sanitation: a human right
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INTRODUCTION: THE RIGHT TO AN ADEQUATE AND DECENT SANITATION

This report seeks to highlight how sanitation, considered as a human right, helps to conceptualise and address the global sanitation crisis.

The human right to sanitation as a right that is autonomous and independent from the one to water was not recognised as such by the United Nations General Assembly until the end of 2015 in its ruling A/RES/70/169 published in February 2016. This separate recognition has received wide support from experts in the field, who have considered the benefit of treating the rights independently to ensure advances in each of their implementation, as the right to sanitation, when not considered independently, was historically relegated to the background and its specificities were not reflected.

The relationship between this right and others, such as the right to health, is undeniable, as has been demonstrated in the current COVID-19 crisis. Tripura et al. (2013) concluded that improved sanitation and the use of hygienic facilities have been instrumental in reducing cases of helminthiasis in children under 5. There is likewise a positive correctional between the lack of latrines in homes and the average diarrhoea incidence (Nath, 2006). Moreover, the right to sanitation is related to the right to education, if we take into account the number of girls who are absent from school during menstruation, when there is no facility for them to manage their menstrual hygiene safely and with dignity. Furthermore, the right to adequate housing and to a healthy environment, both sacred human rights, cannot be enjoyed without sanitation services.

Considering sanitation as a human right modifies the approach, for example, when selecting the technical solutions to be implemented, as they must guarantee the minimum defining requirements and the legislative and political framework to recognise it. Moreover, recognising sanitation as a human right means that this is not something subject to solidarity or charity, but rather a series of obligations for the State (respect, protect and comply) are established, along with a high degree of responsibility for all of us, particularly of those in charge of ensuring that sanitation is within the reach of everyone.

Both individual and groups can claim its compliance as a human right by means of advocacy activities to their governments, along with seeking compensation, when the right has been breached, at the national human rights commission and tribunals or through international human rights organisations. They have the right to be informed and to actively participate in the definition of the policies and plans that regulate access to this service. In turn, that must prioritise the individuals and groups that historically have been discriminated and marginalised in that regard.

This report begins with a short historical overview of the recognition of sanitation, its link to the human right to water until it was recognised as an autonomous and independent right in 2015 and finally its inclusion in the Sustainable Development Agenda, with a specific target of achieving universal access to this service by 2030.

The definition of the regulatory content of sanitation as a human right is then set out and the progressive realization concept introduced. The implication of the different categories

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1 Winkler (2016) considers the arguments for and against the individualised recognition of the right to sanitation. Admittedly, the arguments in favour are mainly accepted.
defining this human right in relation to the service level and how the different general principles of human rights are applied to sanitation are subsequently analysed.

Specifically, the obligations for the States that have ratified this right are outlined, along with the responsibilities that affect other non-state stakeholders as regards guaranteeing this right.

Finally, the report analyses what are the main causes that have led to the sanitation crisis and puts forward some key points to advance in implementing this right.
For many years, sanitation was seen as a private matter, limited to the personal sphere and to individual responsibility, and even as a “taboo” not to be spoken about in some settings. A direct consequence of this situation has been the scarce political prioritisation that it has received. This has meant that the majority of interventions related to sanitation have fallen outside this public sphere. They have mainly focused on providing infrastructure and the approaches have been very general, with priority being given to a very biased view of sanitation.

Its inclusion in the Sustainable Development Agenda and its recognition as a human right independent from the right to water have led to increased visibility and consequently greater relevance, conducive to endeavours to develop a comprehensive framework for action to ensure its compliance by different stakeholders. Even though there are still detractors of the recognition of sanitation as an autonomous human right, it is precisely this need for visibility that was behind this step taken by the UN General Assembly in 2015.

However, the history of sanitation as a human right dates back much further. As a fundamental requirement to achieve an adequate standard of living, the first reference to it in international law was implicitly related to the Universal Declaration of Human Rights in its Articles 2 and 25. It is explicitly mentioned in Article 14 of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW, 1979), Article 5 of Convention 161 of the International Labour Organisation (ILO) regarding occupational health services (1985), in Article 24 of the Convention on the Rights of the Child (CRC 1989), at the Conference on Environment and Development (Rio Declaration, 1992), at the Conference on Population and Development (El Cairo, 1994) and at the Conference on Human Settlements – Habitat (Istanbul, 1996), among others.

One of the targets included in Goal 7 (Ensure Environmental Sustainability) in the 2000 UN Millennium Declaration was to "Halve, by 2015, the proportion of the population without sustainable access to drinking water". Subsequently, at the World Summit on Sustainable Development held in Johannesburg in 2002, it was agreed that, given the close relationship with water, the number of people without sanitary facilities should also be halved by 2015.
The concept used was access to **basic sanitation**, thus complementing the MDG target relating to safe drinking water. Nonetheless, sanitation was one of the issues that remained the furthest from the 2015 objectives pursued.

That same year, the Committee on Economic, Social and Cultural Rights of the United Nations Economic and Social Council passed **General Comment No. 15** entitled “The Right to Water”. Even though this Comment focused on clarifying the scope and content of the human right to water, it also mentioned the term **personal and domestic hygiene**, referring to personal cleanliness and of the home. With respect to the right to sanitation, it clarified that hygienic requirements meant that the latrine had to be easy to clean and have the necessary handwashing facilities.

Furthermore, promoting hygiene is a “**key aspect of many programmes relating to access to water and sanitation, and is also increasingly important in developed countries recently hit by lethal viruses, best managed and prevented by good hygiene**”.

In 2008, at the initiative of Spain and Germany, the Human Rights Council created the post of **independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation**, to examine in detail the content of the obligations from the human rights perspective in relation to access to drinking water and sanitation, and provide recommendations in that regard.

Yet it was not until 2010 that, both the UN General Assembly and the Human Rights Council jointly and explicitly recognised the human right to water and to sanitation essential to the full enjoyment of life and all other human rights in **Resolution 64/292**.

