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United Nations: General Assembly makes progress on the human rights to water and sanitation, but only so far as the USA permits

The UN General Assembly's Third Committee on 21 November adopted a resolution on "The human right to safe drinking water and sanitation". Amnesty International welcomes this resolution; the first in which all UN member States affirm that the rights to water and sanitation are legally binding in international law. However, we are deeply disappointed that as a result of pressure from the USA, the main sponsors of the resolution, Germany and Spain, removed from the resolution a paragraph containing a critical affirmation of the contents of these rights. It is outrageous that one country's view – for which it has not provided any plausible explanation – has been given priority over the expressed view of the many other countries supporting this language. The US position stands in stark contrast to the views of the UN Human Rights Council and the UN Committee on Economic, Social and Cultural Rights, and against the interests of the billions of people who lack adequate access to water and sanitation.

A Glaring Omission

Until moments before its adoption, the draft General Assembly resolution had recognised that "the human right to safe drinking water and sanitation entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use and to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, and acceptable and that provides privacy and ensures dignity".

The definition under discussion was based on that contained in a resolution of the UN Human Rights Council adopted in September 2013, which was co-sponsored by 111 States and was adopted by consensus. At the time, the USA was the only country that disassociated itself from the definition of these rights and stated that it did not agree 'with the expansive way this right has been articulated'. However, it has not explained what aspects of this definition it does not accept.

The draft of this resolution that included this important affirmation of the content of the rights to water and sanitation in the General Assembly enjoyed the support of 81 cosponsors from all parts of the world. Only the USA consistently opposed inclusion of text endorsing the contents of these rights. It is regrettable that the main sponsors removed this language at the last minute at the behest of the USA.

The USA's view that the definition of the rights set out by the Human Rights Council is 'expansive' cannot be sustained. That definition of these rights is in fact limited and relates to essential elements without which they would only be hollow promises. People are entitled to water and to sanitation that is within reasonable reach and at a price they can afford. People have a right to enough water to wash their clothes, prepare their food and keep themselves and their homes clean. People have a right to sanitation which they can use without risk of disease, injury or assault, in all locations where they spend significant time, which they can access in dignity and without spectators and without being forced to abandon those of their social and cultural sanitation practices that they wish to maintain. Such rights are only 'expansive' if one adopts a 19th century understanding of hygiene and of government duties to ensure the provision of public services.

It is therefore incumbent upon the US government to explain which of these aspects of the rights it cannot accept and why. It owes this explanation to the world at large, and to Americans, who deserve to know what aspects of their rights to water and sanitation their Federal government refuses to guarantee. In fact, during the official mission to the USA in 2011, the UN Special Rapporteur on these rights identified several instances where the government was not taking adequate steps to ensure quality, affordability and access to water and sanitation.

Amnesty International's research in informal settlements has shown the consequences when governments fail to address all aspects of these rights. For example, lack of attention to safety of sanitation by ensuring that women and girls have a toilet in or next to their home leads to situations in which they cannot use toilets after dark. Failure to address affordability – such as for payment for water, charges for use of public toilets, emptying latrines or sewerage charges – can be a significant barrier to access for the poor.

Positive steps – the glass half full

While the explicit reference to the definition of contents of rights was removed, the resolution adopted by the GA Third Committee endorses the UN Human Rights Council resolution of September 2013 which defined these rights.

Furthermore, the General Assembly resolution strengthens the global recognition of the legal basis of the rights to water and sanitation. It repeats an affirmation by the UN Human Rights Council that the rights to water and sanitation are derived from the right to an adequate standard of living. It effectively affirms that the rights to water and sanitation are implicitly contained in several human rights treaties that guarantee the right to an adequate standard of living, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which 161 States are party, and the UN Convention on the Rights of the Child (CRC), which has reached nearly universal ratification, and are therefore legally binding rights. The General Assembly's view is significant because it comprises all States parties to the ICESCR and CRC.

The resolution also calls on States to consider these rights in the goals, targets and indicators for the post-2015 international development agenda. It calls on States to eliminate inequalities in access on grounds such as gender and social origin and to progressively eliminate inequalities based on factors such as rural-urban disparities, residence in slums and income levels. The resolution calls upon States to consult with communities on adequate solutions to ensure sustainable access. It further calls on States to provide for effective accountability mechanisms for all water and sanitation service providers to ensure that they respect human rights and do not cause human rights violations or abuses.

Way Forward

The resolution will now be transmitted to the General Assembly Plenary for adoption in mid-December.

