



Sanitation: A human rights imperative

A document defining sanitation in human rights terms, describing the value of treating sanitation as a human rights issue and outlining priority actions for governments, international organisations and civil society.



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Swiss Agency for Development
and Cooperation SDC

CENTRE ON
HOUSING RIGHTS
AND EVICTIONS



Sanitation: A human rights imperative

A document defining sanitation in human rights terms, describing the value of treating sanitation as a human rights issue and outlining priority actions for governments, international organisations and civil society.

COHRE, UN-HABITAT, WaterAid, SDC

Copyright © 2008
Centre on Housing Rights and Evictions, 83, Rue de Montbrillant,
1202 Geneva, Switzerland

All rights reserved. Any reproductions, in whole, or in part of this publication must be clearly attributed to the original publication and the authors notified.

This publication may be cited as: COHRE, WaterAid, SDC and UN-HABITAT, *Sanitation: A human rights imperative* (Geneva 2008).

ISBN: 978-92-95004-47-4

Centre on Housing Rights and Evictions, Right to Water Programme
83, Rue de Montbrillant,
1202 Geneva
Switzerland
Tel: +41 22 734 1028,
Fax: +41 227338336
E-mail: water@cohre.org
Web: www.cohre.org/sanitation

Swiss Agency for Development and Cooperation (SDC)
Thematic and Technical Resources
Freiburgstrasse 130
3003 Berne
Tel: +41 31 322 34 75
Fax: +41 31 323 17 64
E-mail: catherine.favre@deza.admin.ch, francois.muenger@deza.admin.ch
Web: www.sdc.admin.ch

United Nations Human Settlements Programme (UN-HABITAT)
Water, Sanitation and Infrastructure Branch (WSIB)
P.O. Box 30030, Nairobi
Kenya
Tel: +254 20 7625082
Fax: +254 20 7623588
Email: andre.dzikus@unhabitat.org
Web: www.unhabitat.org

WaterAid
47-49 Durham Street,
London
SE11 5JD
UK
Tel. +44 20 7793 4500
Fax: +44 20 7793 4545
Email: olivercumming@wateraid.org
Web: www.wateraid.org

Cover photos: WaterAid/Abir Abdullah
Graphic design: www.barbara-brink.com
Technical editor: Maria Katsabanis

For a list of any errors or omissions found subsequent to printing, please visit www.cohre.org.

In the UN International Year of Sanitation 2008, it is useful for us to add to our understanding and knowledge of how best to improve access to sanitation for all by exploring the legal basis and possible standards for the human right to sanitation, as a tool to improve our common goal of ensuring sanitation for all.

This publication plays an important role in clarifying how implementation of the right to sanitation encourages governments to ensure that all people, regardless of background, income or living conditions have access to these crucial services.

While governments are increasingly including the right to sanitation in their constitutions, national laws and policies, there is still a long way to go before this right is universally recognised. However, the benefits are clear. The right to sanitation demands accountability from governments in facilitating access to sanitation, particularly by assisting individuals and communities in constructing their own latrines, and removing barriers to access such as lack of security of tenure. Governments also must fulfil their

obligations to ensure that all those who lack access, or who are often socially excluded from decision-making, such as women, are ensured their rights to information and participation. It is critical that the sanitation provided is what the users require, rather than what the provider thinks is required. Further to this, a human rights vision requires that governments prioritise the needs of those without access, or those who cannot provide services for themselves, such as the sick, the elderly and those living in informal settlements.

I welcome this publication, which has drawn on the expertise and knowledge of a wide range of sanitation specialists, as an important contribution to the 2008 International Year of Sanitation.



Maria Mutagamba
Honourable Minister of Water and
Environment, Uganda.

1.	Introduction: The sanitation crisis	1
1.1.	The necessity of access to sanitation for all	3
1.2.	Benefits of recognising sanitation as a human right	5
1.3.	Why is sanitation for all still such a distant goal?	5
2.	The legal basis for the right to sanitation	11
2.1.	Legally binding international treaties	11
2.2.	Key political declarations	13
2.3.	National law and policy	14
2.4.	International expert reports	14
3.	What is the scope of sanitation in human rights terms?	17
3.1.	Defining sanitation	17
3.2.	Defining the right to sanitation	18
3.3.	Standard setting	22
4.	Transforming sanitation delivery	27
4.1.	Government obligations to implement the right to sanitation	27
4.2.	Responsibilities of individuals and communities	29
4.3.	What are the barriers to transforming the sanitation sector, and what role can the right to sanitation play in removing them?	30
4.4.	Limitations of the right to sanitation	34
5.	Select bibliography	37
6.	Acknowledgements	39
7.	Partners	41



*Everyone has the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and **sanitation**. The Habitat Agenda, adopted by consensus of 171 States at the Second United Nations Conference on Human Settlements (Habitat II), 1996 (emphasis added).*

Clean water and sanitation are not only about hygiene and disease, they're about dignity, too. ... [E]veryone, and that means ALL the people in the world, has the right to a healthy life and a life with dignity. In other words: everyone has the right to sanitation.

- Prince Willem Alexander of the Netherlands, Chair of the UN Secretary General Advisory Board on Water and Sanitation (UNSGAB).

The scale of the sanitation crisis is profound. The UN estimates that 2.5 billion people, 40 per cent of the world's population, lack access to adequate sanitation. The global toll in human development terms is shocking: pervasive associated disease and death, chronic and inescapable poverty and the paths of opportunity through education and productive labour blocked.

A failure by governments to respond comprehensively to the sanitation crisis is undermining development efforts. The decision taken in Johannesburg in 2002 to set an international target for sanitation, to "*halve the proportion of people living without access to basic sanitation by 2015*," under the Millennium Development Goals (MDGs) framework, has failed to mobilise the requisite political will among international or national level actors. Of all the MDG targets, the sanitation target remains one of the most off-track. At current rates of progress it will be missed globally by half a decade. In sub-Saharan Africa the MDG target will not be met until 2076. This lack of progress against the MDG target is a critical indicator of the widespread neglect of sanitation services by both national governments and donors.

In recognition of this crisis, the UN has declared 2008 the International Year of Sanitation, to provide the necessary impulse to get the sanitation MDG back on track. This has inspired numerous debates and conferences, attended by ministers responsible for sanitation, which has greatly improved the recognition that sanitation is an issue that underpins all development efforts.¹

The recognition of sanitation as a human right alongside water is central to this effort, clarifying the role of States in ensuring access to adequate sanitation, establishing standards that can be monitored and to which States can be held to account, and lending priority to reaching those without access, particularly the vulnerable and marginalised, in a non-discriminatory manner.

While virtually all governments have recognised in at least one political declaration that sanitation is a component of the right to an adequate standard of living, the majority have yet to reflect this in their national policies and legislation relating to sanitation.

General Comment No. 15 on the Right to Water by the UN Committee on Economic,

¹ See ministerial statements resulting from the South Asian Conferences on Sanitation, African Conferences on Sanitation and Hygiene, Latin American Conferences on Sanitation and East Asian Conferences on Sanitation, all available at: <http://www.personal.leeds.ac.uk/%7Ecen6ddm/SanitationDeclarations.html>

Box 1.1: Definition of sanitation for the purposes of the right to sanitation

There are many definitions of sanitation, basic sanitation, improved sanitation and environmental sanitation, proposed by UN bodies, Water Supply and Sanitation Collaborative Council (WSSCC), Joint Monitoring Programme (JMP) of UNICEF and the World Health Organization (WHO), amongst others.

This publication proposes the following definition, adapted from the definition developed by the Millennium Task Force:²

Sanitation is 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.

'Facilities and services' should include the '*collection, transport, treatment and disposal of human excreta, domestic wastewater and solid waste, and associated hygiene promotion*',³ to the extent demanded by the particular environmental conditions. Please see section 3 for further details, and a discussion of the standards required for sanitation provision in different environments.

Social and Cultural Rights focuses on defining the roles and responsibilities of State parties with respect to water, taking into account the need for access to sanitation. More recent expert reports have treated sanitation as a right alongside water, in particular the Guidelines on the realization of the right to drinking water and sanitation (adopted in 2006 by the Sub-Commission on the Promotion and Protection of Human Rights)⁴ and the 2007 Report of the UN High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to drinking water and sanitation (OHCHR Report).⁵ There is an emerging view among States, civil society and other actors that it is necessary to treat sanitation alongside water in human rights terms. The members of the UN Human Rights Council have in 2006 and

2008 adopted resolutions setting in motion a process to clarify human rights obligations related to safe drinking water together those relating to sanitation.⁶

The OHCHR Report stated that, "*it is now time to consider access to safe drinking water and sanitation as a human right.*"⁷ However, it indicated that human rights instruments do not offer sufficient guidance as to the scope and content of the term 'sanitation' and that terms such as 'adequate', 'basic' and 'acceptable' sanitation were used without clear definition of what these requirements

² "Access to, and use of, excreta and wastewater facilities and services that provide privacy while at the same time ensuring a clean and healthful living environment both at home and in the immediate neighborhood of users."

³ Quoted from the definition for sanitation used by the UN Water Task Force for the International Year of Sanitation, 2008.

⁴ United Nations Sub-Commission on the Promotion and Protection of Human Rights, Res. 2006/10, Promotion of the realization of the right to drinking water and sanitation (2006) UN Doc. A/HRC/Sub.1/58/L11, adopting the *Draft Guidelines for the realization of the right to drinking water and sanitation* (2005), UN Doc. E/CN.4/Sub.2/2005/25, para. 3, available at: www.ohchr.org ('Your Human Rights' > 'Human Rights Issues' > 'Water'). These will be referred to in this publication as 'Sub-Commission Guidelines'.

⁵ OHCHR Report (2007), UN Doc. A/HRC/6/3, para. 66, available at: <http://www2.ohchr.org/english/issues/water/index.htm>.

⁶ See sections 2.1, 2.3 and 2.4 below.

⁷ OHCHR Report (2007), para. 66, available at: <http://www2.ohchr.org/english/issues/water/index.htm>.

mean.⁸ The report therefore noted that detailed practical advice is required in relation to the normative content of human rights obligations in regard to sanitation.⁹

The present publication aims to address this gap by proposing a definition of sanitation in human rights terms that would assist governments in setting appropriate standards for sanitation, and which outlines some priority actions that support implementation of the right to sanitation. Section 1 of this publication describes the current sanitation crisis. Section 2 analyses the legal basis for sanitation as a human right. Section 3 proposes a definition of the right to sanitation, along with a discussion of minimum standards. Section 4 suggests how barriers to accessing sanitation can be overcome by applying human rights principles to the development process.

This publication is a first step in defining the content and implications of the right to sanitation. Comments on this publication are welcomed for the purpose of future editions. Comments can be sent to virginia@cohre.org.

1.1. The necessity of access to sanitation for all

The impact of the sanitation crisis is far-reaching, acting as a brake on development efforts and constraining progress across all the MDGs. Sanitation, as a single intervention, has the potential to catalyse a broad range of development outcomes and supports the

realisation of other human rights, including the rights to education, health, adequate housing, work, food and water.

First and foremost, lack of access to sanitation is an affliction of the vulnerable and marginalised. Children under the age of five account for almost 90 per cent of all the deaths that occur from sanitation-related diarrhoea, amounting to at least 5 000 children dying each day. Women, more than men, suffer the indignity of being forced to defecate in the open, at risk of assault and rape. Women, generally being responsible for the home and for children and other dependents, are most affected by a lack of sanitation, and by the indignity of living without sanitation. At least 60 per cent of those who lack access to sanitation are from the poorest sections of society living on less than US \$2 a day and the majority live in the poorest regions of the world.