In keeping with this Resolution, in 2011 the post of **Independent Expert** was changed to **Special Rapporteur on the right to safe drinking water and sanitation**, with the recognition of the right being introduced. The first Special Rapporteur to hold this post was Catarina de Albuquerque, who started her mandate in November 2008, and she was followed by Léo Heller, who has held the post since 2014, and by Pedro Arrojo since November 2020.

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5 According to the WHO in 2000, basic sanitation is the lowest-cost technology ensuring hygienic excreta and sewage disposal and a clean and healthy living environment both a home and in the neighbourhood of users. Coverage is the proportion of people using sanitation services, such as public sewer connection, septic system connection, pour-flush latrine, simple pit latrine, ventilated improved pit latrine. Available at: [http://www.who.int/water_sanitation_health/mdg1/es/](http://www.who.int/water_sanitation_health/mdg1/es/)

6 Definition of the former UN Special Rapporteur of the human rights to water and sanitation, Catarina Albuquerque, who mentioned this definition in 2009 and in ‘Good practices in realising the rights to water and sanitation’ (2012).
This pathway to the recognition of the human rights to water and sanitation led to the current 2030 Agenda of the Sustainable Development Goals (SDG)\(^7\), adopted by the United Nations on 25 September 2015. Along with explicitly mentioning those rights in its initial Declaration, the commitment of this Agenda to sanitation can be seen in a direct target for sanitation being included within Goal 6:

“By 2030, 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” (SDG 6.2).

SDG 6 overall goes far beyond the water and sanitation targets envisaged in the previous MDG agenda, by incorporating the universal nature of access to water, sanitation and hygiene, along with the concepts of equality, availability, affordability and safety, non-discrimination and gender equality, in line with the regulatory content of the rights. However, Agenda 2030 has deferred the inclusion of certain human rights principles, including access to information, people participation and government accountability, and categories such as cultural acceptability.

In tandem, Target 11.1 regarding sustainable cities and communities includes guaranteeing access to sanitation, as it reads: “By 2030, ensure access for all to adequate, safe and affordable housing and basic services, and upgrade slums [...]” (11.1).

Finally, in its Resolution 70/169, the United Nations General Assembly in December 2015 defined the human right to sanitation as being a distinct right from the human right to water. This Resolution, while considering that both rights are closely related, stresses that they must be treated independently to achieve advances in their implementation, as, should that not be the case, it is the right to sanitation that is typically pushed to the background and its specificities are not reflected. Ample proof of this is that Target 10 of Goal 7 of the MDG relating to access to water has been globally achieved, which has not been the case of sanitation.

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\(^7\) The SDGs are a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity. They were established in the Framework of the UN General Assembly on 25 September 2015, through Resolution 70/1 ‘Transforming our World: the 2030 Agenda for Sustainable Development’. There are 17 targets and 169 indicators that were implemented in 2016, which include promoting and achieving access to sanitation.
In short, important progress has been made in the last decade regarding the political prioritization of sanitation on the international stage. This has been endorsed by different historical UN milestones, such as 2008 being declared the International Year of Sanitation, its recognition as a human right (2010), its definition as an independent human right to that of water (2015) and the inclusion of the sanitation as an independent target in the Sustainable Development Goals (2015).

Therefore, the advances achieved by increasing the visibility of sanitation can be expected to result in both public policies and interventions in order to incorporate the different factors leading to an adequate provision and management from the perspective of human rights, to, consequently, achieve sustainability and significant impacts on people’s quality of life.

This would in turn require the development of a more comprehensive indicators system, as not only physical access must be guaranteed to sanitation, but also its sustainable management according to the customs and needs of each user.
DEFINITION OF THE HUMAN RIGHT TO SANITATION

A PROGRESSIVE REALIZATION RIGHT

In the same way as with the other Economic, Social and Cultural Rights (ESCR), the human right to sanitation requires time and resources, which are not always available, for its full implementation.

Therefore, the States are required to guarantee its progressive enjoyment, by moving towards that objective as expeditiously and efficiently as possible by allocating the maximum resources available. Even so, there are some obligations that are deemed to be pressing, such as non-discrimination when guaranteeing access and the adoption of specific measures to steadily progress towards achieving universal access.

The progressive realization implies that when a State is able to ensure the enjoyment of human rights, it is obliged to do so. Moreover, a setback in the levels of enjoyment of this or any other human right in a country must be sufficiently justified by the State (in relation to the enjoyment of the human rights overall) so as not to be considered as a breach.

Progressive realization refers to two dimensions related to compliance of the obligations:

I. Moving towards universal access, trying to reach the maximum of people

II. Moving towards the enjoyment of better level services, so the human right legislation is respected

Thus, the States must reach more people and, in the case of those that have already reached an essential or basic service level, they must continue to advance to guarantee that the service provided it complies with all the principles and categories of the right.

LEGISLATIVE CONTENT OF THE HUMAN RIGHT TO SANITATION

The human right to sanitation means that everyone has physical and economic access to sanitation, in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, with privacy and dignity, and without discrimination.

This definition highlights the following characteristics of categories that must be taken into account to consider the full enjoyment of sanitation as a human right:
The former Special Rapporteur, Catarina de Albuquerque, defined sanitation broadly as a system that includes “collection, transport, treatment and disposal or reuse of human excreta and associated hygiene promotion”:

It is important to remember that sanitation is directly related to public health. In addition to the matter of individual access, correct sanitation avoids pollution of the environment, protects the human rights of others, including the right to life, to health, to water and to a healthy environment. Therefore, in order for one individual to fully exercise their right to sanitation and to other associated rights, the other people from their community or nearby communities, mainly those upstream of the river basin that they share, must have and use safe sanitation facilities to collect, treat and dispose of excreta.

