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ECONOMIC, SOCIAL AND CULTURAL RIGHTS
Realization of the right to drinking water and sanitation
Report of the Special Rapporteur, El Hadji Guissé

Summary

At its fifty-sixth session, the Sub-Commission, in its decision 2004/107, dated 9 August 2004, decided to request Special Rapporteur Mr. El Hadji Guissé to prepare a set of draft guidelines for the realization of the right to drinking water supply and sanitation and to submit them to it at its fifty-seventh session.

The draft guidelines contained in the present report are intended to assist government policymakers, international agencies and members of civil society working in the water and sanitation sector to implement the right to drinking water and sanitation. These draft guidelines highlight the main and most urgent components of the right to water and sanitation. They do not attempt to provide an exhaustive legal definition of the right to water and sanitation.

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Introduction

1. At its fifty-sixth session, the Sub-Commission, in its decision 2004/107, dated 9 August 2004, decided to request Mr. El Hadji Guissé, the Special Rapporteur, to prepare a set of draft guidelines for the realization of the right to drinking water supply and sanitation and to submit them to it at its fifty-seventh session.
2. The draft guidelines set out in the present report are intended to assist government policymakers, international agencies and members of civil society working in the water and sanitation sector to implement the right to drinking water and sanitation. They are also designed to help States to formulate and implement human rights policies, including with respect to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the Universal Declaration of Human Rights, as well as to meet, if not exceed, the goals set out in the United Nations Millennium Declaration and the Johannesburg Plan of Implementation adopted by the World Summit on Sustainable Development of halving, by the year 2015, the proportion of people unable to reach or to afford safe drinking water supply and the proportion of people without access to basic sanitation.
3. These draft guidelines highlight the main and most urgent components of the right to water and sanitation. They do not attempt to provide an exhaustive legal definition of the right to water and sanitation. The draft guidelines are consistent with the relevant international documents on the right to water, in particular general comment No. 15 (2002) on the right to water, adopted by the Committee on Economic, Social and Cultural Rights, and the final report of the Special Rapporteur on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation (E/CN.4/Sub.2/2002/20). Since General Assembly resolution 54/175 of 17 December 1999 and general comment No. 15 (2002) both refer to the “right to water”, we propose using the term “right to water” rather than “right to drinking water supply” for the sake of consistency.

DRAFT GUIDELINES FOR THE REALIZATION OF THE RIGHT TO DRINKING WATER AND SANITATION

Considering that water is the source of life,

Considering that the right to drinking water and sanitation is unquestionably a human right,

Considering that all persons have the right to sufficient supplies of water to meet their essential needs and to have access to acceptable sanitation facilities that take account of the requirements of hygiene, human dignity, public health and environmental protection,

Recalling the guiding principles expounded by the conferences on water and sanitation held at Dublin, Marrakesh, Paris and Rio de Janeiro and in the Declaration on the Right to Development,

Recalling the International Covenant on Economic, Social and Cultural Rights, in which all States recognize “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions” (art. 11, para. 1) and “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” (art. 12, para. 1),

Emphasizing in particular the Convention on the Elimination of All Forms of Discrimination against Women, ratified by 164 States, and the Convention on the Rights of the Child, ratified by 190 States,

Noting with satisfaction the adoption of the Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes adopted under the auspices of the United Nations Economic Commission for Europe and the World Health Organization, which focuses especially on ensuring “adequate supplies of wholesome drinking water” and “adequate sanitation”,

Considering that water resources constitute a common heritage and must be used in an equitable manner and managed in cooperation with the users in a spirit of solidarity,

The following draft guidelines are recommended to States and to the international community:

1. The right to water and sanitation

1.1 Everyone has the right to a sufficient quantity of clean water for personal and domestic uses.

1.2 Everyone has the right to have access to adequate and safe sanitation that is conducive to the protection of public health and the environment.

