

Special Rapporteur on the human right to safe drinking water and sanitation
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Responses to questions from Interactive Dialogue
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1. Questions regarding sustainability and non-retrogression in the realization of the human right to water and sanitation.
 - a. Difference between the human rights principle of sustainability and sustainability as a development concept.

Human rights principles are cross cutting and core principles for the realization of all human rights. In my report, I put forward a holistic understanding of sustainability as the direct counterpart to retrogression, which is prohibited under the human rights framework. Sustainability as a human rights principle has been previously discussed in the United Nations, for instance, in a report of the Office of the High Commissioner for Human Rights on preventable maternal mortality and morbidity and human rights¹. The Committee on Economic, Social and Cultural Rights also stresses, in its General Comment 15, that “the manner of the realization of the right to water must be sustainable, ensuring that the rights can be realized for present and future generations”².

Once services and facilities have been provided and improved, the positive change must be maintained and slippages or retrogression must be avoided. Services must be available for present and future generations and the provision of services today should not compromise the ability of future generations to realize the human rights to water and sanitation. The human rights principle of sustainability does not exist in isolation: it goes hand in hand with, and is strengthened by, other human right principles such as non-discrimination, participation, indivisibility and accountability as well as the normative content of human rights. In the case of access to water and sanitation, in order for services to be sustainable, they must be available and accessible to everyone on a continuous and predictable basis, without discrimination. Integrating the principle of sustainability into the human rights framework guides States to realize human rights in a sustainable manner.

In the concrete case of the realization of the human rights to water and sanitation, the principle of sustainability, together with other principles, should guide States in undertaking the following steps:

- Planning and institutional coordination for the long-term realization of the rights to water and sanitation, targeting the elimination of inequalities;
- Sustainable financing;
- Prioritization of water for personal and domestic uses for everyone and forever;
- Accountability and monitoring mechanisms; and
- Meaningful participation by the most vulnerable and marginalized individuals and groups.

¹ A/HRC/14/39; paragraph 32

² E/C.12/2002/11; paragraph 11

b. What national mechanisms could be considered as good practices to ensure sustainability and avoid retrogression in the water and sanitation sector?

First of all, it is important to adopt measures to prevent regressive measures. For instance, by ensuring efficient tax systems that enable continued investments in the water and sanitation sector. While human rights do not prescribe tax policies, mobilizing tax revenue, in an appropriately targeted manner, is the responsibility of governments and a way of implementing their human rights obligations. Secondly, creating an independent regulator responsible for oversight of the water and sanitation sector seems fundamental to ensure sustainability and avoid retrogression. I draw your attention to the report I submitted to the Council in 2011 on National Planning for the Human Rights to Water and Sanitation³. Lastly, accountability mechanisms must be in place. States must provide effective remedies for breaches of the rights to water and sanitation. The rights to water and sanitation are justiciable human rights, and should be recognized as such by governments and courts. Furthermore, by fighting corruption and opaque decision-making by agencies lacking transparency, accountability can also be enhanced.

c. How to achieve the balance between the right to water and sanitation and other water and sanitation demands, in particular in the context of population growth, urbanisation, industrialisation and expansion of irrigated agriculture, and taking into account the different levels of development among States?

I would like to come back to the point of how important it is to plan for the long-term realization of the rights to water and sanitation. Establishing well-functioning water and sanitation systems in times of economic growth will help to withstand the additional pressure on scarce resources during times of crises. I would like to recall Member States that there is generally sufficient water to satisfy the realization of the rights to water and sanitation in virtually all countries. It is about the question of equitable distribution in a non-discrimination manner. On average, overall household water use accounts for less than 10% of total water use, while industry and agriculture are the largest water uses. The rights to water and sanitation are limited to basic personal and domestic needs, which account for only a fraction of overall domestic use. Even in the context of climate change, which affects overall water availability, water for personal and domestic uses can still be ensured, if prioritized as required by human rights law. **In the context of regions that suffer from very high levels of water stress**, choosing the right technology can be essential. While human rights law does not prescribe any specific type of technology, States have often made wrong or inappropriate decisions to invest in technology that, for instance, uses too much water. In several of my country mission reports I referred to concrete examples of the importance of making the right technology choices in the context of water scarcity.

