AMNESTY INTERNATIONAL PUBLIC STATEMENT

AI Index: IOR 40/018/2010
1 October 2010

United Nations: Historic re-affirmation that rights to water and sanitation are legally binding

Amnesty International welcomes the adoption by the UN Human Rights Council of a resolution which affirms that the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living. This resolution effectively re-affirms that the rights to water and sanitation are implicitly contained in several human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) to which 160 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.

This is the first UN Human Rights Council resolution to affirm the right to water and sanitation. This resolution reiterates the recognition by the United Nations Committee on Economic, Social and Cultural Rights that the right to water – like the rights to food and adequate housing - emanates from the right to an adequate standard of living contained in Article 11 (1) of ICESCR. In addition, the resolution affirms that the right to sanitation is also derived from the right to an adequate standard of living.

In July 2010, the UN General Assembly adopted a resolution that "recognised the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights" (A/RES/64/292 of 28 July 2010). The Human Rights Council resolution refers to the General Assembly resolution and takes a further step by specifying that the right to water and sanitation is legally binding.

In total, 178 countries from all regions of the world have now recognised the right to water and sanitation at least once in an international resolution or declaration. Governments cannot deny that they are legally obliged to ensure the rights to water and sanitation. This resolution will strengthen the ability of persons denied their rights to water and sanitation to hold governments to account.

Amnesty International regrets the UK's decision to disassociate itself from the consensus on this resolution. The organization urges the UK to rectify this decision at the earliest available opportunity and to recognise the right to sanitation. Amnesty International is disappointed with Guatemala's statement prior to the adoption of the resolution that the right to drinking water and sanitation must be in conformity with current national legislation and that this right is not justiciable at the international level. Such a view is legally incorrect.

Amnesty International calls on all countries that have not done so to publicly recognise and implement the rights to water and sanitation. All States must take steps to ensure that the rights to water and sanitation are fully reflected in their laws, policies and practise. They should ensure that remedies are available for violations of these rights at the national and international level. All States should become parties to international complaint mechanisms for violations of these rights, including the Optional Protocol to the ICESCR.

Background Briefing on the Human Rights Council Resolution

1. Human Rights Council resolution A/HRC/15/L.14 not only provides the legal basis for the rights to water and sanitation but also recognises that it is inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity.

2. The right to water and sanitation has been recognised by 178 States in at least one international resolution or declaration including at the UN General Assembly in July 2010, the First Africa-South America Summit in 2006, the First Asia-Pacific Water Summit in 2007, the Third South Asian Conference on Sanitation in 2008 and at the present session of the Human Rights Council on 30 September 2010.

3. Only Canada, Israel and Tonga have not recognised both the rights to water and sanitation. On 30 September, at the present Council session, the USA accepted that the right to safe drinking water and sanitation is derived from the ICESCR.

4. Ten countries have recognised the right to water but have not as yet recognised the right to sanitation in an international or regional declaration. These countries are Albania, Austria, Belize, Czech Republic, Malta, Sweden, Trinidad and Tobago, Turkey, Turkmenistan and the UK.

5. Amnesty International regrets the UK's decision to disassociate itself from the consensus on this resolution and to refuse to recognise the right to sanitation. The UK justified its position on the grounds that there is no international agreement on what the right comprises and that there is no clear internationally agreed definition of sanitation. Amnesty International deplores the UK's position on the right to sanitation. The lack of an internationally agreed definition of sanitation did not prevent the UK from repeatedly declaring its commitment to the Millennium Development Goal 7 C to reduce by half the proportion of people without sustainable access to safe drinking water and basic sanitation.

6. In becoming party to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, the UK recognised and became bound by a range of rights that did not have internationally agreed definitions. Such rights included the right to cruel, inhuman or degrading treatment or punishment, the right to food, the right to take part in cultural life, the right to self-determination, the right to protection of the law against interference with one's privacy, family, home, correspondence and against unlawful attacks on one's honour and reputation. The binding content of these and other rights is appropriately elaborated over time by independent treaty monitoring bodies, in fulfilment of the mandate that States have given them.

7. The Independent Expert on human rights obligations related to safe drinking water and sanitation has provided the Council with a definition of sanitation in human rights terms in her first annual report to the Council (A/HRC/12/24). The Independent Expert specified that sanitation can be defined as a system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene.

8. Any lack of clarity about the precise scope of the right to sanitation is not an excuse for refusing to recognise the core content of the right of sanitation about which there can be no dispute. The right to sanitation means that people should not be left with no option but to defecate in the open, or into a bucket or a plastic bag. Women and girls should not have to choose between going to a public toilet or risking sexual violence. They should not – due to a lack of toilets in schools – be forced to choose between education and dignity. Children should not be in a situation where lack of an adequate toilet or lack of information about safe hygiene puts them at risk of death from diarrhoea. To state that governments cannot be held legally accountable for such situations due to a lack of international agreement on definitions reveals a callous lack of urgency.

9. Amnesty International is also concerned about Guatemala's statement prior to the adoption of the resolution that the right to drinking water and sanitation must be in conformity with current national legislation. Such a view is incorrect as it is established international law that national legislation must be in conformity with human rights treaties such as the ICESCR to which Guatemala is a party.

10. Guatemala also stated that the adoption of the resolution does not generate any right which is justiciable at the international level. However, there is no basis for a State to purport to state that any particular right contained in an international treaty is non-justiciable at the international level. The adoption of the Optional Protocol to the ICESCR by the UN General Assembly in December 2010 confirmed that all rights contained within the ICESCR are justiciable at the international level. All States that have not done so must therefore become party to the ICESCR and its Protocol in order to ensure that all people have the right to a remedy at the international level for violations of their economic, social and cultural rights.

11. Amnesty International notes that the resolution refers to the right to safe drinking water, rather than the right to water. The term 'drinking water' refers to water that is suitable to drink, regardless of the purpose to which it is used, including washing, flushing toilets or agriculture. However, 'drinking water' may be misunderstood in practise as referring only to water for personal consumption. Future United Nations resolutions should therefore refer to the right to water or the right to safe water rather than the right to safe drinking water.

12. Amnesty International welcomes that resolution A/HRC/15/I.14 reaffirms that States have the primary responsibility to ensure the full realisation of all human rights, and that the delegation of safe drinking water and/or sanitation service delivery to a third party does not exempt the State from its human rights obligations. It is important the resolution calls upon States to adopt and implement effective regulatory frameworks for all service providers in line with the human rights obligations of States and to ensure active, free and meaningful participation of the concerned local communities and relevant stakeholders. Amnesty International calls upon States to ensure that an effective regulatory framework and participation decision-making process is in place *at the outset* prior to any delegation of the water and sanitation to non-State actors.

13. The resolution does not set out the all the requirements of international law on non-State provision of water and sanitation. It is therefore essential that States act in conformity with their obligations which have been elaborated in General Comment No. 15: The Right to Water of the United Nations Committee on Economic, Social and Cultural Rights, the second annual report of the Independent Expert (A/HRC/15/31) and the report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation (A/HRC/6/3).

Amnesty International's Demand Dignity campaign aims to end the human rights violations that drive and deepen global poverty. The campaign mobilises people all over the world to demand that governments, corporations and others who have power listen to the voices of those living in poverty and recognise and protect their rights. For more information visit the Demand Dignity website

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