1.3 Everyone has the right to a water and sanitation service that is:

- (a) Physically accessible within, or in the immediate vicinity of the household, educational institution, workplace or health institution;
- (b) Of sufficient and culturally acceptable quality;
- (c) In a location where physical security can be guaranteed;
- (d) Supplied at a price that everyone can afford without compromising their ability to acquire other basic goods and services.

2. State actions to implement the right to water and sanitation

2.1 Each level of government in a State, including the national Government, regional governments and the local authorities, has a responsibility to move progressively and as expeditiously as possible towards the full realization of the right to water and sanitation for everyone, using practical and targeted measures and drawing, to the maximum extent possible, on all available resources.

2.2 National Governments should ensure that other levels of government have the necessary resources and skills to discharge their responsibilities.

2.3 States should at all levels of government:

- (a) Give priority in water and sanitation policies and programmes to the persons without any basic access;
- (b) Adopt and implement a plan of action for the full realization of the right to water and sanitation which establishes specific targets, indicators and time frames and identifies the necessary national and international resources;
- (c) Formally recognize the right to water and sanitation in relevant laws and regulations;
- (d) Refrain, and ensure that private persons and organizations refrain, from interfering with the enjoyment of the right to water and sanitation or any other human rights, unless such interference is permitted by law and includes appropriate procedural protection. No one whose access to water and sanitation may be legally curtailed after the appropriate procedures have been followed should be deprived of the minimum essential amount of water or of minimum access to basic sanitation services;
- (e) Establish a regulatory system for private and public water and sanitation service providers that requires them to provide physical, affordable and equal access to safe, acceptable and sufficient water and to appropriate sanitation and includes mechanisms to ensure genuine public participation, independent monitoring and compliance with regulations.

3. Preventing discrimination and addressing the needs of vulnerable or marginalized groups

3.1 States should ensure that no persons or public or private organizations engage in discriminatory practices which limit access to water and sanitation on the grounds of sex, age, ethnic origin, language, religion, political or other opinion, national or social origin, disability, health status or other status.

3.2 States should give particular attention to the needs of individuals or groups who are vulnerable or who have traditionally faced difficulties in exercising their right to water and sanitation, including women, children, indigenous peoples, persons living in rural and deprived urban areas, nomadic and traveller communities, refugees, asylum-seekers, internally displaced persons, migrant workers, prisoners and detainees, as well as other groups facing difficulties with gaining access to water.

3.3 States should give priority to providing water and sanitation services to institutions serving vulnerable groups, such as schools, hospitals, prisons and refugee camps.

3.4 States should enact and implement legislation to protect access by persons to traditional water sources in rural areas.

4. Availability and equitable distribution of water

4.1 States should ensure that everyone has a sufficient amount of safe water, including by adopting and implementing integrated water resource management programmes and water efficiency plans, combating the depletion of water resources due to unsustainable extraction, diversion and damming, reducing water wastage during distribution and establishing mechanisms to respond to emergency situations.

4.2 States should adopt measures to prevent over-consumption and promote efficient water use, such as public education, dissemination of appropriate conservation technologies and, as necessary, restrictions on water use beyond an acceptable consumption threshold, including through the imposition of charges.

4.3 The priority in water distribution shall be for essential personal and domestic uses for all. In order to realize the right to adequate nutrition and the right to earn a living through work, marginalized or disadvantaged farmers and other vulnerable groups should be given priority in access to water resources for their basic needs.

4.4 The right to water should be exercised in a manner that is sustainable for present and future generations.

5. Improving access to drinking water supply

5.1 States should progressively ensure that everyone has access to water and sanitation services and that these services are equitably distributed. Where available resources are not sufficient to guarantee the delivery of high-quality services, States should invest in services that

give priority to the needs of those without basic access, normally through low-cost services that can be upgraded, rather than through expensive services that would only benefit a small section of the population.

5.2 States should promote hygienic use of water and sanitation services.

5.3 Water and sanitation facilities should be designed to take account of the needs of women and children.

5.4 No one should be denied access to water and sanitation because of his/her housing or land status. Informal human settlements should be upgraded through the provision of water and sanitation services and through assistance with the construction of their own water and sanitation facilities.

