

# Human Rights to Water & Sanitation: FAQs

- **Human rights mean that water and sanitation services must be free**

No. Human rights demand that water and sanitation services are affordable to everyone, including for people who may not be able to pay very much or anything at all. This is the same for all types of human rights. Consider for example:

- The right to food: Food is not free, but food items are quite commonly subsidised
- The right to health: Drugs are not free, but are quite commonly subsidised

Consider also discussions about ability to pay & full cost recovery: A balance must be found between affordable payment (tariffs) for services. Costs that cannot be covered from those tariffs must be covered through other means, commonly public funds (taxes).

- **If water/sanitation are human rights, what about the private sector**

Human rights don't favour any one service delivery model over another. They demand that the state sets up a system within which service delivery can take place – by state owned or private service providers or by communities or households themselves.

For any such system, regulation and enforcement is crucial: To what standards do service providers have to work? Who is responsible for what? Are standards really enforced for all types of service provider?

“The private sector” also means many different things: Large private sector service providers are quite rare, but small scale private sector is almost always involved in service delivery, especially in rural areas: Drillers, builders, sludge collectors, mechanics, etc.

Another example that shows the importance of regulation and enforcement by the state: Tenants. The landlord is usually responsible for building the WASH infrastructure INTO the house. This requires building regulations that need to be checked and enforced. And clear roles and responsibilities if something inside the house breaks down: Is it the responsibility of the tenant or the landlord?

In the case of private sector actors violating rights (e.g. extractives, beverage companies): The state must protect people's human rights from violations by private sector actors. Again through laws, regulations and enforcement. For instance, BEFORE any private sector actor starts anything that might impact

people's ability to enjoy services, the impact should be carefully checked, people should have the ability to participate/be consulted, etc. and if the enjoyment of their rights deteriorates (the aquifer runs dry, sources are polluted) they should have a way to seek redress.

This system is often not in place and/or corrupted, which is a problem. To counter violations, it needs advocacy, lobbying, activism, protest. That is not the scope of this workshop, but international human rights protection mechanism can help to bring some international attention to issues in a given country. We can put you in touch with people who work in that field...

- **Sanitation is a household responsibility, not the job of the government**

Human rights never mean that a particular needs to be delivered to rights holders by the government: People produce or go and buy their own food – government does not deliver food to the door.

The role of government is to create a system that ensures that everyone will have sanitation. Think about it from scratch:

- A house is planned, then built: Building regulations require that a functioning sanitation system is put in place
- Sewage mains exist: People have to connect
- Septic tanks or similar are used: Regulations specify that emptying needs to happen and how the waste will be treated
- In households without sanitation: Encourage, enforce and where needed support (incl. financially) people to get a sanitation facility and to maintain it (with the help usually of the private sector – from building to sludge collection, transport and treatment). In larger settlements, communal toilet blocks run by private or public entrepreneurs may be needed in the interim.

[A note: This is where often, the sentence "with rights come responsibilities" comes in. Yes, of course. BUT: Government's role is to see to it that sanitation happens for everyone. If people e.g. don't WANT to use toilets, then government needs to think about its role in changing this – awareness raising, behaviour change... are part of progressively realising rights as well. The government can't say "people don't want to take up their responsibility, so it's not my fault"... Hannah's rant over]

- **Equality means everyone should be treated exactly the same. That is impossible.**

No. It means that every single person, no matter who they are, has the same right to have water and sanitation services that fulfil certain standards. That is the aim: a service that fulfils a certain standard for everyone.

As we all know, not everybody is the same: People live in different environments, have different needs, different abilities, etc. So in order to reach equality, we have to differentiate! Examples:

- A person with a high income can pay the full service cost – a person with a low income can't. So how to ensure that everyone CAN pay?
- A person without a disability can handle the steps at a water pump – a person with a walking disability will struggle. So how to ensure that everyone can access?

- **What about enforcement of these international rights (what teeth do human rights have)**

It depends!

- At the international level, honestly not very many teeth. However, there are international monitoring and complaint mechanisms that review how states are progressing with the implementation of their international human rights obligations and that can issue (public or confidential) recommendations, reports, etc. Perhaps the most important thing about all these documents is that they are used! A recommendation from an independent international mechanism can be an important 'back up tool' for civil society to use at the national level.