Access to sanitation has the potential to catalyse development and improve the quality of life by:

1.1.1. Ensuring the health of citizens and limiting the burden of treating preventable illness

A lack of sanitation, including the collection, treatment and disposal or re-use of excreta and wastewater can have a severe negative impact on people's health and dignity and on the environment. Just a small number of people practicing open defecation can threaten the quality of water resources, which will in turn infringe the right to water and the right to health. The major burden of a lack of sanitation is borne by the very young. The safe disposal of excreta is one of the strongest determinants of child survival.¹⁰ Evidence

⁸ Ibid., paras. 18-19. In this regard, the OHCHR was taking into account a submission which pointed to the differences between the right to water and the right to sanitation and the need for clearer definition of the content of the right to sanitation: Aquafed, 'Practitioner's views on the right to water', April 2007, s. 4.

⁹ OHCHR Report, para. 67.

¹⁰ WaterAid, *Tackling the silent killer* (London, 2008), pp. 6-9.

suggests that in addition to causing child deaths by diarrhoea, poor sanitation may also contribute to child deaths resulting from other health conditions, including malnutrition and acute respiratory infections.¹¹ Further to this, millions of children are left physically stunted, mentally disabled and severely malnourished by excreta-related diseases and intestinal worm infections.¹² Access to sanitation and good hygiene practices give protection from opportunistic diseases infecting people who are already sick. Women in particular suffer from infections caused by lack of access to hygienic facilities and lack of water for washing during menstruation.

Improvements in sanitation and hygiene are the most cost-effective health interventions, yet governments have failed to adequately promote these issues.¹³ The resulting costs of treatment of sanitation-related disease drain resources from already weak public health systems. At the household level, the poorest families are forced to use scarce financial resources for health services, which would otherwise be allocated to other important needs, including children's education or to save money for emergencies.

1.1.2. Increasing access to education for all

Significant progress has been made in extending primary education, but sick children do not attend school. The World Health Organization (WHO) estimates that meeting the MDG sanitation target would result in a gain of 272 million school days in the developing world.¹⁴

¹¹ Ibid., pp. 6-9.

¹² WHO & UNICEF, *The Global Water Supply and Sanitation Assessment 2000* (Geneva, New York: WHO, UNICEF, 2000), p.1.

¹³ WaterAid, *Tackling the silent killer* (London, 2008), p.4.

¹⁴ UNDP, *Beyond Scarcity: Power, poverty and the global water crisis*: UNDP Human Development Report 2006 (New York, 2006), p. 58, available at <http://hdr.undp.org/hdr2006/>.

Lack of adequate sanitation in schools, including the separation of girls and boys facilities, is a critical barrier to school attendance of girls, particularly after puberty.¹⁵ A failure to address sanitation in schools, including facilities for menstrual hygiene, perpetuates gender inequality widening the gulf between the opportunities afforded to girls and boys through education.

Sanitation-associated parasitic diseases have been shown to impede learning and child development.¹⁶

1.1.3. Promoting economic growth in the poorest countries of the world¹⁷

It is estimated that lack of access to adequate sanitation, alongside safe drinking water, costs sub-Saharan Africa 5 per cent of its Gross Domestic Product each year.¹⁸ Meeting the sanitation MDG target would yield economic benefits in the region of 63 billion dollars each year rising to 225 billion dollars if universal access to sanitation was achieved.¹⁹ Notably, the greatest economic benefits would accrue in the poorest regions of the world, in particular in sub-Saharan Africa. According to the 2006 UNDP Human Development Report, meeting the MDG for water and sanitation would require

¹⁵ Ibid., p.22.

¹⁶ A. Bhargava, D. A. P. Bundy, M. Jukes and J. D. Sachs, *Modelling the Effects of Health Status and the Educational Infrastructure on Cognitive Development of Tanzanian Children*, Commission on Macroeconomics and Health, Working Paper Series, Paper No. WG1: 2 (2001), p. 5.

¹⁷ WaterAid, *Sanitation and economic development: making the case for the MDG orphan* (2007), available at: www.wateraid.org/international/about_us/newsroom/5849.asp.

¹⁸ UNDP Human Development Report (2006), p.42.

¹⁹ B. Evans, G. Hutton & L. Haller, *Closing the Sanitation Gap - the case for better public funding of sanitation hygiene* (OECD, 2004), p.8.

a sustained investment of 10 billion dollars per year.²⁰

Lack of sanitation most affects those struggling to mobilise the means for basic survival, diverting scarce resources from critical areas such as nutrition, health and education. Access to sanitation supports other efforts to assist people find a path out of poverty, particularly by reducing the cost of healthcare and reducing the number of working hours lost to ill-health. Easy access to sanitation also frees time for other activities, including for work and education, or improved care of children or the elderly.

1.2. Benefits of recognising sanitation as a human right

Addressing sanitation as a human right moves the focus from technical solutions to ensuring that the political and legislative frameworks are in place to ensure access to sanitation for all.

Recognising sanitation as a human right:

- Demonstrates that **sanitation is a legal entitlement**, not charity. Civil society can use the right to raise the political profile of access to sanitation services.
- Provides a basis for **holding to account** those responsible for ensuring that sanitation is accessible to all.
- Requires **information sharing** and **genuine participation** in decision-making around the provision of services.
- Ensures a **focus on vulnerable and marginalised groups**, who have been historically discriminated against or neglected, such as persons living in informal settlements.

- Provides a basis for defining **minimum requirements** for sanitation.
- Provides a framework and guidelines for the **development of and reforms to public policies and plans, to prioritise resources**, and to **monitor performance**.

These human rights principles are discussed in more detail in section 3.2. It should be emphasised here that the benefit of treating sanitation as a right is that the right to sanitation provides a valuable tool that can be used by government officials, judges, civil society and individuals to strive to ensure access to sanitation for all. Recognition of the right to sanitation is only a first step and on its own will not automatically lead to the realisation of the right to sanitation for all.

1.3. Why is sanitation for all still such a distant goal?

In spite of the potential for cost-effective, deep and far-reaching development outcomes from access for sanitation for all, the sanitation sector remains marginalised and progress in extending coverage negligible. Five contributing factors are discussed below.

1.3.1. Lack of sanitation viewed as a symptom of poverty rather than as a barrier to development and poverty reduction

Despite the fact that sanitation is one of the most cost-effective public interventions²¹ for the improvement of health, particularly of children, it is largely overlooked by the health sector, which prefers other interventions.

²⁰ UNDP Human Development Report (2006), p.58.

²¹ World Bank, *Disease Control Priorities for Developing Countries* (OUP 2006), p.45, available at: <http://www.dcp2.org/main/Home.html>

Box 1.2: Links and differences between water and sanitation interventions

Links

- Without adequate sanitation and improved hygiene behaviour, water provision does not have such a strong health outcome. Where water is provided, wastewater must be removed.
- Sanitation is necessary to ensure water quality.
- Water and sanitation services both require good hygiene to be effective.

Differences

- Water provision is generally a simpler process than sanitation provision, which requires a wide range of services, particularly for options other than sewerage systems.
- Responsibility for sanitation services is normally spread among many different departments and ministries, and is delivered by a wide range of service providers.
- The timeframe for the delivery of sanitation services and particularly hygiene promotion tends to be longer.
- Due to the nature of their delivery, when water services fail, they tend to fail in a geographic area, sparking immediate public demand for improvement or replacement services. However, when sanitation services fail, they are more likely to fail by household (full pit or septic tank), so the public demand for improvement is more localised and therefore not as effective.
- Even where only a few people lack sanitation, all feel the health impact.

The importance that is attributed to sanitation in the developed world²² has resulted from these countries' own experience of the critical interaction between sanitation and public health. Despite this, it remains conspicuously absent from donor government policy.

Benefit of the right to sanitation: Can be used as an advocacy tool to overcome political and institutional neglect as it demands minimum standards of sanitation, requires that governments, including donor governments prioritise sanitation and that all grants, loans and development projects incorporate human rights principles, such as participation and non-discrimination.

1.3.2. Lack of clarity of the role of government and others in delivering sanitation services

Responsibility for sanitation can rest with a number of different departments and ministries, including health, education, water, public works, development, agriculture and the environment (see section 4). This often leads to fractured and uncoordinated policies and actions.

In many developing countries, responsibilities are also not sufficiently clarified between different service providers, such as public or private utilities, and small to medium-scale independent providers, leaving considerable proportions of residents without service provision or the hope of receiving services.

²² Sanitation was voted the major medical advance since 1840 by 11,000 readers of the BMJ (previously *British Medical Journal*). Source: A. Ferrima, BMJ readers choose the 'sanitary revolution' as greatest medical advance since 1840, BMJ 2007; 334:111.

Household and employer or landlord responsibilities are also frequently unclear and efforts are often blocked by regulations that do not allow the provision of sanitation services in informal settlements.

Further to this, there is a responsibility of the individual towards the collective, as sanitation is a public good. It is broadly accepted that in order for the full health benefits of improved sanitation to be realised, everyone within a settlement or village must use a toilet all of the time. Where even just a few households practice open defecation this brings health risks to all. This implies a role for government in ensuring that everyone can and does access a toilet when they need one.

Benefit of the right to sanitation: Requires that in order to ensure accountability, governments clearly define the roles and responsibilities of government bodies at the national, regional (where applicable) and local level and those of other stakeholders, such as private providers, and households.

1.3.3. Demand for sanitation is latent

Whereas demand for other critical services is often well articulated by citizens, demand for sanitation is often latent. The reasons for this are complex but centre on four key issues. Firstly, as with many development interventions, the impacts of poor sanitation fall disproportionately on those whose voices are not heard - the vulnerable and marginalised individuals and groups. Secondly, the far-reaching benefits of sanitation are hard to perceive before they have been experienced, such that sanitation loses out to other services, for example water or medical care, that may seem more pressing. Thirdly, and in some settings, most importantly, defecation is a taboo subject, which few people, particularly women, are willing to discuss openly. Finally, there is a need for joint action to realise health benefits. Households may hesitate to make significant differences to their own behaviour where this would have a limited impact on the overall hygiene conditions in the neighbourhood.

Box 1.3: Kibera, Nairobi - land tenure and sanitation

The rapid development and expansion of informal settlements is a manifestation of the inability of most cities in developing countries to cater for its growing population's need for adequate housing at affordable rates. To fill this gap, landlords in most informal settlements have responded by constructing low cost housing without regard to prevailing housing standards and without necessary amenities like toilets and water points. This is in part to cut down on construction costs and maximise on available land. Landlords are generally not required by the State to construct much needed facilities such as toilets. International human rights law provides that residents of informal settlements should not be denied access to basic services on the basis of lack of legal tenure. Therefore it is necessary for governments to establish and enforce appropriate standards for sanitation for all, including by ensuring that landlords fulfil their responsibilities and providing assistance to residents to ensure that housing is affordable.

Box 1.4: Buenos Aires, Argentina - impact of a lack of adequate sewage treatment on the poor²³

In Buenos Aires, people living in informal settlements, although lacking basic access to sanitation themselves, are currently suffering the consequences of inadequate treatment of sewage from the sewerage system. Raw sewage coming from middle class areas often floods their neighbourhoods, causing environmental disaster. Tariffs for a sewerage connection need public financing, and to ensure the inclusion of the cost of treating and disposing of sewage. Otherwise people living in informal settlements are being discriminated against twice - once for the subsidy to the sewerage systems available only in formal areas but not to them, and again in terms of poor health and an unsafe environment.