We believe that sanitation to be successful; it must include the following components:

**COMPONENTS OF SANITATION**

1. Hygiene promotion
2. A system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene.
3. Evacuation of wastewater, solid waste (domestic, industrial, sanitary ones) and rainwater

The fundamental categories that define the content of the human right to sanitation envisaged and explained in the different regulatory documents are analysed below.
IMPLICATION OF THE CATEGORIES OF THE RIGHT AT THE SERVICE LEVEL

THE RIGHT TO AVAILABILITY: EVERYONE MUST HAVE A SUFFICIENT NUMBER OF SANITATION FACILITIES – AVAILABILITY

The right to sanitation establishes that everyone must have a sufficient number of sanitation facilities. Specifying a minimum number of toilets needed to comply with the availability imperative may be counterproductive in terms of human rights, as it will depend on the specific requirements of each situation. What is considered acceptable for one group of persons may not cover the needs of others. Consequently, avoiding long waiting times must be included as a key indicator. Thus, it is fundamental that the assessment of the sanitation needs of any area or community is based on an analysis of the context, along with the characteristics of the specific groups that may have different sanitation needs. For example, inequality between men and women is frequently observed in the waiting time to access a sanitation facility. In this regard, the participation of the individuals involved is a vital aspect to comply with the human rights obligations related to sanitation.

Furthermore, those facilities must be adequate, which means that the facility must guarantee that it allows the management of the waste (collected through a network or in situ, treatment, transport and final disposal) and the corresponding hygiene. Otherwise, it will be impacting on the right of other persons by endangering their health.

In the case of shared sanitation facilities, a sufficient number of facilities with associated services must be guaranteed to ensure that the waiting times are not excessively long. At any rate, the service level that can guarantee the enjoyment of the human right to full sanitation in households involves having a facility on the premises where people live and any other measure should not be considered as a long-term solution.

Thus, shared facilities may be a short-term solution, provided that the aspects of intimacy, safety, hygiene, affordability and sustainability are guaranteed. In any event, the commitment should be expressly stipulated to improve the quality of the service in the medium and long term, in line with the process to progressively execute this right until its full implementation is obtained, by means, for example, of plans of action. Performing a prior comparative analysis into what can be more cost-effective, sustainable, and in turn guarantee the human right to sanitation, is recommended in order to guide the decision making regarding whether to adopt more lasting measures right from the start or, conversely, to do so progressively.

The facilities must include associated services to comply with the appropriate hygiene requirements to ensure hands to can always be washed (which include access to water and soap), genital, anal and menstrual hygiene, the management of infant faeces and household food hygiene. Furthermore, it must ensure a place that guarantees privacy, where girls and women can wash their private parts and their clothes as necessary and dispose of the materials used during menstruation; if this place is not within the same sanitary facility, it must be within the vicinity. These aspects are of particularly concern in health and education.
centres, in the sense that they are a risk of discrimination in relation to other human rights such as the right to education or health.

Ensuring the availability requires setting up the necessary structures to guarantee the sustainability of the services, from the development of programmes and policies to creating institutions with sufficient trained staff to ensure the service at any of its levels. The matter of sustainability will be considered in greater depth later.

**THE RIGHT TO AVAILABLE FACILITIES MUST BE AVAILABLE ON A RELIABLE AND CONTINUOUS BASIS – SAFETY**

The sanitation facilities must be safe from the sanitary point of view, be easy to use and effectively prevent human contact and of animals and insects with human excreta in order to guarantee the safety and protect the health of the users and of the community in general. Therefore, not only is an improved sanitation facility necessary, but that also needs to guarantee the adequate management of the waste generated, i.e., that it has to include the collection, transport, treatment and elimination of the excreta and the waste resulting from hygiene.

Particularly in the case of shared or collective bathrooms, special attention should be paid to their regular cleaning and their maintenance in order to guarantee the quality, acceptability, safety and sustainability of the services (including the emptying of the pits or places where human excreta is collected, for the so-called in-situ solutions). In this regard, manual emptying of the latrines or septic tanks should be avoided as that is considered hazardous and even unacceptable in many places and may lead to the stigmatisation of the people carrying out those tasks.

Good hygiene must be instilled or fostered. This criterion therefore implies the need to implement processes to foster hygiene aimed at encourage people to change their habits permanently.

**THE RIGHT TO ACCESS TO SANITATION SERVICES MUST BE AVAILABLE AT A PRICE THAT IS AFFORDABLE TO EVERYONE – AFFORDABILITY**

Affordability as a human rights criterion requires everyone to have access to sanitation services and to hygiene products and facilities at a price that they can afford without that limiting their capacity to acquire other basic goods and services protected by human rights (food, housing, health, education, etc.).

Even though there are some countries that have established affordability scales in their legislation, it is impossible to establish general application criteria valid worldwide, as both the cost associated to the provision of the service and the ability to pay of an individual greatly

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depends on the context and on their specific socio-economic situation. This circumstance requires the States to establish those affordability criteria on a local scale to ensure that they really reflect the specific circumstances of the people in the context in which they live.

When the price charged for hygiene or sanitation services is too high for some people, they cannot cover their most basic sanitation needs. This circumstance is too frequently overlooked, particularly in the assessment studies of the sector, which focus nearly exclusively on access coverage data, and given that it is taken for granted that whoever has access to a sanitation facility will assume the payment of the service.

In this regard, promoting connectivity to the sanitation networks must always be accompanied by detailed identification of those people who, even if they are aware of its importance, cannot fund the connection and/or the payment for providing the service, and special financial aid (solidarity rate, specific subsidy, etc.) the established.

In any case, social sustainability, taken to be the guarantee of affordable access to the services for all users, must never be subordinate to environmental sustainability, in the sense of having sufficient good quality water resources that are available for future and present inhabitants, or economic sustainability. In this regard, enduring economic sustainability requires the guarantee of the recovery of the operating costs (and in some cases the construction and refurbishing ones) so that the service provider can ensure the management of a suitable and quality service for the users.

The three aspects to ensure sustainability – social, environmental and economic - must be considered jointly without any of them being neglected; for example, low-income vulnerable groups and people cannot be overlooked on the grounds that their economic sustainability has to be ensured, but rather ways will have to be found to address both aspects without anyone being left behind. Reconciling the three aspects requires a financing scheme to be established that:

1. The protection of water resources, including system for the collection, transport, treatment and disposal or reuse of wastewater.

