
WASH UNITED, AMNESTY INTERNATIONAL AND WATERAID PUBLIC STATEMENT

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UNITED NATIONS: GENERAL ASSEMBLY RESOLUTION ON HUMAN RIGHTS TO WATER AND SANITATION MAKES IMPORTANT ADVANCES BUT RAISES CONCERNS ABOUT FULL COMMITMENT TO HUMAN RIGHTS TREATY OBLIGATIONS

The UN General Assembly on 18 December 2019 adopted a resolution on the “human rights to safe drinking water and sanitation”. We welcome that this resolution was adopted by consensus for the first time since 2015, following votes at the UN Human Rights Council in 2016 and 2018 and at the General Assembly in 2017. We also welcome the commitments in the resolution on equality and non-discrimination, including on menstrual hygiene. We are pleased that the resolution recognises the impact of climate change, as well as humanitarian emergencies, on the human rights to water and sanitation, and the need to pay specific attention to disadvantaged groups.

We welcome the resolution’s recognition that the 2030 Agenda marks a paradigm shift in which plans for achieving sustainable development should reflect the universality, indivisibility and interdependence of all human rights. Almost 10 years after the recognition of the human rights to water and sanitation and with only 10 years left to achieve the SDGs, there is no time to waste in getting policies on sustainable development right. However, we are concerned that the resolution’s text does not adequately reflect the strength and extent of States’ legally binding obligations to realise the human rights to water and sanitation, on the basis of their existing commitments under human rights treaties.

GENDER EQUALITY

Almost a quarter of a century after their adoption, the resolution for the first time recalls the Beijing Declaration and Platform for Action and the International Conference on Population and Development Program of Action and the outcome documents of follow up conferences, which have been instrumental in outlining critical areas for action to achieve women’s empowerment and gender equality. The resolution highlights many concerns that are particularly important for achieving gender equality in exercising the human rights to water and sanitation. It reiterates that women and girls face specific barriers in accessing water and sanitation services and are more harshly impacted by the lack of services because they shoulder the main burden of collecting household water and unpaid care work. The text further highlights not only the importance of adequate services for enabling menstrual hygiene management, but also the need to tackle stigma and shame associated with menstruation. It is welcome that the General Assembly rejected attempts by some States to oppose references to gender equality in the resolution.

In future resolutions, the General Assembly should explicitly address outstanding gender related concerns such as, discrimination and stigma faced by gender non-conforming individuals.¹

CLIMATE CHANGE, HUMANITARIAN EMERGENCIES AND CRISES

A clear focus of the resolution this year is on the human rights to water and sanitation in the context of humanitarian emergencies and crises, including armed conflict and natural disasters, including due to climate change. In previous years, the resolution expressed concern over the contribution of climate change to the increased frequency and intensity of sudden-onset natural disasters and slow-onset events on the enjoyment of all human rights, including the human rights to water and sanitation. This year's text contains important additions. It highlights that the effects of climate change are felt unequally, with impacts felt most acutely by people living in informal settlements, people living in small island States and rural and local communities, as well as Indigenous peoples. It calls for enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change.

The resolution highlights the dramatic consequences of a lack of adequate water and sanitation services in humanitarian emergencies and crises and acknowledges that people living in countries affected by armed conflict and natural disasters are more likely to lack access to even basic services. It expresses concern regarding some of the specific impacts of humanitarian emergencies and crises, including armed conflict or natural disaster, on women and girls, children and persons with disabilities. In its operative part, the resolution calls for taking measures to empower women and girls for preparedness in humanitarian emergencies and crises by ensuring access to services and implementing gender-responsive policies, plans and programmes.

CONSENSUS REGAINED, BUT LACK OF ACCURATE REFLECTION OF STATE COMMITMENTS

In 2016, 2017 and 2018, resolutions on the human rights to water and sanitation at the UN Human Rights Council and General Assembly respectively faced a vote – rather than being adopted by consensus like all other texts since 2010. It is therefore a key success by the sponsors Germany and Spain to have found a text on which all UN Member States could agree. This cements the confirmation by all UN Member States that water and sanitation are human rights guaranteed by Article 11 of the International Covenant on Economic, Social and Cultural Rights.

This year, however, at Kyrgyzstan's request, the long-standing agreed language stating that regional and international cooperation for the realisation of the human rights to water and sanitation is "without prejudice to" international water law including international watercourse law was amended.² The language in question has now been changed to state that international cooperation has "no bearing on the issues of international water law, including international watercourse law". This is of great concern, as "without prejudice" is a common expression used in public international law to state that two legal

¹ See the Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, Stigma and the realization of the human rights to water and sanitation, A/HRC/21/42, para. 40.