Clarifying the health benefits of sanitation and hygiene is assumed to be the best approach for sanitation promotion, but in practice, it is rarely the motivating factor for individuals, households and communities. The drivers of investment and behaviour change are more likely to be security, privacy, dignity, and convenience.²⁴

Benefit of the right to sanitation: Requires genuine participation in decision-making processes, which will give the necessary voice to those without access; requires the provision of information to them, and allows them to express how they see their needs being met, and why these issues are important to them.

1.3.4. Unsustainable solutions

Insufficient attention is paid to ensuring that sanitation interventions are sustainable. In many situations, household level toilets are not used, or are not used by the whole family, or there are insufficient mechanisms in place to empty them when full, and public toilets are frequently not hygienically maintained.

The considerable costs of exhausting toilets in urban areas are often not considered, which results in toilets that are unusable. Likewise, if there is insufficient participation by projected users in decision-making around issues of design and siting of toilets, all too frequently toilets are not used.²⁵

Benefit of the right to sanitation: Requires that issues of long-term affordability and sustainability are also addressed in planning and financing development interventions, and that decisions are made with the genuine participation of all stakeholders.

1.3.5. Funding for sanitation prioritises the rich

All too often, the small amount of funding that is made available for construction of sanitation facilities prioritises those living in formal, more affluent areas. This results in a small proportion of people being served with high quality services and the rest left without any services. Sewerage systems are generally an expensive option to construct and operate,

²³ Argentina - Matanza-Riachuelo Environmental Plan. Bank Netherlands Water Partnership Program BNWP (2007), available at: <http://www-esd.worldbank.org>.

²⁴ M. Jenkins and S. Sugden, *Rethinking Sanitation: lessons and innovations for sustainability and success*, Occasional Paper for the Human Development Report 2006 (UNDP 2006), p. 14.

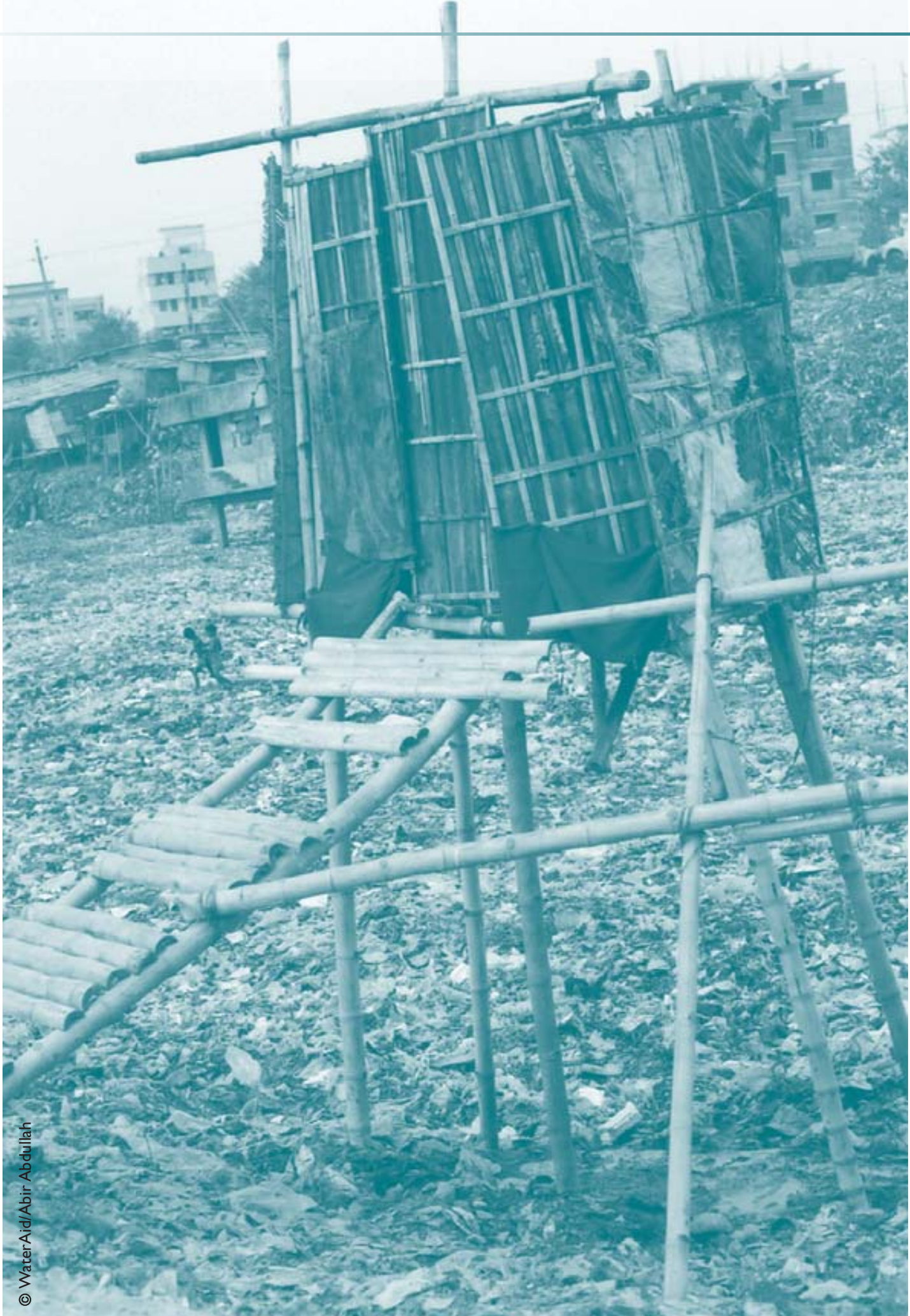
²⁵ M. Muller, R. Simpson and M. von Ginneken, *Ways to Improve Water Services by making Utilities more accountable to their users: a review*, Water Working Notes, Note No. 15 (May 2008), p. 60.

for which it is likely that there will be some form of subsidy, at least in the form of government spending on treatment of sewage.²⁶

In many situations, sewage treatment plants are either inadequate or absent, leading to raw or insufficiently treated sewage being discharged inappropriately. This leads to pollution of water supplies, health risks for those living near sewage disposal areas and environmental degradation, normally to the detriment of the poor (see Box 1.4 on Buenos Aires).

Benefit of the right to sanitation: Requires that the maximum available resources be allocated to sanitation, in order to ensure sanitation is provided for all. Where insufficient resources are available from national and international sources to provide high-quality services for all, the whole population should be provided with at least a modest (but still adequate) standard of service rather than high-quality service for some and none for others.

²⁶ In most developed countries, the treatment of sewerage is subsidised, either through cross-subsidisation with water or through government paying for treatment and disposal of sewage. It is therefore unreasonable to expect that people in developing countries pay the full-cost of receiving sanitation services, particularly when the 'public good' aspect of sanitation is taken into account.



© WaterAid/Abir Abdullah

This section outlines the sources from which the right to sanitation is derived, demonstrates the international treaties and national legislation that already recognise the right to sanitation and provides a brief discussion of the increasing global interest in the right to sanitation.

2.1. Legally binding international treaties

While the International Covenant on Economic, Social and Cultural Rights (ICESCR), the cornerstone treaty in the field of economic, social and cultural rights,²⁷ does not explicitly refer to a right to sanitation, article 11(1) stipulates that:

The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent (emphasis added).

By using the word 'including', article 11(1) indicates that the right to an adequate standard of living is not necessarily limited to

food, clothing and housing as components of the right to an adequate standard of living. The UN Committee on Economic, Social and Cultural Rights (CESCR), the body of independent experts responsible for interpreting and monitoring implementation of the ICESCR by States parties has stated:

Article 11, paragraph 1, of the Covenant specifies a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living, including adequate food, clothing and housing. The use of the word 'including' indicates that this catalogue of rights was not intended to be exhaustive.²⁸

While adequate food, clothes and shelter are all indispensable for an adequate standard of living, they are not sufficient for this purpose. In light of the fundamental importance of sanitation for human survival, well-being and dignity, it would be impossible to maintain that an individual lacking access to sanitation could enjoy an adequate standard of living. It

²⁷ As of April 2008, the ICESCR has 158 State parties. The ICESCR applies to all categories of people and is without geographical limitation.

²⁸ United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The right to water* (2002), U.N. Doc. E/C.12/2002/11 (2003), para. 3. This document is not legally binding per se, but it constitutes an authoritative interpretation of the provisions of the ICESCR by the competent body. The Committee on Economic, Social and Cultural Rights sought the authorisation of the United Nations Economic and Social Council to develop General Comments, and received encouragement from the Council to, "continue using that mechanism to develop a fuller appreciation of the obligations of State Parties under the Covenant." Economic and Social Council Resolution 1990/45, para. 10.

is therefore sound to conclude that the right to an adequate standard of living recognised under article 11(1) of the ICESCR includes the right to sanitation, exactly like the rights to food, clothing and housing.

Virtually all States that have ratified the ICESCR have explicitly stated that the right to an adequate standard of living implicitly includes sanitation. The Programme of Action of the 1994 Cairo Conference on Population and Development, endorsed by 177 States, recognises in Principle 2 that:

*Countries should ensure that all individuals are given the opportunity to make the most of their potential. They have the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and **sanitation**.*²⁹

The Habitat Agenda, adopted in the framework of the Second United Nations Conference on Human Settlements (Habitat II) held in Istanbul in 1996, provides in almost identical terms in Principle 11 that:

*Everyone has the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and **sanitation**, and to the continuous improvement of living conditions.*³⁰

29 Emphasis added. Available at: http://www.unfpa.org/icpd/icpd_poa.htm. For a list of participating countries, see the Report of the International Conference on Population and Development, A/CONF.171/13, 18 October 1994, available at: <http://www.un.org/popin/icpd/conference/offeng/poa.html>.

30 Emphasis added. The Habitat Agenda Goals and Principles, Commitments and the Global Plan of Action, available at: <http://www.unhabitat.org/content.asp?ID=1176&catid=10&typeid=24&subMenuId=0>. The Habitat Agenda was adopted by consensus of all 171 UN member States represented at the conference. For a full list of participants, see UN Doc. A/CONF.165/L.4 (1996).

Access to sanitation for all is also required in order to realise other human rights explicitly contained in the ICESCR, including the right to the highest attainable standard of health (article 12 (1)),³¹ the right to adequate housing (article 11 (1))³² and the right to education (article 13(1)),³³ as well as the right to life contained in the International Covenant on Civil and Political Rights (ICCPR) (article 6 (1)).

Various other international human rights treaties include explicit State obligations with regard to access to sanitation. Article 14 (2) (h) of the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) specifically addressing the living conditions of women in rural areas provides that States parties shall ensure to women, *"the right to enjoy adequate living conditions, particularly in relation to housing, **sanitation**, electricity and water supply, transport and communication"* (emphasis added).

With regard to children, article 24(2)(e) of the 1989 Convention on the Rights of the Child (CRC) obliges States parties to ensure that all segments of society, *"are informed, have access to education and are supported in the use of basic knowledge of ... **hygiene and environmental sanitation"*** (emphasis added). In addition, article 27(1) of the CRC recognising the right

31 A core obligation of the right to health is for the State to ensure access to basic sanitation, and an adequate supply of safe and potable water, see Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health*, UN ESCOR, 2000, para. 43 (c). See also paras. 11, 12, 15, 36.