2. Allow economic feasibility of the service.

3. Do not discourage the use of services, which could imply public health risks.

There are different methods to achieve this, which frequently involve combining different financial instruments. Where there is a sufficient number of people in a comfortable economic situation in relation to the amount of people that cannot meet the total cost of the
service, the costs of the services can be fully recovered by means of a price system that includes a crossed subsidy instrument. However, in the case of sanitation, even in high income level contexts, governments usually provide considerable sums of public funds to guarantee the financial feasibility of the service and protect public health.

Even though much hope has been pinned on the private sector as the driving force to improve access to sanitation rates, several studies, including the one by the World Bank, have shown that that is not a realistic way of achieving the universality of the service, and that yet again the poorest are those that remain outside those instruments. Thus, the States must act as the brokers and drivers of the investments in sanitation, by defraying the cost of constructing and maintaining the infrastructure, and even its operating, when there is no guarantee that the service is affordable for the whole population. One example that is frequently overlooked is the overly high cost of the in situ solutions to empty tanks for the economically disadvantaged users to be able to continue using the same structure, which results in the system being abandoned when it is full.

When a cross-subsidy scheme is not possible because there is not a sufficient mass of people who are relatively well off, it makes it impossible to recoup all the costs by only using a tariff scheme and it will be necessary to call on the public purse or on other sources such as international cooperation (which is not risk free as, given that it is a public service, it requires a long-term commitment beyond the one-off actions that are more typical of cooperation).

In any event, priority must always be given to ensure that access to services is on a more even footing. The funds must be used as efficiently as possible and avoid generally available subsidies, such as tax exemptions or financial incentives for any connection to the systems, which are not aimed at the families that really need it.

In other cases, subsidies are only granted to the formal owners of the housing and therefore they only benefit people with property title deeds and, inadvertently, discriminate against those people with fewer resources. It should likewise be added that, currently and globally, the majority of public funds continue to be used for the construction of major works in urban areas, which mainly serve the high and medium income sectors.

When there is no ability to pay the established tariff, even when there are reduced or concessionary tariffs, instruments need to be implemented that enable the services to be free, which also occurs in the case of other human rights such as education or health. In this regard, a breach of the human right occurs when the proven inability to pay leads to the disconnection of the service, thus depriving an individual or family of access to sanitation.

The considerations regarding which systems are more or less appropriate to guarantee or not the affordability of the sanitation service are frequently focused on the regulated formal services. However, the same attention is not paid to the cost to be borne by the people using the collective or individual solutions that are typical of rural or informal urban areas. In the urban sphere, those cases are estimated to account for 25% of the urban population of Latin America and 50% of Africa’s. To address the challenge of the universality of the human right to sanitation, the analysis needs to be expanded and specific alternatives proposed for the disadvantaged contexts in a timely manner.
Sanitation facilities must be always physically accessible for everyone inside or in the vicinity of each household both at day and night. In addition, the people must have sanitation services in all those places where they spend most of their time: educational and health centres, the public highway, workplaces and public places, such as markets, religious centres and detention centres. Depending on the context, the places can be the same or different.

The location and design of the sanitation facilities are fundamental aspects, as the risks to the physical integrity of the users and of their companions, when so required, must be reduced as far as possible. This has specific implications for the path leading to the facility, particularly when the facility is located outside the home, as the pathway must be safe and convenient for the users. In particular, people with special access needs, such as children, the disabled, older people, pregnant women or the chronically ill, will be taken into account.

In this regard, the involvement of the users from the very start of any sanitation intervention is going to allow a correct prior assessment of the needs of all the users that are going to guarantee their access through that facility. This assessment will allow factors to be established, such as the size of the entrance, the indoor space, the placement of the handrails and other features, the lighting of the path, etc., thus ensuring that all users have access. Special attention should be paid to people with special needs so that they are not excluded from the service and the social gap greatens with the rest of the population. For example, a person with reduced mobility who cannot access to hygiene and sanitation facilities runs the risk of suffering exclusion and marginalisation.

On the other hand, the sanitation facilities must be constructed to ensure that both the base and the superstructure are stable and so that the physical integrity of the user is guaranteed, minimising the risks of falls or attacks by animals or people, particularly in the case of women and children.

In the same way as with water, cultural and social acceptability are important considerations when designing sanitation facilities and regarding the processes associated to emptying, transporting and treating the waste. Sanitation is a highly sensitive matter in different cultures and regions. What is considered acceptable can vary from culture to culture and over time. For example, in some places, defecating far from the home is viewed favourably, as it means that the vicinity of the dwelling is kept clean. In other places, sanitation facilities cannot be shared by men and women. Therefore, the design, location and conditions of use must be analysed from different perspectives.

Sanitation facilities have to enable hygiene practices that are respectful to the cultures (genital, anal cleanliness, etc.), take menstrual hygiene into account, along with the gender separation of services in public places, such as schools or health centres. The privacy aspect is fundamental in the design.
HUMAN RIGHTS PRINCIPLES APPLIED TO SANITATION

The mainstreaming principles are set out in international human rights legislation and are common to all of them. The Committee on Economic, Social and Cultural Rights stresses the need for them **to be present in all spheres to do with guaranteeing human rights.** These range from preparing the regulatory frameworks in question, along with the policies and the strategies that foster them, the allocation of the budgetary frameworks, the implementation of programmes and projects, to the provision of the service. Those principles must be respected by all the stakeholders involved in any way in the service provision and their compliance is mandatory for the States. In turn, they legitimise people, as rights holders, so that they can exercise them, which explain why it is important for the rights to be known in depth.

The UN Rapporteurs have progressively delved into how to materialise those sanitation-related principles in their different reports.

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NON DISCRIMINATION AND EQUALITY

The non-discrimination and equality principle requires that no group of people are left at a disadvantage with respect to their situation regarding the right. Therefore, **priority has to be given to more vulnerable groups as they have fewer means and opportunities** to access the enjoyment of the right.

The States must **immediately** prevent discrimination both in legislation and in the policies and in practice and progressively reduce inequalities between discriminated groups and the general population, even by means of positive actions that speed up the closing of the gaps.