² The original text in the last General Assembly resolution on the subject in 2017 stated: "Affirming the importance of regional and international technical cooperation, where appropriate, as a means to promote the progressive realization of the human rights to safe drinking water and sanitation, without any prejudice to questions of international water law, including international watercourse law,"

sources stand next to each other, and that both would continue to apply. Whereas the resolution now can be read to imply that international cooperation for the realisation of the human rights to water and sanitation does not affect issues of international watercourses law. Such language is disturbing as it may imply that States' are seeking to ignore certain human rights obligations in contexts where international watercourses law applies.

While international watercourses law provides more specific and authoritative guidance than human rights law on the allocation of international watercourses, it is not legally correct to imply that there may be a 'human rights free zone' in any context. For example, it surely is not the case that States are free to engage in racial or gender discrimination in technical assistance programmes to assist another country relating to management of transboundary watercourses.

We recognize that States were seeking to achieve consensus on the text, but do not believe that States, particularly sponsors and co-sponsors of the resolution, intended to provide a misleading statement of international law or to compromise on human rights obligations. It is therefore critical that future resolutions by the Human Rights Council and General Assembly correct such errors and go back to the original formulation of the text in the 2017 General Assembly resolution.

The resolution contains another concerning failure to reflect human rights obligations, indicating that States have the responsibility to "endeavour to take steps" to progressively achieve the full realization of the human rights water and sanitation.³ This language closely tracks the language of Article 2 (1) of the International Covenant on Economic, Social and Cultural Rights, but it replaces an undertaking to 'take steps' with an undertaking to 'endeavour to take steps'. This distinction is important, as it appears to seek to reduce the extent of the obligation. Article 2 (1) of the ICESCR explicitly indicates that States parties must take steps to realise these rights. Although the extent of the steps they take is dependent on availability of resources, they must take steps, not simply *try* to take steps.⁴ Article 2 (1) was formulated in a very nuanced manner that sets out a clear obligation for States to do what is feasible, but not the impossible, to realise rights. It reflects a treaty development process that was conducted over a decade, leading to an outcome to which 170 States are legally bound. Notably, the UN Human Rights Council uses the term 'must take steps' when it refers to these obligations.⁵ It is therefore important that General Assembly resolutions that repeat such obligations do not describe them in this watered down manner.

³ "Reaffirms that States have the primary responsibility to ensure the full realization of all human rights and to endeavour to take steps, individually and through international assistance and cooperation, especially economic and technical cooperation, to the maximum of their available resources, with a view to progressively achieving the full realization of the rights to safe drinking water and sanitation by all appropriate means, including, in particular, the adoption of legislative measures." A/C.3/74/L.33/Rev.1, para. 4.

⁴ This reading of the treaty also reflects the view of the UN Committee on Economic, Social and Cultural Rights, see General Comment No.3: General comment No. 3: The nature of States parties' obligations, UN Doc. E/1991/23.

⁵ For example, HRC Resolution 39/8 of September 2018 states in OP3: "Reaffirms that States have the primary responsibility to ensure the full realization of all human rights and must take steps, nationally and through international assistance and cooperation, especially economic and technical, to the maximum of their available resources, to achieve progressively the full realization of the rights to safe drinking water and sanitation by all appropriate means, including in particular the adoption of legislative measures in the implementation of their human rights obligations;"

BACKGROUND

The resolution adopted by the 74th UN General Assembly was led by Germany and Spain and co-sponsored by: Afghanistan, Albania, Algeria, Andorra, Angola, Antigua and Barbuda, Armenia, Austria, Bahamas, Bangladesh, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Cabo Verde, Chad, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czechia, Denmark, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gambia, Georgia, Germany, Ghana, Greece, Guinea, Haiti, Honduras, Hungary, Iceland, Ireland, Italy, Jordan, Kiribati, Latvia, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Maldives, Mali, Malta, Mexico, Micronesia, Monaco, Mongolia, Montenegro, Morocco, Namibia, Netherlands, Nicaragua, Nigeria, North Macedonia, Norway, Palau, Panama, Paraguay, Peru, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Serbia, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sweden, Switzerland, Thailand, Togo, Tunisia, Tuvalu, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, Uruguay and Venezuela.

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