32 Access to safe drinking water, sanitation and washing facilities, refuse disposal, site drainage and emergency services are some of the elements of the right to adequate housing. See Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The right to adequate housing*, UN ESCOR, 1991, UN Doc. E/1992/23, para. 8 (b).

33 Sanitation facilities for both sexes and safe drinking water are required in schools as part of the right to education. See Committee on Economic, Social and Cultural Rights, *General Comment No. 13: The right to education*, UN ESCOR, 1999, UN Doc. E/C.12/1999/10, para. 6 (a).

of every child to an adequate standard of living has consistently been interpreted by the Committee on the Rights of the Child, the treaty body in charge of monitoring and interpreting the CRC, to encompass access to clean drinking water and latrines.³⁴

In March 2008, the UN Human Rights Council adopted resolution A/HRC/7/L.16, which emphasises that international human rights law, including the ICESCR, CEDAW and CRC entail obligations in relation to access to sanitation.³⁵

Entitlements to access to sanitation are also explicitly included in International Humanitarian Law treaties. The Geneva Convention Relative to the Treatment of Prisoners of War (Geneva Convention III, 1949) provides in article 29 that:

The Detaining Power shall be bound to take all sanitary measures necessary to ensure the cleanliness and healthfulness of camps and to prevent epidemics. Prisoners of war shall have for their use, day and night, conveniences which conform to the rules of hygiene and are maintained in a constant state of cleanliness. In any camps in which women prisoners of war are accommodated, separate conveniences shall be provided for them.

The Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV, 1949) in article 85 provides analogous entitlements for civilian internees.

On the regional level, in Europe, article 4(2) b of the 1999 UNECE Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes requires that States parties take all appropriate measures to ensure: "*Adequate sanitation of a standard which sufficiently protects human health and the environment*".³⁶ In the Americas, many States are party to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador", 1988. This regional legal instrument entitles everyone to, "*the right to live in a healthy environment and to have access to basic public services*".³⁷

States are legally bound under international law to comply with international human rights treaties that they have ratified. Some States have made international treaties binding in their national law, or have integrated the relevant rights and State obligations into their national law (see Section 2.3 below).

2.2. Key political declarations

Virtually all UN member States have recognised the right to sanitation in at least one political declaration. As noted in the above section, the Programme of Action of the 1994 Cairo International Conference on Population and Development, unanimously adopted by 177 States, explicitly recognises that the right to an adequate standard of living includes access to sanitation. Two years later at the United Nations Conference on Human Settlements in Istanbul, 171 States unanimously adopted the Habitat Agenda, which reiterates the statement included in the Cairo Programme of Action.

³⁴ See, for example, Concluding Observations of the Committee on the Rights of the Child: Kazakhstan. UN Doc. CRC/C/KAZ/CO/3 (2007), at para. 56 and Concluding Observations of the Committee on the Rights of the Child: Ethiopia. U.N. Doc.CRC/C/ETH/CO/3 (2006), at para. 61.

³⁵ UN Doc. A/HRC/7/L.16 (2008), available at: http://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=76&t=11.

³⁶ 1999 UNECE Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, available at: <http://www.unece.org/env/documents/2000/wat/mp.wat.2000.l.e.pdf>.

³⁷ The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador", 1988, art 11.

In December 2007, 37 countries from the Asian-Pacific region at the 1st Asia-Pacific Water Summit held in Beppu, Japan, issued the "Message from Beppu", which acknowledges "*the people's right to safe drinking water and **basic sanitation** as a basic human right*"³⁸ (emphasis added).

2.3. National law and policy

There is a clear trend among UN member States towards recognition of the right to sanitation in domestic law and policy. At least seven countries specifically recognise the right to sanitation in their constitutions, national legislation or sanitation policies. Most instances of recognition are from 2004 onwards, thereby indicating the recent trend towards recognition. The relevant countries, and the year of such recognition are South Africa (1997), Uruguay (2004), Honduras (2005), Algeria (2005), Bangladesh (2005), Kenya (2007) and Sri Lanka (2007). Further to this, the Supreme Courts of Bangladesh and India have held that access to sanitation is part of the right to life.

In addition, the laws of many countries include specific government obligations to ensure sanitation and hygiene. Examples include Armenia, Colombia, Ecuador, Finland, France, Indonesia, Iran, Madagascar, Mauritania, Mozambique, Spain, Sweden, Ukraine, and the United Kingdom. At European Union level, the directive on urban wastewater makes it obligatory for all 27 Member States to have proper sanitation systems in all urban areas.

2.4. International expert reports

With regard to UN bodies, the United Nations Children's Fund (UNICEF) stressed that,

*"[a]ccess to sanitation facilities is a fundamental human right that safeguards health and human dignity. Every human being deserves to be protected from the many health problems - including dysentery, cholera and other serious infections - posed by poor disposal of excreta."*³⁹ The 2006 UN Human Development Report also promotes the right to sanitation.⁴⁰ The right to sanitation was also recognised in the 2004 report by the Special Rapporteur on the Right to Drinking Water Supply and Sanitation mandated by the UN Sub-Commission on the Promotion and Protection of Human Rights⁴¹ as well as in the 2006 Sub-Commission Guidelines for the realization of the right to drinking water and sanitation.⁴²

The UN High Commissioner for Human Rights concluded in her 2007 Report on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments (OHCHR Report) that, "*it is now time to consider access to safe drinking water and **sanitation** as a human right.*"⁴³

The OHCHR Report was based on an explicit mandate of the Human Rights Council in a decision taken without a vote to carry out: "*a detailed study on the scope and content of the relevant*

³⁸ Emphasis added. Available at: <http://www.apwf.org>. The full list of participating countries is available on the same site.

³⁹ UNICEF, *Sanitation for all: Promoting dignity and human rights* (2000), available at:

<http://www.unicef.org/wes/files/sanall.pdf>.

⁴⁰ UNDP Human Development Report (2006), p. 60.

⁴¹ Sub-Commission on the Promotion and Protection of Human Rights, *Final report of the Special Rapporteur on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation*, 14 July 2004, E/CN.4/Sub.2/2004/20, paras. 40-44.

⁴² United Nations Sub-Commission on the Promotion and Protection of Human Rights, Res. 2006/10, Promotion of the realization of the right to drinking water and sanitation (2006) UN Doc. A/HRC/Sub.1/58/L.11, adopting the Draft Guidelines for the realization of the right to drinking water and sanitation (2005), UN Doc. E/CN.4/Sub.2/2005/25, section I.3.

⁴³ OHCHR Report (2007). At para 66. Emphasis added, available at: <http://www2.ohchr.org/english/issues/water/index.htm>.

Box 2.1: Court orders to improve sanitary conditions and to build public conveniences in India and South Africa

*Municipal Council, Ratlam v. Shri Vardhichand & Others, Supreme Court of India, 29 July 1980.*⁴⁴

This case addressed severely unsanitary conditions in the municipality of Ratlam. As a result of the municipality's failure to provide any sanitary facilities on the roads or public conveniences for slum dwellers, people living in informal settlements were using the road for that purpose. The open sewage situation was even worsened by a distillery discharging bad smelling fluids into the street.

The applicants were seeking an order directing the Municipal Council of Ratlam to take the necessary action to stop this unbearable situation whereas the municipality pleaded, inter alia, financial difficulties. The Court relied on the Municipalities Act, which includes the provision of sanitary facilities as duties of the municipal council and held that the municipality was required to abate such nuisance regardless of its financial situation.

In this early decision, the Supreme Court stressed that, "[d]ecency and dignity are non-negotiable facets of human rights." According to the Court, the municipality's failure to provide basic public conveniences, "drives the miserable slum-dwellers to ease in the streets, on the sly for a time, and openly thereafter, because under Nature's pressure, bashfulness becomes a luxury and dignity a difficult art".

The Court therefore ordered the municipality to shift priorities by decreasing its budget on other items and using the savings for sanitary facilities and public health measures, including the construction of sufficient numbers of public toilets.

Grootboom v. Government of Republic of South Africa, Case No CCT 38/00, court order made on 21 September 2000

The respondents of the Grootboom case, evicted from their homes, were living on a sports field using plastic sheeting as shelter, and without access to any water or sanitation services, while waiting to be allocated low-cost housing. Because of these poor conditions, the residents applied to the High Court for an order compelling government to provide them with adequate basic shelter until they obtained permanent accommodation. The High Court concluded, "tents, portable latrines and a regular supply of water would constitute the bare minimum". Because the government appealed, the case went to the Constitutional Court, which held that the state's housing programme failed to make reasonable provision within its available resources for people with no access to land, no roof over their heads and who were living in intolerable conditions or crisis situations. The Court concluded that these immediate needs can be met by relief short of housing that fulfils the requisite standards of durability, habitability and stability.

A settlement agreement between the community and the relevant state organs was agreed upon to ameliorate the "immediate crisis situation" of the respondents. When this did not occur, the court ordered the government to provide basic water and sanitation services to the Grootboom community which included the erection of a block of 20 permanent toilets, the provision of 20 temporary chemical toilets until the permanent toilets were erected, the installation of 20 permanent taps and 10 temporary taps until the permanent taps were installed.

*human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments."*⁴⁵ Several countries,

including Belgium and Cyprus, used their contributions to the OHCHR Report to recognise sanitation as a human right.

⁴⁴ UN Doc. A/HRC/2/L.3/Rev.3, available at: http://www2.ohchr.org/english/issues/water/docs/HRC_decision2-104.pdf.

⁴⁵ (1981) SCR (I) 97, available at: http://www.judis.nic.in/supremecourt/qrydisp.aspx?file_name=4495. See also: M. Langford, A. Khalfan, C. Fairstein and H. Jones, *Legal Resources for the Right to Water: International and National Standards* (Geneva: Centre on Housing Rights and Evictions COHRE, 2004), available at: www.cohre.org/water.



This section suggests a definition of sanitation in human rights terms and proposes standards that governments should be obliged to meet in order to ensure sanitation services for all.

3.1. Defining sanitation

There are many definitions of sanitation, basic sanitation, improved sanitation and even environmental sanitation, which are used by UN bodies such as the Millennium Task Force, the Water Supply and Sanitation Collaborative Council (WSSCC), and the Joint Monitoring Programme (JMP) of UNICEF and WHO.

Some of these definitions refer just to access to a toilet, while others include the services required to empty, transport, treat and dispose of excreta. Definitions also generally include the necessity of removing waste-water. Some definitions refer, under 'environmental sanitation' to the need for solid waste management and storm-water drainage.

While many definitions refer only to the need for sanitation to protect health, the definition adopted by the Millennium Task Force and that adopted by the JMP refers to the need for privacy. The WSSCC definition also includes the need for dignity.

From a human rights point of view, the concepts of privacy and dignity are essential. This publication proposes the following definition, adapted from the definition of the Millennium Task Force,⁴⁶ to include dignity:

Sanitation is 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.

All the aspects of sanitation in the above definition are necessary to ensure health, privacy and dignity, and therefore constitute a minimum human rights standard. Some definitions of 'sanitation' are accompanied by a definition of 'basic sanitation' that leave out the treatment and disposal of excreta and wastewater. However, from a human rights point of view, such a level of access to sanitation would not meet the minimum human rights standards. It is therefore proposed that 'basic sanitation', in human rights terms, should simply refer to low-cost technology that provides basic access to sanitation as shown in Box 3.2. This box describes the impact on health relating to different service levels, suggesting stepping-stones towards optimal access to sanitation.