People can suffer discrimination directly or indirectly, by means of legislation and/or social behaviour. It is therefore necessary to improve the quality of the existing data and include broken-down information to pinpoint the existence of discrimination patterns, establish the situation of the identified discriminated people (economic capacity, sex/gender/, ethnic group, number of people in the household, geographical location, etc.) and the causes of the discrimination.

Sufficient information on the marginalised groups in each context can be used to adopt specific measures to eliminate the discrimination and to allow them to use the services as usual.

A specific example of discrimination in the supply of sanitation services is the case of informal settlements, which do not receive services due to the lack of legal status or property deeds.

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GENDER EQUALITY

Gender inequalities deserve special attention as **they exist in all countries and in all aspects of social life.** As regards access to sanitation and hygiene, this inequality highlights wide
disparities between men and women that systematically exist as regards their access capacity, their management, their control and the ensuing benefits.

The source of that inequality of opportunities in the enjoyment of the human right to sanitation lies in the biological and socio-economic differences between women and men, but above all in the socio-cultural stereotypes that allocate certain functions and attributes to women that compound gender differences.

Women are disproportionately affected by the lack of private and adequate sanitation facilities, particularly in the case of those who are older, disabled, or pregnant, during menstruation or when they have to help their young children.

The lack of a sanitation facility near or within the home stops women and girls from being able to wash and manage their menstruation in safety and in privacy. This lack of privacy and the fear of suffering abuse cause many women to drink less liquids to avoid urinating, which can lead to dehydration, or directly to retain their urine for long periods of time, with the risk of suffering bladder and kidney infections.

Furthermore, the harassment of women when they relieve themselves outdoors or use public baths or the fear of suffering any type of gender violence on the way to the sanitation facility generates ongoing psychosocial stress that limits the social and personal development of many women.

One of the most vulnerable collectives in terms of gender equality is that of the non-defined gender persons or transgender persons, particularly with regard to access to public bathrooms when they are separated according to gender, due to the risk of suffering harassment and even violence.

Gender equality refers to the equality of rights, obligations and opportunities between the sexes, taking into account the different interests, needs and priorities and recognizing the diversity of the different groups of women and men.

States cannot ignore the prejudices of the stereotypes and the stigma by considering them as social phenomena over which they have no influence, even when the most direct effects are focused on the private sphere. A gender stereotype is unlawful when it breaches human rights and fundamental freedoms.

Coordinated action on different fronts is needed to address gender discrimination in the enjoyment of human rights. This requires the leadership of the public institutions and also the active involvement of other local non-state stakeholders, as the causes are complex and, to a great extent, context dependent.

Gender equality and non-discrimination have to be integrated in legislation, policies and strategies, so that:
Therefore, the States must begin by **reviewing and reforming all legislation** that inadvertently cause discrimination directly or indirectly, as there are numerous legal systems whose legislation hinders the enjoyment of those rights. For example, when they establish the ownership of land as a precondition to connect to a sanitation system, a status denied to women based on family laws regarding land inheritance.

Some countries have laws to keep cities clean and which penalise open defecation without offering public sanitation facilities as an alternative. This particularly discriminates against the homeless, above all women and girls that have a pressing need to use adequate services that guarantees their privacy.

In turn, **non-state stakeholders** involved in development have the **responsibility to question** current social norms and the traditional relations of power and control of the resources that **foster inequalities** in order to try to eliminate or, at least, not increase them as the consequence of their theoretically neutral interventions.

In many cases, **temporary affirmative action measures will need to be adopted**, particularly in those cases where gender is combined with **other discrimination factors aggravating inequalities**, such as in the case of those women who suffer poverty, live with a disability, suffer incontinence, live in remote areas, lack property deeds, are in prison or homeless.

The States have to adopt all the possible measures to eliminate the barriers that dissuade people from using sanitation facilities.
Awareness-raising campaigns based on the innovative use of the media, so that they reach each group according to their interests and motivations, are very powerful tools to inform and change ways of thinking and attitudes of women and men.

In order for the policies to be implemented and for progress to be made, robust supervisory and accountability frameworks have to be established, where women are offered the real opportunity to participate, make decisions and access control of resources.

**GENDER AND THE RIGHT TO SANITATION**

Understanding good menstrual hygiene management within the context of human rights requires a holistic approach to women’s and girls’ human rights. This means asking whether a woman or girl has:

- Adequate, acceptable and affordable menstrual management materials to absorb or collect menstrual blood and, where needed, access to medicine for period pain.
- Adequate facilities, notably water and sanitation infrastructure, which enable women and girls to change menstrual materials in privacy, with dignity and in safety, as often as necessary, using soap and water for washing the body as required, and with facilities to dispose of used menstrual management materials.


**MENSTRUAL HYGIENE MANAGEMENT**

Menstruation is a natural part of the lives of women and girls, and accommodating the menstrual needs is a key issue for the human right to sanitation. One of the greatest barriers that women and girls have to overcome to achieve gender equality has to do with the low priority given to managing their menstrual hygiene (MH). Their needs in this dimension of their lives are rarely taken into account when addressing water, sanitation and hygiene projects, developing policies or defining standards, as there is a tendency to homogenize the population under a male perspective that is exclusive to women.

This exclusion affects the guarantee of the human right to sanitation of women and girls, and also has a direct impact on their health, education, access to livelihoods and other human rights. Many women and girls use unhygienic sanitation methods because other methods are not affordable, not available or unknown due to stigma and taboos related to menstruation. Some girls and teenagers do not attend school because they lack private spaces to wash themselves and avoid being singled out by their peers. In the case of women, they have limited access to work when it requires long stays on the street or places where there is no access to decent and safe facilities.

These barriers are often multidimensional and include technical aspects related to the design and availability of sanitation infrastructure, but also economic, social, cultural and political ones. Therefore, addressing them requires the involvement of a large number of actors, from families, schools, the community or technical staff, to policy and regulatory decision makers.