In the same context, and in order to respond to the question of **whether minimum quantity and quality standards should be set out to realize the rights to water and sanitation**, human rights tell us that it depends on the specific contexts and situations – under certain weather conditions water consumption is higher, under certain health conditions people might require a higher quantity of water, and have higher quality requirements. Existing international guidelines, though, can provide indication for assessing whether availability and quality criteria are being met.

³ A/HRC/18/33

- d. Which measures could be adopted to ensure access to drinking water and sanitation to the most vulnerable groups in the context of economic and financial crisis, in particular to prevent situations such as the increase in prices or affordability-related disconnections?

It is important to take adequate measures and plan for the long-term in times of prosperity. If this takes place, the challenges and risks in times of austerity will certainly be more controlled. However, I recognise that, independently of the adequacy of measures adopted in times of economic growth, it often happens that States reduce funding not only for water and sanitation, but also for social benefits in times of economic and financial crisis. These cuts affect the poorest and most marginalized who tend to receive a higher proportion of their income from social security benefits, rely heavily on public services, and spend a higher proportion of their income on basic services. For this reason, when reducing their funding for water and sanitation and when decreasing connected social benefits, States must assess how these actions will negatively impact on the most vulnerable and should ensure that measures are in place to ensure that all persons will continue to be able to access affordable and safe water. Otherwise people will be confronted with disconnections or, in order to avoid these, with the dilemma of choosing between paying for food, water or medicine, which undermines the realization of their human rights. Because of these risks a group of Special Rapporteurs, including myself, has called for the consecration of a social protection floor (that includes obviously access to sanitation and water) in the post 2015 agenda. You will find more details on it in the press statement we issued⁴.

- e. How can the human-rights framework, including the principle of non-discrimination, be beneficial to women and girls, those that perhaps, literally, carry the heaviest burdens because of the lack of access to safe drinking water and sanitation?

Ensuring the human rights principle of non-discrimination in laws, policies, decisions and practices relating to the rights to water and sanitation will lead to eliminating both formal and substantive discrimination on all prohibited grounds – this will also enable us to tackle entrenched and institutionalized discrimination (on that issue I draw your attention to the report I presented last year to the Council on the human rights to water and sanitation and stigma). By doing so, women and girls, as other forgotten groups, will be considered in the design, implementation and follow-up to policies or laws to effectively realize the rights to water and sanitation. Thus, situations such as menstrual hygiene management would be tackled. So far, there is evidence that women and girls are forced into furtive practices and obliged to hide their hygiene practices and limit their movements during menstruation. Girls may be taken out of school or workplaces or choose not to attend because there are no facilities for hygienically managing menstruation in sanitation facilities.

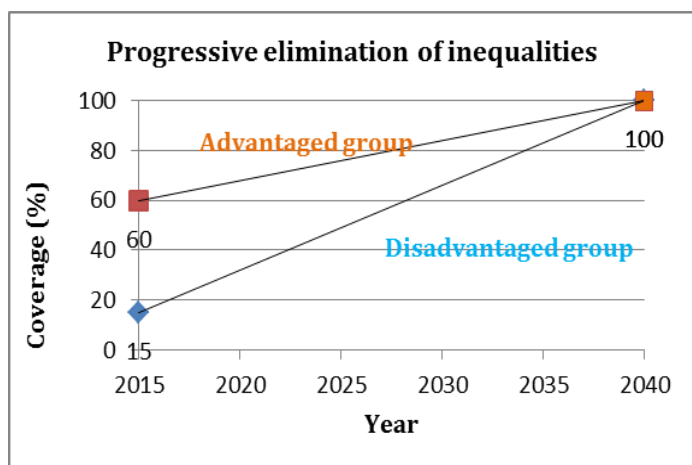
I draw your attention to the Book “On the Right Track” on Good Practices in realizing the Human Rights to Water and Sanitation that I published last year and which contains several examples of how to include human rights, including the principle of sustainability, in actions aimed at ensuring access to water and sanitation. An electronic version of the book is available at http://www.ohchr.org/Documents/Issues/Water/BookonGoodPractices_en.pdf.

2. The question on the ideal outcome to get from the post-2015 sustainable development agenda.

⁴ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13342&LangID=E>

We need a **global water and sanitation goal** that calls for safe and sustainable sanitation, water and hygiene for all, which are affordable, acceptable and available in sufficient quantities.