⁴⁶ "Access to, and use of, excreta and wastewater facilities and services that provide privacy while at the same time ensuring a clean and healthful living environment both at home and in the immediate neighborhood of users."

Where necessary, facilities and services should include the, "*collection, transport, treatment and disposal of human excreta, domestic wastewater and solid waste, and associated hygiene promotion*",⁴⁷ to the extent demanded by the particular environmental conditions.

3.2. Defining the right to sanitation

Sanitation must be safe, physically accessible, affordable and culturally acceptable, as outlined by the Sub-Commission Guidelines on the realization of the right to safe drinking water and sanitation:⁴⁸

Safe: Everyone is entitled to sanitation that is safe, adequate and conducive to the protection of public health and the environment.⁴⁹ This means the toilet must be hygienic and that there is no risk of collapse. It must be able to effectively prevent human, animal and insect contact with excreta. Toilets must ensure privacy and water points should be positioned to enable use for personal hygiene, including menstrual hygiene, and anal and genital cleansing. Ensuring safe sanitation requires adequate hygiene promotion and education.⁵⁰

Excreta and wastewater need be removed and/or disposed of safely. It is also important that the right to health of sanitation workers is protected, and

therefore workers who transport, treat and dispose of waste must be able to do this without risk to their health.

Each person has not only a right to sanitation facilities for their own use, but also a right to be protected from excreta and wastewater produced by others. Therefore, no person can fully exercise the right to sanitation, or other related rights, such as health or water, unless people in their locality also have access to, and use, toilets and the attendant safe collection, treatment and disposal of excreta.

Physically accessible: Sanitation must be accessible within, or in the immediate vicinity, of each household, health or educational institution, public places and the workplace.⁵¹ This means that toilets must be available for use at all times of the day or night, along with associated services such as sewerage or septic tank or pit exhaustion. Toilets must be situated in a location where physical security can be guaranteed.⁵² The path to the toilet must be designed so as to prevent accidents and protected to reduce the chance of attack from animals or people, particularly to women and children,⁵³ who are most at risk. Sanitation facilities should be designed to take account of the needs of women and children, persons with disabilities,⁵⁴ as well as those of elderly persons.

⁴⁷ Quoted from the definition for sanitation used by the UN Water Task Force for the International Year of Sanitation, 2008.

⁴⁸ United Nations Sub-Commission on the Promotion and Protection of Human Rights, Res. 2006/10, Promotion of the realization of the right to drinking water and sanitation (2006), UN Doc. A/HRC/Sub.1/58/L11, adopting the *Draft Guidelines for the realization of the right to drinking water and sanitation* (2005), UN Doc. E/CN.4/Sub.2/2005/25, section I.3.

⁴⁹ Sub-Commission Guidelines, s. I.2.

⁵⁰ Sub-Commission Guidelines, s. 5.2: "States should promote hygienic use of water and sanitation services."

⁵¹ General Comment No. 15, paras. 12(c)(i), 29, Sub-Commission Guidelines s. I.3(a).

⁵² Sub-Commission Guidelines, s. I.3 (c).

⁵³ Sub-Commission Guidelines, s. 5.3, General Comment No. 15, para. 29.

⁵⁴ OHCHR Report, para. 25.

Box 3.1: Components of sanitation

The key aspects to sanitation are: **1. Hygiene promotion; 2. Excreta management**, encompassing collection, transport (including sewerage networks), treatment and disposal or reuse of human excreta; and **3. Wastewater, solid waste and stormwater removal**.

1. Hygiene education/promotion

To gain the full health benefits of sanitation, it is necessary to practice good hygiene. This includes hand washing and anal/genital cleansing after using the toilet and keeping the toilet and the area around it clean.

2. Excreta management encompasses:

Collection: Excreta collection can take a variety of forms, such as bucket latrines, pit latrines, ecological sanitation⁵⁵ or toilets requiring septic tanks, and can be constructed and used at a household level or for the use of a wider community. In rural areas, excreta can be collected, treated and stored in a pit latrine. When the pit is full, it is closed and a new pit is dug.⁵⁶ In higher-density urban areas, a pit latrine or water-based toilet linked to a septic tank will need to be emptied so that the pit or tank can be used again. Alternatively, a toilet can be connected directly to a sewer, thereby transporting the excreta as soon as it is produced.

Transport: Sewerage networks, while common in developed countries (and almost universal in urban areas in such countries), are expensive to construct, maintain and operate. Even in industrialised countries, sewerage systems generally require a state subsidy, particularly for sewage treatment. Sewerage networks require a lot of water, which can be problematic in water-scarce areas. In some cases, cheaper alternatives are used, such as the condominium systems pioneered in Brazil and Pakistan. Where there is no sewerage system available, and excreta cannot be treated on-site, removal and transport of excreta from pit latrines or septic tanks is either carried out by hand or using appropriate emptying technologies.

Treatment: Most treatment plants only treat waste from the sewerage network. In some cases waste from septic tanks or pit emptying will also be deposited into the network and thereby be treated in the treatment plants. Pit wastes and septic sludge are often dumped in nearby drains or watercourses. Many cities either do not have sufficient capacity in the treatment plants to treat all the wastes, or the wastes are not delivered to the treatment plant. Small-scale, local treatment plants are sometimes used as alternatives to a large-scale municipal treatment plants.

Disposal/re-use: After adequate treatment, the effluent can generally be safely discharged back into the environment. Safe treatment and disposal of excreta is a significant problem in many small towns and cities, but is vital for public and environmental health.

The cost of transport, disposal and treatment of excreta is generally high, whether through sewerage networks or other technologies, and generally requires government support.

3. Wastewater, solid waste and stormwater removal.

This is particularly a problem in urban areas, where the removal of used water from washing, cooking or toilet use is not adequately managed. Domestic solid waste, industrial and hazardous waste, such as from hospitals, also needs to be disposed of appropriately. Lack of adequate drainage of wastewater and stormwater has a negative impact on health, particularly where it leads to standing water, and for living in dignity where the local environment is unclean and unsafe.

⁵⁵ Ecological sanitation aims for ecologically sustainable systems that limit use and contamination of water and where possible provide positive uses of excreta.

⁵⁶ See R. Franceys, J. Pickford & R. Reed, *Guide to the development of on-site sanitation* (WHO, 1992), available at www.who.org.

Affordable: Sanitation services, including construction, emptying and treatment of faecal matter, must be available at a price that everyone can afford without compromising their ability to acquire other basic goods and services, including food, housing, health services and education.⁵⁷ In urban areas, a connection to the sewerage system will almost always be the cheapest and most convenient option for the user. However, as with water connections, often the price of a connection to the sewerage system will be prohibitive. Governments should provide subsidies where necessary for the emptying of septic tanks or pit latrines and the safe transport, transport, treatment and disposal of excreta. Governments should also provide assistance to households unable to afford soap for hygiene practices, and sanitary towels for women.

Culturally acceptable: Sanitation must be of a culturally acceptable quality.⁵⁸ In many cultures, use of toilets is a highly sensitive subject and the construction, positioning and conditions for use will need to be taken into account in planning services. In most cultures, it will be necessary to separate women's and men's use of toilets where public toilets are being constructed, (or boys' and girls' facilities in schools) to ensure privacy and dignity. Care

needs to be taken that good menstrual hygiene can be practiced. Many cultures and religions require that washing facilities be available for cleaning of anal and genital areas after the use of a toilet. Manual emptying of pit latrines is generally culturally unacceptable, so mechanised alternatives that limit contact with faeces should be used.

Sanitation should be ensured in a **non-discriminatory manner** and include **vulnerable and marginalised groups**.⁵⁹ There must be no distinction based on prohibited grounds such as race, gender, health status or colour that leads to unequal access to sanitation. Non-discrimination also includes proactive measures to ensure that the particular needs of vulnerable and marginalised groups are met. According to the OHCHR Report, priority in allocating limited public resources should be given to those without access or who face discrimination in accessing sanitation.⁶⁰ A particular example of discrimination in the delivery of services is where informal settlements do not receive services due to their lack of legal status. The lack of delivery to such settlements is particularly discriminatory against the vulnerable and marginalised groups who are most in need of assistance to access sanitation services.

⁵⁷ Sub-Commission Guidelines, s. 1.3(d).

⁵⁸ Sub-Commission Guidelines, para. 1.3(b).

⁵⁹ ICESCR, Art. 2 (2), Sub-Commission Guidelines, s. 3.

⁶⁰ OHCHR Report, para. 24.

Box 3.2: Service level descriptors of sanitation in relation to hygiene⁶¹

Service level description	Technology	Ease of access	Level of health concern**
No access	Open defecation, 'flying toilets', a hole in the ground, bucket latrine, open latrine or public toilet without adequate levels of hygiene. No water available for washing.*** No wastewater, solid waste or stormwater disposal.	Open defecation seldom provides privacy and always is a safety risk, particularly for women and children.	Very high. High likelihood of human contact with faeces, or of contamination via flies or other vectors. No physical security for women and children.
Basic access	Household level standard pit latrine with superstructure or public toilet with adequate levels of hygiene, connected to a pit that is regularly emptied, sewer or septic tank* for all members of a locality. Water available for washing. Wastewater, solid waste and stormwater removed from human settlements and drinking water resources.	Access may be adequate. However, public toilets are not always open, can be unaffordable, and/or may not be hygienically managed. Privacy may be ensured.	High, depending on whether toilet is hygienically kept and regularly maintained (e.g. pit emptied regularly) and whether most persons in a locality use sanitation effectively in order to prevent faecal-oral transmission. Where toilets are away from the household, physical security for women and children is significantly reduced.
Intermediate access	Household level pit latrine or toilets connected to a septic tank or sewer* for all members of a settlement, emptied as necessary. Water available for washing. Wastewater, solid waste and stormwater removed from human settlements and water resources.	Privacy assured, access available day or night.	Medium, depending on whether toilet is hygienically kept and regularly maintained (e.g. pit emptied regularly) and whether most persons in a locality use sanitation effectively in order to prevent faecal-oral transmission.
Optimal access	Low-density areas: Household-level pit latrines* or toilets connected to a septic tank with mechanical emptying services for all residents in a settlement. Dense urban areas: Household toilet, connected to a sewer,* for all residents in the settlement. Water is available for washing. Wastewater, solid waste and stormwater disposal is environmentally sustainable.	Can be used day or night, in full privacy.	Low, but relies upon sewage and faecal sludge being effectively transported, treated and disposed so that wastewater and faeces do not contaminate the environment, including water supplies.

* Or adequate alternative.

** In order to reap all the health benefits, it is necessary that sanitation be used effectively by at least 75 per cent of the population (JMP).

*** In some cultures, water is not only necessary for hand washing, but also for anal and genital cleansing. Water is also required for menstrual hygiene.

NB The technology used is irrelevant in terms of health, privacy and dignity if good hygiene is not practiced.

⁶¹ Adapted from the WHO: Service level descriptors for water in relation to hygiene, Table 6 in J. Bartram and G. Howard, *Domestic Water Quantity, Service Level and Health* (WHO, Geneva, 2003), p. 22.

Further to this, all people have the **right to participate** in decision-making processes that may affect their access to sanitation and must be given **full and equal access to information** concerning sanitation.⁶² Seldom are women and children consulted on their needs relating to sanitation, but these are the groups hardest hit by a lack of sanitation services.

