



Freshwater Action Network

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11 June 2009

To: Ms. Catarina de Albuquerque
Independent Expert
Human rights obligations related
to safe drinking water and sanitation
Palais des Nations – Geneva

RE: Response to request for input on human rights obligations related to sanitation

Dear Ms. de Albuquerque,

Freshwater Action Network (FAN) continues to be extremely grateful for the opportunity to share our views and experience on the human rights obligations related to sanitation with your team. As you have repeatedly acknowledged, most recently at the public consultation on the human rights obligations related to sanitation you chaired on 29 April in Geneva, sanitation is the most off-track off all of the development goals, leaving more than 2.5 billion people without access to sanitation services.

In this vein, we are supportive of your choice to focus your first year in your new role specifically on sanitation. As a major network of civil society organizations (CSOs) implementing and influencing water and sanitation policy and practice around the world, FAN members are keenly focused on working towards the progressive realization of the human right to sanitation, defined as 'access to, and use of, excreta and wastewater facilities and services that ensure privacy and dignity, ensuring a clean and healthy living environment for all.'¹ In the experience of our members, this work is fraught with significant obstacles and challenges, among the greatest of which is neglect and silence. Thank you again for opening up an important dialogue on this critical issue.

As you know, there has been recognition of the right to sanitation at various levels within contexts in which many of our members are working. For example, The Delhi Declaration, which emerged out of the Third South Asian Conference on Sanitation (SACOSAN III), recognizes the right to sanitation for every citizen. However, this right is not legally recognized in the constitutions of countries in the region. The Delhi Declaration, as well as other regional agreements and national constitutions that recognize this right, remain significant however, in that they can signal, catalyze and support increased political will towards the ultimate aim of universal access to sanitation.

This is important because what Freshwater Action Network members, and certainly you and your team, ultimately seek is not merely recognition of the human right to sanitation in a document, but

¹ (Facilities and services should include 'collection, transport, treatment and disposal of human excreta, domestic wastewater and solid waste, and associated hygiene promotion') COHRE, UN-HABITAT, WaterAid, SDC, *Sanitation a Human Rights Imperative*, Geneva, 2008. p. 17. This document defines sanitation in human rights terms, describing the value of treating sanitation as a human rights issue and outlining priority actions for governments, international organizations and civil society.

recognition of this right in practice. Through decades of work across continents, our members have learned that in order for this legal right to translate into safer, healthier living conditions, citizens must be made aware of their rights, how to claim these rights and what responsibilities they have as rights holders.

In this vein, recognition of the right to sanitation can support efforts towards an integrated approach to wastewater management. By raising awareness among communities about their rights and the responsibilities linked to those rights – specifically their dual role as beneficiaries and polluters – the rights based approach to sanitation not only encourages behavioral change, it can foster ‘catchment solidarity’ – whereby people settled upstream appreciate not only their rights but also their responsibilities to those settled downstream.

Recognition of the human right to sanitation is also particularly valuable for building awareness and creating political will – again not just for rights holders, but also for duty bearers. The rights based dialogue can promote forums for parliamentarians, legislators, judges and other government officials to learn their role in creating and supporting access for all. A well informed group of legislators can lead not only to enormous progress in rights recognition, but critically also to the realization of sanitation commitments in practice.

There are however, those who oppose the recognition of the right to sanitation arguing that it will actually undermine current effective efforts on the ground. Primarily, this seems to stem from the fear that once this right is ‘granted’ if a country is unable to provide these services the government can be held legally responsible – thus the focus will be moved from service provision to litigation. While the acknowledgement of rights certainly demands accountability from governments in facilitating access, FAN members work in contexts where the government and local service providers struggle with inadequate resources and lack of capacity that recognition of this right alone will not change. Thus, our members work daily to support, inform and cooperate with local service providers and governments in partnership to increase their capacity, accountability and responsiveness. This critical cooperation and support will not end once rights are recognized.

What will hopefully end, through our work and yours, are the myths surrounding the recognition of the right to sanitation – for example, that it should result in ‘free’ services such as household toilet construction and septic tank or pit exhaustion services. In fact, the right to sanitation does not require the government to provide sewerage services for everyone where this is technically, financially or environmentally unfeasible.² What it does require is that governments respect, protect and fulfill the right, using the maximum available resources to progressively realize the right.³ Importantly, the right to water is increasingly legally recognized and has not caused significant litigation issues or created obstacles to attainment of water services.

Those who deny that sanitation is a human right argue that recognition of this right could lead to increased ‘supply-led’ interventions. This argument comes from past experience where toilets were given to communities without appropriate hygiene promotion or buy-in or in culturally irrelevant or inappropriate ways. Practitioners have learned a great deal from this experience and the high subsidy intervention model that was largely responsible has been widely discredited. Increasingly, sanitation initiatives focus on communities rather than individual households, in an effort to produce defecation-free settlements and intensive use of sanitation facilities. In these circumstances the risk of non-use of latrines once constructed is much lower, particularly where hygiene and sanitation improvements go hand-in-hand, as we believe they should. The rights based approach to sanitation is assisting this process and is used by many of our members to support communities in claiming their rights and assessing their actual need or ‘demand’ for services and appropriate technology. In this way, the right to sanitation actually and fosters demand-led, rather than supply-led interventions.

² Ibid. p. 28-9.

³ Ibid. p. 27-8.

Freshwater Action Network recognizes that the right to sanitation, like other social, economic and cultural rights, has limitations. While it can clearly help shape policy and legitimize claims for access – particularly for marginalized groups – it does not automatically lead to implementation and is only useful to the extent that marginalized groups and those working on their behalf, use it as a tool.⁴ That said, the above issues are among the most critical in this discussion and we are appreciative of the opportunity to comment on them.

We are aware that what you have started is an ongoing dialogue and we are committed to continuing this conversation with you and your team. Freshwater Action Network members are further committed to leveraging your efforts towards our shared goal – creating the political will necessary to realize access and dignity for the more than 2.5 billion people around the world without access to sanitation.

You have already met some of our members through your research in the field. Please be assured, that our members will continue to share their experience and expertise and make themselves available as needed to support your efforts.

In partnership,

Freshwater Action Network

⁴ COHRE, AAAS, SDC and UN-HABITAT, *Manual on the Right to Water and Sanitation* (2007), p. 18-19.