6. Affordability

6.1 States should ensure that they have appropriate water and sanitation pricing policies, including through flexible payment schemes and cross-subsidies from high-income users to low-income users.

6.2 States should subsidize water and sanitation services for low-income households and poor areas that lack the means to secure access to such services. Subsidies should normally be used for connection to distribution networks or for the construction and maintenance of small-scale water supply and sanitation facilities, such as wells, boreholes and latrines.

6.3 Where public resources cannot guarantee high-quality services for all, States should offer a range of services, including low-cost technology options, to promote affordable access for low-income households.

6.4 States should ensure, before a person's access to water and sanitation services is reduced owing to non-payment, that account is taken of that person's ability to pay. No one should be deprived of the minimum essential amount of water or access to basic sanitation facilities.

7. Water quality

7.1 States should establish water-quality standards on the basis of the World Health Organization guidelines, taking account of the needs of vulnerable groups and upon consultation with users.

7.2 Water-quality standards should give priority to the elimination of the pollutants with the most significant impact on health in the particular country or context, rather than to the setting of high thresholds that cannot be attained immediately within the available resources. They should be periodically reviewed and progressively raised.

7.3 States should devise regulations and policies to control pollution of water resources by all persons and organizations, both public and private, including surveillance, disincentives, pollution penalties and assistance with compliance.

7.4 States should prevent and progressively reduce contamination of watersheds and aquatic ecosystems by substances such as bacterial pathogens and chemical pollutants. They should monitor water quality in reservoirs and distribution systems.

7.5 States should provide financial and technical assistance, including information and training, to communities which depend on small-scale water supply systems, particularly low-income communities.

8. Participatory rights

8.1 Everyone has the right to participate in decision-making processes that affect their right to water and sanitation. Special efforts must be made to ensure the equitable representation in decision-making of vulnerable groups and sections of the population that have traditionally been marginalized, in particular women.

8.2 Communities have the right to determine what type of water and sanitation services they require and how those services should be managed and, where possible, to choose and manage their own services with assistance from the State.

8.3 Everyone should be given equal access to full and transparent information concerning water, sanitation and the environment held by public authorities or third parties.

9. Remedies and monitoring

9.1 Everyone should have access to administrative or judicial procedures for the making of complaints about acts or omissions committed by persons or public or private organizations in contravention of the right to water and sanitation.

9.2 States should monitor the implementation of obligations concerning the right to water and sanitation, including by establishing or authorizing independent institutions such as human rights commissions or regulatory agencies to carry out monitoring activities in a manner that ensures full transparency and accountability.

10. International obligation and duty of solidarity

10.1 States should refrain from actions that interfere with the enjoyment of the right to water and sanitation in other countries and should prevent individuals and companies under their jurisdiction from taking such actions.

10.2 Depending on the availability of resources, developed countries should provide sufficient financial and technical assistance to supplement the resources of developing countries with a view to ensuring that everyone has access, as promptly as possible, at least to basic water and sanitation services. Every developed country should undertake, at a minimum, to allocate a portion of its official development assistance proportional to its Gross National Product to achieving the goals set out in the United Nations Millennium Declaration and the Johannesburg Plan of Implementation adopted by the World Summit on Sustainable Development concerning access to water and sanitation.

10.3 Bilateral and multilateral assistance for the water and sanitation sector should be channelled, as a matter of priority, towards countries that are unable to realize the essential aspects of the right to water and sanitation for their people; such assistance should not interfere with the realization of human rights and should focus on bringing tangible benefits to those with no basic access to water and sanitation.

10.4 International organizations, including United Nations specialized agencies, trade and financial institutions, and the States members of such bodies should ensure that their policies and actions respect the right to water and sanitation. States should take account of the right to water and sanitation when formulating and implementing international agreements that have an impact on this right.