SIGNIFICANT, FREE AND ACTIVE PARTICIPATION

Once sanitation has been recognised as a human right, people move from being recipients of discretionary policies to be holders of an enforceable right and, therefore, to being able to participate in all the processes and issues of concern regarding this human right.

The importance of participation lies in that, if it is inclusive, active, free and meaningful, it offers great benefits as it fosters the achievement of more sustainable and inclusive results. However, it is not straightforward to ensure participation in these conditions as it implies reassessing the relations of power, hierarchical structures and exclusion mechanisms that are frequently culturally and socially rooted. When the exercising of participation is not free but is presented as such, a legitimacy is assumed that really has not emerged from democratic processes and the patterns of discrimination and exclusion are perpetuated.

Participation must not be based on sporadic actions, but rather on ongoing processes in all spheres and stages. It should allow all those decisions to be influenced that affect the enjoyment of the human right to sanitation, which ranges from the local sphere (the design of a latrine, its location, the price, the management model of a system, etc.) to the national sphere (establishing government priorities, distribution of the resources, strategic decisions regarding regulatory and legislative frameworks).

On the other hand, the fact that participation processes are set up does not directly imply that everyone is able to participate on equal terms, which makes it one of the great challenges of the participatory processes.

It is essential that the participation is active, free and signification in order to ensure that a process is participative from human rights based approach. This implies:

- Involve people in the participation process
- Facilitate sufficient and appropriate spaces
- Assure capacity to access to participatory process
- Guarantee free and safe participation
- Guarantee every opinion is taken into consideration
It should be noted that the mere initial consultation does not comply with the content of the participation principle.

The call process is particularly relevant, as if the target audience is only the people owning the dwelling or the head of the household, the process can be perpetuating or even exacerbating patterns of inequality, for example, between women and men.

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**ACCESS TO INFORMATION**

Individuals may participate efficiently in the processes and ensuing issues provided they have free, coherent and sufficient information on them and it is available sufficiently ahead of time. It is important that the format is understandable and accessible to everyone, including those who do not know how to read or have a minority language. Different formats and channels will be needed to ensure maximum dissemination and that the lack of information does not hinder or prevent participation and to make sure that it reaches everyone.

The Inter-American Development Bank has identified the six processes (see next figure) in relation to the sector in order to guarantee access to the information and transparency.

In the Water and Sanitation Sector Framework, IADB sets as a priority to promote its transparency and accountability to improve the quantity and quality of information for all stakeholders, for use in citizen control and participation, so as to strengthen users’ rights. One goal aims to “[strengthen] municipal management in W&S and technical assistance for developing and implementing information systems that boost transparency and accountability in sector institutions” In the Public Services Policy, IADB outlines the principle of promoting integrity, transparency and accountability, as part of the goal to improve governance, improve efficiency, and guarantee users’ rights.

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IDB (2017) Manual on the Human Rights to Safe Drinking Water and Sanitation in Latin America and in the Caribbean, pg. 21
This principle consists of the right of people to require transparency from officials when fulfilling their obligations. Legislation and policies must therefore clearly define those obligations and the people responsible in each area (quality, affordability, etc.) and establish the channels to ensure that accountability to the population.

Individuals may monitor and assess how the rights are being implemented at the different levels of decentralisation. In this regard, the work carried out by the national statistics institutions (in charge of publishing and updating data) and the inspection and/or regulatory entities (in charge of monitoring the actions of the providers and compliance of legislation) is very important. In the countries where national human rights institutions are present, they usually coordinate with the inspection and/or regulatory entities to supervise how the government is complying with its human rights obligations and even monitoring specific complaints and ensuring their redress.
When the State institutions and/or the service providers do not comply with their duties in relation to the provision of this human right, the inspection and/or supervisory entities must have the authority to seek their compliance and do so through the courts. In this regard, all justice mechanisms shall be accessible, affordable, timely and efficient, in accordance with the human right to justice.

Sanitation services must be kept operative so there is no drop in access or in the service level and thus avoiding any setbacks. Furthermore, those services must also be guaranteed for future generations. Therefore, when selecting a technology, officials must take into account the short- and long-term costs, both direct and indirect, and the availability of financial and water resources in order to ensure sustainability.

This also applies to individual behaviour, as people must also always behave responsibly: correct use of the facilities, particularly as regarding water sources, cleanliness of the facilities, service connections, payment of the services, and other measures aimed at guaranteeing this right over time.

Even though it is true that the first thing is to ensure that the whole population has access to those services, interventions must also be aimed at guaranteeing their running and maintenance (management of physical assets), as otherwise that would mean that people with those services are at risk of no longer enjoying them (setback) or to do so in conditions that do not meet the minimum requirements. Developing progressive realization plans is therefore very important. The plans must include all the objectives (and their respective measures) to be met in the short, medium and long term, with clear indicators that allow them to be measured, and with measures in place to ensure their financing. This is all in line with the criteria and principles of the human right to sanitation.

In any event, measures should also be adopted that are aimed at ensuring the financial sufficiency of the provider in the long term and therefore have an efficient view and of the cost recovery, while respecting, as has been previously discussed, the criteria of affordability.
WHAT OBLIGATIONS ARE INVOLVED?

OBLIGATIONS FOR THE STATES

The human right to sanitation is recognised by the international community and is protected by international legal instruments. Thus, the States that ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR) (and its Optional Protocol, which establishes the complaints and investigation mechanisms) undertake to protect, respect and comply with the undertakings adopted in the national, regional and international framework to protect those rights.

The duty to respect:

The obligation to respect requires the States to abstain from performing unjustified actions that are a direct or indirect obstacle to the enjoyment of human rights.

As regards sanitation, the States shall abstain, for example, from:

a) Cutting off the sanitation service arbitrarily and illegally
b) Unjustified restrictions in the access to sanitation, such as shutting toilets at night
c) Disproportionately increasing prices
d) Land grab or other measures that led to force resettlement and deprive the affected individuals from accessing sanitation without offering them adequate alternatives
e) Applying penalties for defecating or urinating in the street when there are no other alternative available

The duty to protect:

The obligation to protect requires the States to enact and enforce the necessary laws or regulations to protect people against the abuses committed by third parties (industries, service providers, other people, etc.) against human rights.