In terms of **accountability**, people who are denied their right to sanitation should have access to effective judicial or other appropriate remedies, for example courts, regulatory agencies or human rights commissions.⁶³

3.3. Standard setting

States are required to realise the right to sanitation progressively, to the maximum of available resources.⁶⁴ Where there are resource or capacity challenges that prevent the full realisation of the right to sanitation, States are obliged to ensure the widest possible enjoyment of the right that is possible, and to take steps towards the full realisation of the right. In order to ensure that people can hold governments accountable for ensuring the progressive realisation of the right, it is necessary to consider interim standards that form stepping stones short of the full realisation of the right. In addition, the right to

sanitation requires very different government action as between rural and urban areas. For this, governments need to establish standards in order to make the right to sanitation meaningful.

It is essential that all residents have access to and use some form of safe sanitation in order to reap the health benefits, and to ensure privacy and dignity. It is estimated that currently 1.2 billion people practice open defecation, which suggests that there is a long way to go before everyone has access to sanitation facilities that meet human rights requirements.⁶⁵

In order to improve sanitary conditions, many experts recommend of a 'ladder' of facilities⁶⁶ that individuals and households can 'climb' towards safe, affordable sanitation facilities. (See Box 3.2 Service level descriptors). The bottom rung of this ladder may simply be to ensure that there is a common area (or field) for defecation for those who cannot afford any form of toilet, to prevent faeces from being spread around an entire village. This form of sanitation clearly does not meet the right to sanitation, and does not protect people's dignity or privacy, but is still an initial interim step in the direction of improving the environment and providing health benefits.

⁶² Sub-Commission Guidelines, s. 8.1.-8.3.

⁶³ Sub-Commission Guidelines, s. 9.

⁶⁴ General Comment No. 15, paras. 17 and 29.

⁶⁵ World Health Organization and United Nations Children's Fund Joint Monitoring Programme for Water Supply and Sanitation (JMP), *Progress on Drinking Water and Sanitation, Special Focus on Sanitation* (UNICEF, New York and WHO, Geneva, 2008), p.19.

⁶⁶ See Box 3.3 on the health risk relating to different sanitation technologies.

The top of the ladder in rural areas may be a ventilated improved pit (VIP) latrine, or form of ecological sanitation or a sewerage system. In urban areas with a high-density population, it is generally considered that a toilet connected to a functioning sewerage system, with safe treatment and/or disposal of sewage, is necessary to meet health requirements, and therefore the right to sanitation. However, some forms of on-site sanitation are also adequate (see Box 3.2 Service level descriptors). Adequate sanitation services without good hygiene on the other hand limit the health benefits.

This concept of a sanitation 'ladder' fits well with the human rights principle of 'progressive realisation'. Progressive realisation "*imposes an obligation to move as expeditiously and effectively as possible*" towards the full realisation of all economic, social and cultural rights.⁶⁷ In assessing the availability of resources against competing needs, governments should also take into account the cost of inadequate sanitation services to public health and the environment.

The first priority of States is to ensure that individuals are able to access facilities that ensure separation of excreta from people.

The needs of those without any form of access, and those who cannot provide for themselves, should be met first, following the principles of priority for the marginalised and vulnerable and non-discrimination. This may mean that, in the short or medium term, the immediate requirement is to provide toilets that can be emptied mechanically, where necessary, ensuring that excreta is removed from the direct living environment. Public toilets or toilets shared between households, although not optimum, can be an essential interim solution where they are well-managed, kept in a hygienic condition and where access is affordable or free.

The Sphere Standards for disaster response set out a minimum standard that each toilet serve a maximum of 20 people and that the use of toilets be arranged according to family group or segregated by sex. The minimum standard on adequacy of toilets is that they should be "*sited, designed, constructed and maintained in such a way as to be comfortable, hygienic and safe to use*".⁶⁸ The Sphere Standards, although defined solely for disaster response can be used by States in developing a minimum interim standard for provision of sanitation.

⁶⁷ CESCR, *General Comment No. 3: The Nature of States Parties' Obligations*, UN ESCOR, 1990, UN Doc. E/1991/23, para. 9.

⁶⁸ The Sphere Project, *Humanitarian Charter and Minimum Standards in Disaster Response* (Geneva, 2004), p.73.

Box 3.3: Setting standards for sanitation in different environments

There are vastly different conditions within and between countries, which means that standards need to be carefully modified accordingly. While recognising the shades of grey between 'rural' and 'urban', there are some generalised pointers:

Rural

In rural areas, on-site household level toilets, for both collection and treatment are generally sufficient to avoid contamination of the water supply, as long as toilets are not built in the vicinity of a water source. Wastewater drainage and solid waste management require less attention in low-density rural settings, as some forms of wastewater can be used for watering kitchen gardens. Stormwater may require programmes such as reforestation, or anti-soil erosion measures.

Affordability of sanitation services in rural areas cannot generally be defined as a percentage of household expenditure, as many rural economies in developing countries are often not monetarised - services are more often secured through self-help processes, payment in kind or through government subsidies.

Urban

In high population areas, there is frequently insufficient space for household level on-site latrines, thus requiring short or medium term solutions such as condominal sewerage systems or shared or public on-site facilities. Treatment of excreta will generally not be possible on-site, although small-scale localised treatment plants can be an effective option. It is necessary to understand cities and small towns as a sanitary whole, requiring safe transport, treatment and disposal of excreta, solid waste management and provision for stormwater (which may include reserving urban wetlands for flood waters).

In urban areas, access to services generally requires payment. The affordability of the costs to individuals and households of sanitation services, including operation, maintenance, treatment and disposal of excreta and wastewater and management of solid waste depends on other household needs. A global standard for affordability of sanitation has not been established to date. Affordability of water has been suggested to be between 3-6 per cent of household expenditure, but this will vary between different States.⁶⁹

Small towns may have characteristics of either rural or urban areas, or both, and will require standards relevant to their setting and the institutional arrangements.

⁶⁹ H. Smets, *Le prix abordable de l'eau potable de réseau dans la pratique des états* (Academie de l'Eau, Paris, 2008), p.5.

It should be emphasised that the concepts of 'a sanitation ladder' and 'progressive realisation' should not be understood as justifying a two-tier system of sanitation provision, with sewerage for the rich and on-site sanitation for the poor. Rather, these concepts should guide governments as they develop programmes, with targets and identified resources, to expedite everyone reaching the top of the sanitation ladder, and that within what is possible in the short and

medium term, government resources should be distributed equitably in order to benefit all people, rather than a privileged few. In addition, governments should base their assumptions on affordable level of service through consultations with the users themselves.

WHO has also produced guidelines on the safe use of wastewater and excreta in agriculture and aquaculture.⁷⁰

⁷⁰ S. A. Petterson & N. J. Ashbolt, *Guidelines for the Safe Use of Wastewater and Excreta in Agriculture* Microbial Risk Assessment Section MRA Review (WHO, Geneva, 2003).



This section examines government and other stakeholder obligations to implement the right to sanitation and discusses five priority areas where the right to sanitation can play an important role in removing barriers and improving access to sanitation for all.

4.1. Government obligations to implement the right to sanitation

Governments have an obligation to respect, protect and fulfil the right, using the maximum of available resources to progressively realise the right.

Respect: Governments are obliged to refrain from preventing people from accessing sanitation, for example, by arbitrarily interfering with customary or traditional arrangements for sanitation, without providing adequate and culturally acceptable alternatives.

Protect: Governments are obliged to ensure that private individuals or groups do not prevent anyone from accessing safe sanitation, for example by charging excessively for use of toilets.

Fulfil: Governments are obliged to **facilitate** access by ensuring that appropriate standards and regulations are in place to assist individuals in constructing and maintaining toilets. Governments are obliged to **promote** the right through hygiene education and awareness. Where individuals or groups are unable to provide sanitation services for themselves, governments are obliged to **provide** the necessary assistance, including information, training, access to land and where necessary, the services themselves. This is particularly important for schools, hospitals and other public institutions, which should receive priority in sanitation provision.

Governments are responsible for:

- Reviewing laws, policies, strategies and financing to ensure that sanitation receives sufficient priority, is treated as a right and is appropriately regulated.
- Ensuring that marginalised and vulnerable groups have access to sanitation services, including by ensuring that by-laws and standards promote the construction of toilets.

- Ensuring that the most appropriate technical options for collection, transport, treatment, disposal or re-use of excreta and for management of wastewater, solid waste and storm water are utilised, including considering traditional systems.
- Ensuring that utilities, whether privately or publicly managed, ensure access to sanitation for all, without discrimination, and prioritise provision to those without adequate access.
- Ensuring that small-scale informal provision is formalised where necessary and meets basic standards, for example through provision of training, establishing and enforcing quality and price control standards appropriate to small-scale provision.⁷¹
- Making land available for the essential elements of ensuring sanitation, such as public sanitation blocks or local treatment plants.
- Constructing and maintaining toilets at educational and health institutions and other public areas, such as market places and other commercial centres.
- Requiring households to construct and maintain toilets and providing assistance to this end.
- Requiring employers to provide sanitation for their work force.
- Ensuring, as a matter of urgency, that all people are reached by hygiene education that is customised to their needs.
- Preventing individuals from polluting water resources and the environment.
- Preventing small-scale providers and utilities from polluting water resources and the environment.
- For wealthier countries, providing financial and technical assistance for sanitation, with priority given to sanitation for the poor.
- Ensuring that sanctions imposed on a particular country do not impact negatively on access to sanitation services

There are some common misunderstandings regarding the realisation of human rights, in particular socio-economic rights and this publication aims to dispel these. To this end, it is important to clarify that the right to sanitation does **not** require governments to:

- Provide free sewerage or septic tank and pit exhaustion services. Individuals and households should be expected to contribute to the costs of services either financially or in kind. Where tariffs are charged, they should be differentiated according to the ability of households to pay without compromising on other basic needs.
- Construct household toilets. Governments should ensure appropriate regulations and provide technical and financial support and an enabling environment and support to households, landlords, utilities, small-

⁷¹ Many of the smaller providers will be informal, unregistered and unregulated. It is therefore difficult for governments to control their activities, including what they charge and the quality of services provided.

scale service providers and operators of public institutions to construct toilets suitable to the needs and preferences of users.

- Provide sewerage services for everyone where this is technically, financially or environmentally unfeasible. Toilets linked to septic tanks, pit latrines or ecological sanitation may be adequate alternatives, as long as there is sufficient alternative treatment and disposal of excreta, or there is no risk of faecal-oral transmission, or contamination of water resources.

Private providers of sanitation services are required to comply with government regulations obliging them to provide safe, accessible and affordable services. In addition, they have a social responsibility to ensure services that meet human rights requirements. This responsibility applies in particular to utilities, but while small-scale independent providers have fewer resources and limited capacity to meet human rights standards, they should at least maintain basic hygiene, refrain from discrimination and offer services that are as affordable as possible. The human rights responsibilities of private commercial actors, civil society and international agencies are addressed in greater detail in the *Manual on the Right to Water and Sanitation*.⁷²

4.2. Responsibilities of individuals and communities

Governments have obligations to take steps to prevent individuals from interfering with the realisation of the right to sanitation of others. To this end, governments can include legally binding duties in national law requiring individuals to refrain from activities infringing on the right to sanitation of others. Compulsory measures to prevent open defecation may be needed, although these should be carried out only after sanitary facilities are available and sufficient hygiene promotion campaigns carried out.

In addition, individuals and communities have moral responsibilities, supplementing government obligations, to refrain from infringing on the rights of others. Such responsibilities are recognised, although not spelt out in detail, by international human rights instruments. Individuals and households bear responsibilities to their neighbours and other community members. Therefore, they should keep the common surroundings of a community free of faecal matter, wastewater and garbage.