Furthermore, other special rapporteurs, the OHCHR and myself have also called for the need to adopt a **global goal dedicated to eliminating inequalities** in the post-2015 development agenda. Such a goal will draw attention to the most marginalized groups and individuals, create incentives to end discrimination, trigger the availability of more precise data and adjust development aims to better respond to the reality on the ground. I encourage all Member States and other stakeholders to ensure that the post-2015 Agenda contains a clear commitment to progressively eliminate inequalities. The elimination of inequalities must be operationalized under targets and indicators. This means that inequalities between marginalized groups and individuals and the overall population of a country, or its most advantaged members should be systematically measured while reaching each goal, target and indicator. Under the WHO-UNICEF Joint Monitoring Programme⁵, we developed a simple tool⁶ that clarifies how the elimination of inequalities in access to water and sanitation can be measured. This tool is equally applicable to other global goals and targets, such as child and maternal health, access to primary school and improved nutrition. The graph below illustrates how the achievement of universal access goes hand in hand with the progressive elimination of inequalities and also with ensuring that a faster rate of progress is achieved regarding the most disadvantaged groups of the population, so as to enable to “lift them up” and close the gap.



The progressive elimination of inequalities entails four steps: 1) determining the necessary rate of progress for both the worst-off and better-off groups in order to meet each target (such as rural and urban, informal and formal settlements, poor and rich, disadvantaged group and the average population); 2) comparing the percentage of the worst-off population that has access to the relevant service (e.g. sanitation) with the percentage of the better-off population, to establish the existing disparity; 3) if the progress of the worst-off and better-off groups follows or exceeds the set rate of progress, and if the disparity between the two population groups narrows accordingly, the country is considered “on-track”, and fourth, a “traffic lights” approach will allow an overall assessments of the progressive reduction of inequalities.

⁵ WHO-UNICEF Joint Monitoring Programme (JMP), available at : <http://www.wssinfo.org/>.

⁶ UNICEF&WHO (JMP) / Special Rapporteur 's tool, available at : <http://www.ohchr.org/Documents/Issues/Water/eliminatingSheetPost2015.pdf>

In addition, a **sustainability target should be included in a future sanitation, hygiene and water goal**. Such a target would create an incentive for national governments and also international donors to ensure and monitor the sustainability of interventions. Sustainability is not being monitored systematically and only 7 per cent of total investments in water are devoted to maintenance and monitoring⁷. One of the reasons behind this gap is because the Millennium Development Goals (MDG) framework only tracks those who gained access, ignoring the number of those who lost it.

I was also asked how **safe water quality can be best guaranteed**. As I mentioned before, the MDGs remained silent regarding several human rights aspects, the aspect of water and sanitation quality. And I fully agree that the focus on infrastructure, rather than on water quality, has led to under-reporting of unsafe water sources. In several country visits, including in developed countries, I have come across several instances which highlight the importance of going beyond the current MDG indicator of ensuring access to “improved” water sources and “improved” sanitation – which clearly is not enough to shed light on the reality of unsafe water and sanitation.

3. The question on the areas of work for the mandate in 2014.

I will undertake three or four country missions until the end of my mandate in October 2014. In December I will go to Brazil, and in February to Jordan. I am still waiting for answers to letters I have sent to several governments requesting invitations.

My upcoming reports for 2014 will focus on violations of the human rights to water and sanitation (report to the Human Rights Council) and the principle of participation in the framework of implementing the human rights to water and sanitation (report to the General Assembly).

I would like to note that my efforts will continue focused on implementing the rights to water and sanitation. In this regard, the priorities of my mandate for 2014 will be to continue devoting attention to integrating the elimination of inequalities in the new global development framework with a special focus on the most marginalized and disadvantaged groups and individuals. In this context, I would like to urge all Member States once again to coordinate with the respective Permanent Missions in New York in order to ensure that human rights and the elimination of inequalities are integrated in the post-2015 development agenda. I hope that the commitment expressed by many Permanent Missions in this regard during the interactive dialogue is also displayed in New York.

In 2014 I will also be dedicating a significant portion of my time and resources to the development of a Handbook for implementing the human right to safe drinking water and sanitation - a practical tool to assist States at national, regional and local levels in overcoming the challenges presented in realising these rights. I will be publishing this Handbook in September 2014, but will be requesting your support and input during the next six months to ensure that this Handbook addresses the concerns and needs that States face in realising the rights to water and sanitation. For that purpose a Note Verbale has been sent to all Member States at the end of September. So, I am looking forward to your inputs and contributions to make this Handbook a living tool to realize the human rights to water and sanitation.

⁷ *GLAAS Report*, p. 4.