As regards sanitation, the States should adopt measures, among other aspects:

a) So that the physical safety of women and children is not threatened when they use sanitation services situated outside the household.
b) To protect the sanitation facility against hindrance, damage or destruction by third parties
c) To regulate and control effectively the activity of the service providers in relation to safety, amount, service conditions or disconnections
d) To prevent discrimination by private stakeholders in relation to access to sanitation, for example on grounds of gender or disability
e) To ensure that service providers supply the services to marginal communities or households
The duty to realize:

The obligation to realise requires the States to adopt promotion, legal, budgetary, administrative and legislative measures and of any other type that are appropriate to fully implement the right to sanitation.

The States must, among other aspects:

a) Define the objectives of the extending of the hygiene and sanitation services, focusing on the marginalised and disadvantaged groups

b) Determine the available resources to fulfil those objectives and specify the most cost-effective way of using them

c) Increase the affordability of the services

d) Ensure appropriate education on the correct use of the sanitation services and to promote hygiene

RESPONSIBILITY OF NON-STATE STAKEHOLDERS

Regardless of the obligations of the State, non-state stakeholders also have responsibilities regarding human rights and the need for accountability in the event of non-compliance.

According to the Guiding Principles of the United Nations, companies have the responsibility to respect human rights and act with due diligence to avoid any action that may result in a breach of the human rights in the sphere of its operations, including those of its supply chains. International organisations, cooperation agencies or non-governmental organisations can likewise contribute to human rights violations being perpetrated and this requires accountability processes to be strengthened.

ENFORCEABILITY OF THE HUMAN RIGHT TO SANITATION

The recognition of sanitation as a human right by the international community and the existence of legal regulations and protection mechanisms are what make the human right to sanitation enforceable.

By ratifying the international treaties, the States undertake to embody the international framework of the human rights in their internal legislation, by transposing those international law provisions in the national legal system, by means of laws, regulations or other instruments. Many countries already consider the rights to water and to sanitation within their Constitutions, demonstrating a commitment to those rights at the highest level.

The recognition of rights implies the need for legal or other means that allow the holder of the right, which is any individual, to make a claim regarding any non-compliance by the holder of obligations, the governments, at any of their levels. Thus, we can speak about:
In order to facilitate sanitation being enforceable, the legal system related to the sanitation services and the public policies shall:

**Judicial enforceability**
- The claim is presented to national or international courts or at the administrative level

**Cuasi-legal enforceability**
- National Institutions of Human Rights or United Nations Mechanisms

**Social and political enforceability**
- Trying to influence law process or public policies

INTERNATIONAL CONTEXT OF SANITATION

During the years in which the MDG agenda was in force (from its approval in 2000 to its end in 2015), rapid sanitation interventions were incentivized in order to try to achieve the set target. Many States thus prioritised the provision of the service on a large scale in those areas where facilities could be provided quickly and more cheaply, for example, due to their proximity to existing connections and solutions. In contrast, a large percentage of the people located in more remote places (rural areas, small towns, informal neighbourhoods, etc)
continue not to have basic access to sanitation, thus generating large inequality gaps, along with environmental, health and social problems.

On the other hand, **many of the sanitation interventions have not proven to be sustainable** even though the MDGs agenda required in its wording (through not in its follow-up) the solutions to be lasting. Programmes to extend the sanitation service were all too frequently promoted without ensuring the appropriation, use, management and sustainability by the users, overlooking the adequacy in terms of the customs and preferences of each community, along with safety or the response to the specific needs of each person.

**The access levels to sanitation service**, defined by the JMP, are set out below:

**THE NEW JMP SCALE FOR SANITATION SERVICES**

<table>
<thead>
<tr>
<th>SERVICE LEVEL</th>
<th>DEFINITION</th>
</tr>
</thead>
<tbody>
<tr>
<td>SAFELY MANAGED</td>
<td>Use of improved facilities that are not shared with other households and where excreta are safely disposed of in situ or transported and treated offsite</td>
</tr>
<tr>
<td>BASIC</td>
<td>Use of improved facilities that are not shared with other households</td>
</tr>
<tr>
<td>LIMITED</td>
<td>Use of improved facilities shared between two or more households</td>
</tr>
<tr>
<td>UNIMPROVED</td>
<td>Use of pit latrines without a slab or platform, hanging latrines or bucket latrines</td>
</tr>
<tr>
<td>OPEN DEFECATION</td>
<td>Disposal of human faeces in fields, forests, bushes, open bodies of water, beaches or other open spaces, or with solid waste</td>
</tr>
</tbody>
</table>

*Note: improved facilities include flush/pour flush to piped sewer systems, septic tanks or pit latrines; ventilated improved pit latrines, composting toilets or pit latrines with slabs.*

Source: ‘Progress on Drinking Water, Sanitation and Hygiene’ JMP Report (July 2017) Pg. 8

Regarding the current SDGs Agenda, the UNICEF and WHO Report “State of the World’s Sanitation: An urgent call to transform sanitation for better health, environments, economies and societies” stressed that the world is alarmingly off-track to deliver sanitation for all by 2030, and the rate at which sanitation coverage is increasing would need to quadruple if the world wants to achieve the SDG sanitation targets. At the current rate of progress, it will be the twenty-second century before sanitation for all is a reality.
Currently, 4.2 billion people use sanitation services that leave human waste untreated, 673 million people have no toilets at all and practise open defecation, and nearly 698 million school-age children lacked basic sanitation services at their school.

**ANALYSIS OF THE MAIN CAUSES OF THE WORLD SANITATION CRISIS**

Beyond the greater or less progress in the different regions of the world in the last decades, the inequality gaps are currently obvious in relation to access to sanitation worldwide. In this regard, there is broad consensus\(^\text{10}\) regarding the reasons for the slowness and inequity in the progress towards the sanitation target, and special mention should be made of the low priority that has been given at political and community level. Sanitation continues to be seen by many cultures as a taboo theme and considered politically as a personal matter that does not require public intervention, as is the case of water.