Individuals and communities have the following responsibilities:

- Behaviour/attitude change, including adopting good hygiene practices, sharing information on hygiene education with others.

⁷² COHRE, AAAS, SDC and UN-HABITAT, *Manual on the Right to Water and Sanitation* (Geneva 2007), Chapter 4: Key actors, available at: www.cohre.org/manualrtws.

- Construction and maintenance of toilets where feasible, which should adhere to building and development standards. Tenants should promptly report any problems to their landlord and take corresponding action if facilities broken down.

Individuals and communities also should lobby and advocate for right to sanitation, by identifying their rights, the obligations of duty bearers and demanding their implementation of these obligations.

4.3. What are the barriers to transforming the sanitation sector, and what role can the right to sanitation play in removing them?

To a large extent, the lack of access to sanitation services is related to a lack of political will on the part of governments. Further to this (and probably a symptom of this), the sanitation 'sector' is disparate, with a multitude of actors responsible for different aspects of sanitation. There is often insufficient information at a local level to adequately inform policy and strategy at a local or national level. There is little genuine participation, with women and vulnerable and marginalised groups particularly disenfranchised from decision-making processes. Resource allocation tends to reinforce social exclusion, with available funding focused largely on sewerage networks and treatment plants that primarily benefit wealthier groups. Without clarification of who is responsible for which

aspects of sanitation, complaints mechanisms and procedures, where they exist, are of limited value.

Human rights principles and the right to sanitation provide a framework for removing these barriers and encourages government and other actors to plan effectively to ensure safe and affordable access to sanitation for all.

4.3.1. Lack of clarity of roles and responsibilities relating to implementation of sanitation services, resulting in inadequate policies and strategies

Benefit of the right to sanitation: Requiring clear division of obligations for ensuring the right to sanitation

Many branches of government have responsibility for sanitation, including health, public works, agriculture, housing, environment, local, regional and national government. As discussed in section 1.3.2, this leads to confusion and overlapping mandates. The following actions will strengthen co-ordination:

- Government recognition of the importance of sanitation for overcoming poverty and improving public health.
- Identifying which departments and ministries are responsible for the different aspects of sanitation and hygiene promotion and producing an overarching strategy, which includes all stakeholders.

- Developing common standards and goals, including strengthening sanitation within poverty reduction strategy processes.
- Clearly defining the obligations of employers in regard to employees, utilities, small-scale providers and households.
- Ensuring coordination between government, bilateral and multilateral donor organisations, international and local non-governmental organisations and civil society organisations that are involved in the promotion, construction and maintenance of toilets, and the transport, treatment and disposal of excreta, wastewater and management of solid waste.

4.3.2. Barrier: Limited sharing of information and a lack of genuine participation

Benefit of a right to sanitation: Requires governments to include all relevant stakeholders, including marginalised groups, in decision-making and ensure their access to information

It is crucial that the right of individuals and groups to access information and participate in decision-making relating to sanitation is protected and promoted, so that their needs can be adequately addressed. Decision-making processes often exclude women's involvement, despite sanitation being an area that is particularly important for women, as the main carers of those who require special attention, such as children and the elderly or sick. Women are also the main caretakers of toilets, so their participation in siting and construction is crucial for proper use. Full

participation in decision-making will also lead to innovative solutions in sanitation, such as the community centre toilets constructed with the assistance of SPARC in India, where the toilet block also houses a community room and caretaker's quarters.⁷³

Participatory processes are also beneficial in the monitoring of policies or strategies, such as the report cards in Bangalore, India, which are used by communities to assess the performance of service providers.⁷⁴

4.3.3. Barrier: Social exclusion

Benefits of a right to sanitation: Requires governments to prioritise those currently without access, particularly the vulnerable and marginalised, in policies, strategies and plans of action

A plan of action or strategy will need to prioritise increasing access for those who lack sanitation. The focus from a human rights perspective is on ensuring non-discrimination and equal access for vulnerable and marginalised groups.

Government have the responsibility of:

- Ensuring that policies and legislation on sanitation and hygiene reflect that sanitation is a human right, and use human rights principles, such as non-discrimination, paying particular attention to vulnerable and marginalised groups, participation and information sharing and accountability, to ensure that funding is directed towards those who do not have adequate access.

⁷³ For further information see SPARC www.sparcindia.org.

⁷⁴ S. Wagle and P. Shah, Bangalore, India: *Participatory Approaches in Budgeting and Public Expenditure Management, Social Development Notes, Note No. 70, Participation and Civic Engagement Group (World Bank, Washington DC, March 2003).*

- Ensuring, through the development of regulations and effective enforcement, that utilities delivering sanitation services, such as sewerage systems take into account the needs of the marginalised and vulnerable groups, particularly those without secure tenure.
- Constructing and maintaining toilets at educational, health and other public institutions, and in public spaces (for example, markets).
- Providing skills training and capacity building that targets including social marketing, social mobilisation and micro-finance.
- Ensuring that provision has been made for emergency provision of sanitation for times of natural disaster or political crisis.

4.3.4. Barrier: Insufficient and poorly targeted funds

Benefit of right to sanitation: Prioritisation of funding for those without access and ensuring vulnerable and marginalised individuals and groups are not excluded

Some studies on sanitation demonstrate that the health, educational and economic returns from investments in sanitation can be as high as nine times greater than the cost of investments. This cost-benefit ratio increases to nine in sub-Saharan Africa.⁷⁵ This underlines the need to improve the availability of resources specifically for sanitation interventions. It is necessary to develop a funding strategy that particularly prioritises financing for measures to ensure sanitation for marginalised and vulnerable groups.

Governments have the responsibility of:

- Ensuring that they have a good funding strategy that is based on need. This will also assist in securing funds from international/bilateral donors, where this is required. Donor governments and international organisations should prioritise funding for sanitation for those without access, aligning this funding to nationally developed strategies, and refraining from any conditions that compromise human rights principles.
- Focusing interventions to benefit those who have limited or no access to sanitation.
- Reducing subsidies for those who can pay, providing subsidies for connection charges for those who need them, and emphasising the promotion of sanitation.⁷⁶
- Considering options such as funding transport, treatment and disposal of excreta, with individuals and households responsible for household level sanitation.
- Tackling corruption in the provision of sanitation services, recognising that corruption brings significant costs to the individual and household.⁷⁷
- Ensuring financing for institutional sanitation provision in schools, hospitals and prisons.

⁷⁵ B. Evans, G. Hutton and L. Haller, *Closing the Sanitation Gap - the case for better public funding of sanitation hygiene* (OECD, 2004), p.9.

⁷⁶ I. Pearson, *The national sanitation programme in Lesotho*, WSP, Field Note 5 in Blue Gold series (2002).

⁷⁷ Transparency International, *Global Corruption Report 2008: Corruption in the Water Sector* (Cambridge University Press, 2008), p.16.

Box 4.1: Community managed sanitation facilities: Anjuman Samaji Behbood (ASB), Faisalabad, Pakistan

The ASB is a successful replication of the well-known Orangi Pilot Project (OPP), which uses the technology of a low-cost, small-bore solution for the tertiary level reticulation of sewage. The system was developed to match the funds available from the users, to ensure affordability for all. The government was then lobbied to implement the secondary and primary (trunk) sewerage lines leading from the settlement to sewerage treatment plants. This approach has been very successful in ensuring a clean environment in the settlement. The OPP model has been taken up by other towns and cities in Pakistan as a way of overcoming not only a shortage of funds but also a lack of understanding within the government of how best to manage smaller scale, low-technology systems.⁷⁸ Two important aspects of the programme are the participation of households in lane committees, and the relationship with the local authorities, to ensure their understanding and hence support of the process. Local governments are generally supportive as this separation of responsibilities reduces their own financial burden in constructing and maintaining sewers.

- Promoting the benefits of using a toilet - status, dignity, privacy and health, to encourage household-level expenditure on sanitation.⁷⁹
- Providing incentives for improved services, such as micro-credit for small-scale private sector and for individual households to ensure increased construction and sustainability of sanitation.
- Promoting household expenditure on sanitation interventions and promoting innovation in sanitation provision to ensure that there are appropriate, cost-effective options available for all situations and preferences of users.
- Budgeting for improving disaggregated data collection, participatory processes and information dissemination.

4.3.5. Barrier: Lack of a monitoring framework and complaints mechanism

Benefit of right to sanitation: Requires monitoring and complaints mechanisms to ensure compliance

An essential aspect of a human rights framework includes ensuring an effective approach to monitoring the activities of the government, assessing whether set standards are being met and providing an effective complaints mechanism for people who have inadequate or no access to sanitation. It may also be necessary to review and revise existing standards, regulations and by-laws to ensure that they facilitate and promote access to sanitation.

In the case of service providers, whether public or private, this may require instituting a range of different regulatory bodies, charged with monitoring different aspects of a service contract

⁷⁸ A detailed description of the project, successful replications and replications that 'fizzled out', together with an analysis of the lessons learnt is found in A. Hassan, *Working with Communities* (Karachi: City Press, 2001), pp. 1-42, 159-166.

⁷⁹ This has also been dubbed 'social marketing'. See S. Cairncross, *The case for marketing sanitation*, WSP Field Note (August 2004).

(environmental, economic, and public health regulations).⁸⁰ In order to effectively monitor access to sanitation services, it is crucial that sufficient information is available that can indicate who does not have adequate access to sanitation, what the barriers to accessing sanitation are and which groups or areas lack adequate sanitation. Data must be disaggregated according to age, gender or locality, in order to identify discrimination and exclusion, to identify the barriers to access, to determine the most appropriate action to take and where funding should be focussed. Participatory processes need to be used both in information gathering and sharing of information, but also most crucially in planning strategies for improving access to sanitation.

4.4. Limitations of the right to sanitation

Treating sanitation as a right would bring many benefits to the efforts to ensure safe, affordable sanitation for all. However, it cannot remove all barriers to access to sanitation and it is important to avoid unrealistic expectations in this regard. It may be useful to conclude by addressing the limitations of using human rights in the sanitation sector.

4.4.1. The right to sanitation does not always provide a specific policy

The right to sanitation provides a clear set of principles, such as participation, affordability and non-discrimination to guide policy development. However, it does not define a

specific policy or framework for implementation. This needs to be developed by applying the right to prevailing conditions in each country as well as by taking into account technological and other solutions. The right to sanitation does not replace other development strategies but needs to be used in conjunction with them.

4.4.2. National recognition of the right to sanitation is not sufficient on its own

National recognition of the right to water and sanitation can help shape policy development and legitimise claims for access, but it does not automatically lead to implementation. Recognition is only the first step. Governments need to translate the right into their laws, policies, budgets and practices. Communities facing sanitation challenges, and their allies in NGOs, need to be aware of the right, to mobilise for it and use it to hold the State to account. Human rights therefore do not replace the responsibilities of individuals to act - they provide a tool that can be used by government officials, judges, civil society and individuals to strive to ensure access to sanitation to all.

4.4.3. The right to sanitation is often not yet enforceable in courts

Although there have been some court cases on the right to sanitation (see Box 2.1 Court orders to improve sanitary conditions), in most countries, courts are uncomfortable deciding cases involving social rights and ordering specific remedies, particularly where it would require the establishment of a new government programme to provide services. Accordingly, invoking such a right before courts can be difficult in certain countries.