Fully achieving the rights to water and sanitation will require sustained work in the coming years at all levels – from the United Nations down to sanitation departments at the municipal level. Recognising the content of these rights should be the most straightforward part of this work. Explicit and strong affirmation of the content of these rights by the UN General Assembly would provide additional political and legal support to these rights and help focus government attention on gaps in water and sanitation provision.

Amnesty International therefore urges the supporters of this important initiative to reintroduce the removed language in future texts, and present a resolution for adoption at the next session of the General Assembly.

BACKGROUND

The draft resolution presented at the Third Committee of the 68th session of the General Assembly was cosponsored by the following countries prior to the removal of the paragraph on the contents of the rights to water and sanitation: Albania, Andorra, Armenia, Austria, Belgium, Benin, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Burundi, Congo, Croatia, Cyprus, Denmark, Dominican Republic, El Salvador, Eritrea, Estonia, Fiji, Finland, France, Georgia, Germany, Greece, Grenada, Guatemala, Guinea-Bissau, Haiti, Honduras, Hungary, Iceland, Ireland, Italy, Jordan, Latvia, Lebanon, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Maldives, Mali, Malta, Mauritius, Mexico, Moldova, Monaco, Montenegro, Morocco, Netherlands, Norway, Panama, Peru, Poland, Portugal, Qatar, Romania, Rwanda, San Marino, Sao Tome and Principe, Serbia, Singapore, Slovakia, Slovenia, Somalia, South Africa, South Sudan, Spain, Switzerland, Tajikistan, Tanzania, Thailand, the Former Yugoslav Republic of Macedonia, Togo, Tunisia, Uganda, Ukraine, Uruguay and Zambia. As a result of the deletion of the paragraph on the contents of the rights, Costa Rica withdrew its co-sponsorship and the United States joined the list of co-sponsors.

The right to an adequate standard of living is contained, in addition to the ICESCR and CRC, in the Universal Declaration of Human Rights (UDHR). The USA has previously declared that it recognised the rights to water and sanitation only as rights contained in the ICESCR. The USA has signed, but is not party to, the ICESCR and CRC. It is therefore under an obligation not to defeat the object and purpose of these treaties. The UDHR, although not a treaty, has been used by the International Court of Justice and the General Assembly as a recognised source of standards binding States. The USA has claimed that only parties to the ICESCR are bound by the rights to water and sanitation. However, if it were confident in such a claim, it would not have devoted significant energy and diplomatic capital to opposing the definition of the contents of these rights agreed at the Human Rights Council. Its conduct suggests that it considers itself bound by these rights.

The Human Rights Council's definition of the rights to water and sanitation, contained in Resolution 24/18 of 27 September 2013, drew upon the views of the UN Committee on Economic, Social and Cultural Rights, a body elected by States to elaborate the interpretation of the ICESCR. The Committee has clarified in General Comment No. 15 on the Right to Water (E/C.12/2002/11) that the right to water includes water 'for personal and domestic uses, which ordinarily include drinking, washing of clothes, food preparation and personal and household sanitation and hygiene.' The content of the right to sanitation was defined by the Special Rapporteur (at the time Independent Expert) in her thematic report on sanitation to the Council in 2009 (A/HRC/12/24), and this definition was then relied upon by the Committee on the Economic, Social and Cultural rights in its 2010 Statement on the Right to Sanitation (E/C.12/2010/1).

The Committee's interpretations of the ICESCR are authoritative and therefore the content of these rights is already legally binding on States parties to the ICESCR. They can be used by people to hold their government to account.

UN resolutions on water and sanitation refer to the "human right to safe drinking water and sanitation"; Amnesty International interprets this reference as covering two distinct rights: a right to water and a right to sanitation. The UN Committee on Economic, Social and Cultural Rights has stated that there are distinct rights to water and to sanitation. There is general consensus among experts on water and sanitation that sanitation deserves special attention in order to prevent its neglect. The recognition of the distinct rights to water and sanitation is important in order to prevent the neglect of sanitation. The consequences of neglecting sanitation are dire. Lack of access to adequate sanitary facilities (including toilets and latrines) is one of the primary causes of infant mortality and demeans the dignity of people denied such access. Furthermore, it should be clarified that the term "right to safe drinking water" in the English versions of its resolutions refers to 'drinkable' water – not water just for drinking, but also for other essential uses for a dignified life. Amnesty International has consistently urged

the Council to use the term 'potable or 'safe water' rather than 'drinking water' in order to make this clear.

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