In addition, the private sector perceives sanitation as a low return business outside the cities, as the investment risk is high, does not guarantee reliable initiatives that can be scaled due to the necessary adaptability to each context and projects a low impact as its achievements are blurred and not very tangible in the short term.

There are two key aspects that exacerbate this situation, which are, on the one hand, the little clarity in the allocation of responsibilities in the institutional sphere nationally, together with a lack of coordination of institutions in this regard, and, on the other hand, the inadequate and insufficient funding to enable the provision of the service.

As regards financing, this falls short to tackle the dimension of the current sanitation crisis, in addition to which the available mechanisms do not meet the needs of the users that lack the service, particularly those of the most vulnerable groups.

When the price to be charged to access the service is too high for some people, access is impossible for them and they resort to defecating outdoors as an alternative. This circumstance is too frequently overlooked, particularly in the assessment studies of the sector, focused nearly exclusively on access coverage data, and given that it is taken for granted that whoever has access to a sanitation facility will assume the payment of the service.

According to the human right to sanitation, the States must act as the brokers and drivers of the investments in sanitation, by defraying the cost of constructing and maintaining the infrastructure, and even its operating, when there is no guarantee that the service is affordable for the whole population, as is the case, for example, when the emptying of pits or septic tanks or the connection to a sewage network is too expensive for the users.

Given the current situation, the only channel to achieve universal coverage of the sanitation services involves proposing mixed financing systems that take into account the most vulnerable groups of the population and which includes the whole sanitation cycle, in order

\(^\text{10}\) “Opportunities, challenges and priorities on the road towards universal access to sanitation by 2030 Summary of evidence from an expert consultation”. Presented at the 2015 World Water Week in Stockholm in the session ‘Transforming the sanitation sector for achieving universal access by 2030’. Pp. 3-4. Andrés Hueso, WaterAid. August 2015
to ensure the measures for the construction, access, safe management of human excreta, hygiene and their associated products, and the treatment of wastewater to avoid the pollution of water sources.

As far as the institutional sphere is concerned, the responsibilities regarding sanitation are divided between different ministries and government departments with barely any coordination between them, particularly with the lead health institutions, such as the regulatory body which should generate the relevant guidelines. On the other hand, there is an additional concern and is that the growing decentralisation to local level of responsibilities in the provision of basic services, as is the case of sanitation, does not always go hand-in-hand with an increase in financing and strengthening of planning and implementation skills of interventions at this level.

Furthermore, sanitation has frequently been considered an ‘infrastructure’, and other environmental, cultural and social aspects have been overlooked to a great extent. These aspects, such as privacy and dignity, are closely related to its management and ensuing sustainability and are essential to achieve a real impact on the quality of life of people.

KEY ASPECTS TO PROGRESS IN THE REALIZATION OF THE RIGHT

In order to overcome the current situation and get as close to the SDG target as possible, it is necessary to advance more quickly than so far, accelerating investments and the development of the regulatory frameworks, along with adopting a work approach that exceeds the limitations that have hindered progress so far.

Some key aspects are set out below that can help to contribute to this progress, which are based on the lessons learnt in the previous period (1990-2015), where the slowness of the progress and inequalities have been the trend to overcome.
Review of the current regulatory and legal frameworks to eliminate any type of involuntary discrimination in the enjoyment of the right and to ensure that the operational planning and its budgetary frameworks, at all levels, advance towards those targets while prioritising the most vulnerable groups.

Dovetailing the technology and the service levels provided to the standards required by the human right, in response to the real needs of the users, including those with special needs. The choice of technology is key to provide an efficient service and at an affordable cost.

Development of methodologies to promote sanitation and hygiene practices adapted to each specific context, and in keeping with the timelines that those changes require.

Hygiene and sanitation solutions that include the whole population, with the specific emphasis being on ensuring that groups are not excluded as that would endanger the advances in public health.

The need to design integral actions adapted to the specific characteristics of each context (geographical, environmental, payment capacity, cultural traditions, etc.) that include both households and public spaces such as health centres and schools.

In order to be able to identify the zones and groups discriminated with respect to the general population and measure the progressive reduction of inequalities. It is therefore essential to have disaggregated data that can be crossed with that regarding the service level in terms of human rights. Apart from the data being available, the active involvement of the authorities at all levels is necessary to continuously update the information and link the decision making based on them.
Fostering private initiative in a way that responds to the demand for sanitation–related goods and services in those segments of the population that have the resources to do it.

There has to be leadership by the national, regional and local authorities in the sanitation actions, from the participation, transparency and accountability, in line with a human rights based approach.

It has to include different instruments that respond to the different payment abilities of the users, including public aid to enable the most vulnerable to access the service, promote better hygiene practices and incentivise private initiative in the service and supply chain.

The challenge of guaranteeing the human right to sanitation is huge, and a quantitative (investments) and qualitative (effectiveness and sustainability of the interventions) change of course is needed.

On the one hand, policies and measures need to be adopted that must be guided in practice, and not just in the discourse, by the principles and categories that govern this right, as well as by the roles that the private and public stakeholders must assume. This report, precisely, has sought to pinpoint the key points that may facilitate the understanding and implementation of the regulatory framework of the human right to sanitation.

Improving the interventions underway is not enough and it is essential to increase the financial commitments significantly. The World Bank itself has pointed out that just in terms of infrastructures alone (not taking operations and maintenance into account), three times the current investment would be needed to reach SDG6 by 2030.

Therefore, incorporating sanitation in the international and national political priorities is necessary, in order to ensure that not only the collectives and regions are reached where progress can be made more quickly and which are more economically affordable, to avoid hundreds of millions of people left behind.
Articles, documents and reports

Sanitation. A Human Right

United Nations Resolutions

- Triple-S WASH Sustainability Asessment Tool y WASH Sustainability Charter. https://www.ircwash.org/wash-tools

Thematic Reports of the human rights to water and sanitation Rapporteurs

United Nations Resolutions