⁸⁰ See D. Schaub-Jones, *Trends and themes in pro-poor regulation* (BPD, 2007).

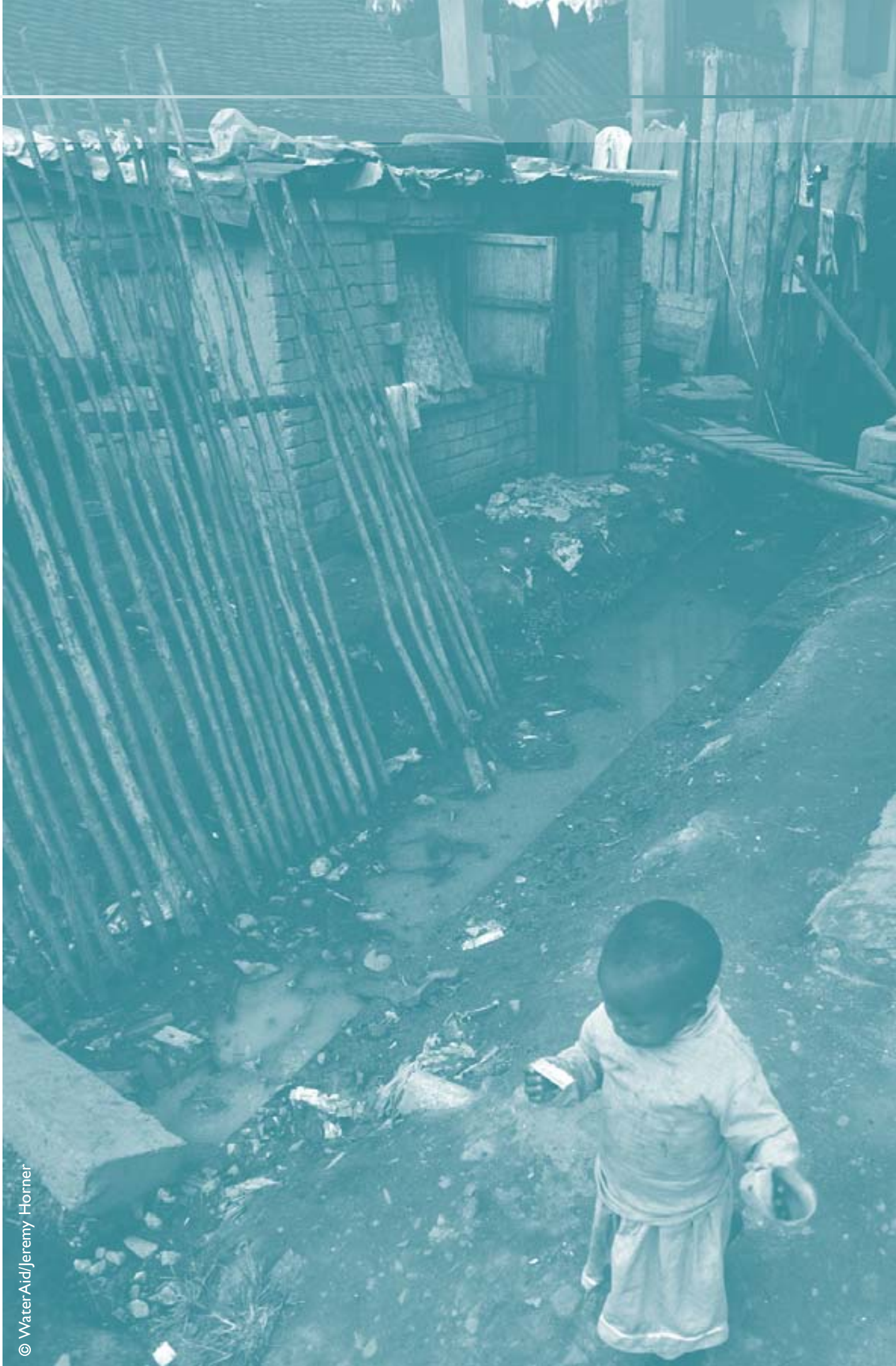
This limitation is not critical, as recourse to the courts is only one of several means with which to implement the right. Others include mainstreaming in policy measures by governments, advocacy by civil society and communities and through national and international monitoring mechanisms.

4.4.4. Misunderstandings of socio-economic rights, including the right to sanitation

Economic, social and cultural rights have historically been neglected and are therefore often misunderstood. Many actors in the water and sanitation sector are now familiar with the concept of the right to water, but have not thus far considered what the implications of treating sanitation as a right

would entail. Several of the misunderstandings detailed in Section 4.1 are likely to be widely held. There can sometimes be unrealistic expectations about what recognition of the right can achieve. This publication hopes to address this gap. Significant education will be required to ensure that the right to sanitation can be used effectively.

In sum, while the right to sanitation is not in itself a panacea for solving all the problems related to lack of access to sanitation, the right to sanitation, as well as other human rights, can provide substantial and useful legal and political tools which enhance the power of marginalised and vulnerable groups and which can be utilised to substantially improve their access to this essential service.



COHRE, AAAS, SDC and UN-HABITAT, *Manual on the Right to Water and Sanitation* (Geneva 2007), available at: www.cohre.org/manualrtws.

COHRE, *Legal basis, practical rationale and definition of the right to water and sanitation* (Geneva 2008), available at: www.cohre.org/water > Resources and Articles.

COHRE, *Legal resources for the right to water and sanitation* (Geneva 2004).

United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The right to water* (2002), U.N. Doc. E/C.12/2002/11. All CESCR General Comments are available at: www.ohchr.org ('Human Rights Bodies' > 'CESCR' > 'General Comments').

United Nations Development Programme, *Beyond Scarcity: Power, poverty and the global water crisis*: UNDP Human Development Report 2006 (New York, 2006), p. 58, available at: <http://hdr.undp.org/hdr2006/>.

United Nations Sub-Commission on the Promotion and Protection of Human Rights, Res. 2006/10, Promotion of the realization of the right to drinking water and sanitation, 24 August 2006, UN Doc. A/HRC/Sub.1/58/L11, adopting the *Draft Guidelines for the realization of the right to drinking water and sanitation* (2005), UN Doc. E/CN.4/Sub.2/2005/25. Available at: www.ohchr.org ('Your Human Rights' > 'Human Rights Issues' > 'Stakeholder views' below the Water heading).

WaterAid, *Sanitation and economic development: making the case for the MDG orphan* (2007), available at: www.wateraid.org/international/about_us/newsroom/5849.asp.

WaterAid, *Tackling the silent killer - the case for sanitation* (London, 2008), available at: www.wateraid.org.

World Health Organization and United Nations Children's Fund Joint Monitoring Programme for Water Supply and Sanitation (JMP), *Progress on Drinking Water and Sanitation, Special Focus on Sanitation* (UNICEF, New York and WHO, Geneva, 2008).

WHO, *The Sanitation Challenge* (Geneva, 2004).

Writers: Virginia Roaf (COHRE), Thorsten Kiefer (COHRE), Ashfaq Khalfan (COHRE) and Oliver Cumming (WaterAid).

Contributions from: Sonkita Conteh (COHRE), Carolina Fairstein (COHRE) and Kerubo Okioga (COHRE).

Advisors: Jamie Bartram (WHO), Andre Dzikus (UN-HABITAT), Barbara Evans, Malcolm Langford, Rolf Luyendijk (UNICEF), Owen McIntyre (National University of Ireland), Nathalie Mivelaz (OHCHR), François Muenger (SDC), Henri Smets (French Water Academy) and Steven Sugden (LSHTM).

Comments gratefully received from: Charles Biney, Patrick Bond, David Boys (Public Services International), Cor Dietvorst, Julia Häussermann (Rights and Humanity), Dr Helvi Heinonen-Tanski, Lara El-Jazairi (COHRE), Agnes Kabajuni (COHRE), Prabhjot Kaur (COHRE), Joe Lambangong (WaterAid), K. C. Malick (BISWAS), Mary O'Connell (WaterAid), Annamarieke Mooijmann, Stella Maris Sendagi, Carolien von Voorden (WSSCC); Thomas van Waeyenberge (AquaFed), Wasim Wagha (Centre for Indigenous Peoples of Indus), Inga Winkler (Amnesty International - Germany), Lesha (B.M.) Witmer, Women for Water Partnership.

DISCLAIMER: The designations employed and the presentation of material in this report do not imply of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries, or regarding its economic system or degree of development. The analysis conclusions and recommendations of this publication do not necessarily reflect the views of the United Nations Human Settlements Programme or its Governing Council.

Please note that all opinions in this publication are to be attributed to the authors. The organising partners, advisors and commentators do not necessarily endorse the analysis and conclusions of this document. Please send any comments or corrections to virginia@cohre.org.

The **Centre on Housing Rights and Evictions (COHRE)** is an independent, international, non-governmental human rights organisation. The Right to Water Programme (RWP) was established in 2002. It promotes reforms in international, national and local governance to achieve the right to water and sanitation for all, based on research, training and advocacy. COHRE works at the national level in co-operation with national and local groups. At the international level, COHRE aims to catalyse and support action by governments, international agencies and NGOs through publications, training and advocacy for stronger international standards. Further information is available at www.cohre.org and www.cohre.org/sanitation.

The **Swiss Agency for Development and Cooperation (SDC)** is Switzerland's international co-operation agency within the Federal Department of Foreign Affairs (FDFA). SDC is responsible for the overall co-ordination of development activities and co-operation with priority countries in Latin America, Africa and Asia and Eastern Europe, as well as for humanitarian aid. SDC puts access to water at the centre of its interventions for human beings and their food security. The Swiss Agency works at the intersection of three interdependent fields: the environment, the economy and society, in order to fulfil its main goal: the fight for poverty reduction and sustainable development. Further information is available at www.sdc.admin.ch.

The **United Nations Human Settlements Programme, UN-HABITAT**, is the United Nations agency for human settlements. It is mandated by the UN General Assembly to promote socially and environmentally sustainable towns and cities with the goal of providing adequate shelter for all. UN-HABITAT's Water, Sanitation and Infrastructure branch works with governments, local authorities and other partners to build capacity for effective and efficient provision and delivery of water, sanitation and infrastructure. Further information is available at www.unhabitat.org.

WaterAid is a leading independent organisation with a focus on enabling the world's poorest people to gain access to safe water, sanitation and hygiene education. These basic human rights underpin health, education and livelihoods and form the first, essential step in overcoming poverty. WaterAid works with local partners, who understand local issues, and provides them with the skills and support to help communities set up and manage practical and sustainable projects that meet their real needs. WaterAid also campaigns locally and internationally to change policy and practice and ensure water and sanitation's vital role in reducing poverty is recognised. Further information is available at www.wateraid.org.

Sanitation: A human rights imperative, developed as a vital contribution to the International Year of Sanitation 2008, initiates the crucial discussion on the human right to sanitation. This publication outlines the legal basis of and standards for the human right to sanitation and proposes priority government actions to ensure the right to sanitation. This is an essential step towards meeting the Millennium Development Goal sanitation target and beyond, towards universal access to sanitation for all.

Written in non-legal language, this publication clarifies that the right to sanitation should not only be included in national constitutions and UN human rights processes but ultimately depends on governments, individuals and communities working together to ensure participation, sharing of information, non-discriminatory practices and government accountability.

Issues covered include:

- The benefits of sanitation as a human right
- The legal basis of the right to sanitation
- Standard setting for the right to sanitation
- Priorities for governments and individuals to realise the right to sanitation.

