services in line with the normative content of the rights, namely, availability, accessibility, affordability, safety/quality and acceptability, privacy and dignity.

INTERLINKAGES WITH OTHER HUMAN RIGHTS

The indivisibility, interdependence and inter-relatedness of human rights are strongly demonstrated in the context of access to water and sanitation in public spaces.



HEALTH

Poor accessibility of water and sanitation in public spaces can exacerbate pre-existing health problems, for instance where the poor design of facilities leads to persons with disabilities being injured when utilising them. A lack of water and sanitation facilities in public can even affect access to healthcare, as homeless persons who are unable to wash themselves have been shown to have been turned away from hospitals.



WORK

The link between the right to work and the rights to water and sanitation is reflected in the obligations placed on States pursuant to their duty to ensure all people experience just and favourable working conditions, which also applies to people who work on public spaces



WOMEN AND GIRLS

The failure of States to ensure the adequate provision of water and sanitation in public spaces has a particularly negative, and often disproportionate, impact on women and girls, and their enjoyment of a great number of their human rights. A lack of adequate water and sanitation in public spaces may infringe women and girls' right to non-discrimination.



CRIMINALIZATION

Without access to adequate water and sanitation facilities in public areas, those who require use of these commonly resort to public urination, defecation and bathing. However, laws frequently criminalise these activities and therefore those who engage in them. These laws breach the human rights of those people that are forced into breaking them because of the lack of proper water and sanitation facilities.



PARTICIPATION

Participatory rights, such as freedom of assembly, freedom of movement, the right to take part in cultural life and the right to manifest one's religion, are often exercised in public spaces. Ensuring the ability of people to exercise these rights requires that they be able to have their rights to water and sanitation fulfilled during the course of their activities.

CONCLUSION



In the report, the Special Rapporteur, has highlighted the vital relevance of public spaces, such as parks, plazas, streets, markets and transport hubs, in enabling people to access their human rights to water and sanitation. Such spaces, as zones accessible to all, are lifelines for numerous people and, accordingly, must be given due recognition in the water and sanitation policies of States. This requires concerted action from national and local governments, service providers and regulators in breaking down barriers to access and to enable the provision of water and sanitation facilities that are available, accessible, affordable, safe, acceptable, and which ensure user's dignity is maintained. It also necessitates that the the roles and responsibilities of all actors involved in provision are clearly identified to determine accountability for human rights violation and abuses.

AS SUCH, THE SPECIAL RAPPORTEUR RECOMMENDS:

States include water and sanitation in spheres of life beyond the household, and particularly in public spaces, in their policies, plans and implementation strategies, with a view to ensuring access which complies with the normative content of the human rights to water and sanitation and the principles of human right.

States deliver recommendations to local governments setting out how to determine which public spaces require the provision of water and sanitation services and what level and type of provision is required.

International monitoring bodies associated with the SDGs include a broader range of spheres of life beyond the household in their assessments and establish methodologies to define levels of services in those spaces compatible with the SDGs agenda and the human rights framework.

International human rights treaty mechanisms and bodies, including but not limited to treaty monitoring bodies and the universal periodic review, must include public spaces and other relevant spheres of life beyond the household in their assessments and monitoring of the enjoyment of human rights, both in specific States and globally.

MRLÉO HELLER
UN Special Rapporteur on the
human rights to safe drinking
water and sanitation



srwatsan@ohchr.org



[@SRWatSan](https://twitter.com/SRWatSan)



[@SRWatSan](https://www.facebook.com/SRWatSan)



[@unsrwatsan](https://www.instagram.com/unsrwatsan)



UNITED NATIONS
HUMAN RIGHTS
SPECIAL PROCEDURES

SPECIAL RAPPORTEURS, INDEPENDENT EXPERTS & WORKING GROUPS