Examples:

- o The Special Rapporteur on the human rights to water and sanitation: The Special Rapporteur is an independent expert on the rights to water and sanitation and acts in his/her personal capacity. The Special Rapporteur prepares two reports per year on topics that he chooses. He also visits countries (upon invitation) and then meets with representatives of government, communities and civil society. Those visits end with a country report that includes recommendations. Finally, the Special Rapporteur can write letters to countries when he hears about a violation of the rights to water and sanitation. Civil society organisations in country are an important source of information for the Special Rapporteur in such cases. These so-called 'letters of allegation' are confidential.
- o The Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child and others: With every human rights treaty comes a committee. These committees are independent and made up of experts in the relevant field of human rights. They generally have three tasks:  
One is to monitor compliance of states parties to a given human rights treaty. For each treaty, there is a rotating system, so that each state has to report to the committee every so often (every few years). The committee then considers the state party report and additional information: NGOs can submit so-called 'shadow reports' in which they give their information about compliance with a given human rights treaty. Based on the information received, the committee then holds a meeting with the

state and often also with NGO representatives and draws up a report with recommendations (called Concluding Observations).

The second task is to issue so-called general comments. These are documents in which the committee interprets certain obligations under a human rights treaty. There is for example a general comment on the right to water. And a general comment on the principle of progressive realisation. While these general comments are not binding, they are authoritative interpretations of a human rights treaty, because they are written by the experts that also monitor compliance with a treaty.

The third task is to investigate and issue recommendations regarding individual complaints. This is only possible where a treaty makes provision for individual complaints. In the case of ICESCR, there was no individual complaint mechanism until very recently. It was created in the Optional Protocol to the ICESCR treaty, which has entered into force in 2013. However, only 22 countries have ratified the Optional Protocol so far, so individual complaints are only possible in very few cases so far.

- International human rights demands that states “translate” their international human rights obligations into their national level systems: By including rights in the constitution and laws and by creating the systems that make sure all the details work. One very important part of this is access to justice or the right to a remedy (accountability in other words): The national system should include complaint mechanisms where things go wrong and these should cover all levels: “small” complaints to the service provider that are solved there directly, but from there, all the way up to the court system. So: Teeth need to be created at the national level and accountability needs to run throughout the entire system of service provision.

- **If people don’t enjoy services, how can it be a right**

Somehow, people often question the existence of the rights to water and sanitation simply because many people do not have access to adequate services. Question though: Child labour is illegal, but it exists. Does its existence mean that that we should legalise it?

The fact that many people do not enjoy their human rights and that many others experience violations of their rights does not mean that their rights do not exist.

The important question is: If we all agree that water and sanitation are human rights, how can we make that conviction meaningful and helpful in practice?

What does it mean for our work? What means of advocacy might be useful to convince others that rights are a useful and helpful concept in practice?

- **What if the government really has no money**

International human rights law does not demand the impossible. Related to water, sanitation, health, education (all the rights related to services and “development”), states have to:

- Move forward step by step, not back (progressive realisation)

- Using the maximum available budget and other resources that they have (maximum available resources). This includes:
  - o A state's own resources
  - o International technical and economic assistance and cooperation
- To achieve the rights recognised in international human rights law (like water and sanitation)

So there is an aim that a state commits to in international law and to achieve this aim as fast as possible. And that is where human rights thinking comes in and can be really useful, even if a government really has NO money or other resources. The government can steer development assistance in "the human rights way" for instance.

- **What about donors – what role do they have**

International human rights law sees international technical and economic assistance and cooperation as part of the solution. This goes both ways: A state that has no or very limited resources should seek assistance to realise human rights. A state that has a lot of resources should offer assistance to states who need it.

This then extends to the HOW of development cooperation: How can development partners best support the realisation of human rights. Most commonly, this is referred to as a human rights based approach to development cooperation.

We don't have time to go into details here, but there are references you could look at:

- The recent report by the Special Rapporteur on development cooperation (the first of two reports on the topic)
- The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (esp. Principles 32 – 35). These are not international law, but reflect the opinion of a number of high level experts in international human rights law.

- **What about the SDGs – how do human rights and the SDGs hang together?**

They complement each other:

- If you look at the issues contained in the SDGs, you will find the vast majority of them in international human rights law (food, health, education, gender equality, water and sanitation, work, reduced inequalities – all the goals and targets related to the "social" dimension of the SDGs (the other dimensions are economic and environmental)).
- The SDGs are a POLITICAL declaration that contains many references to international human rights law, so the SDGs are based on international human rights law. Water and sanitation are even explicitly mentioned as rights in the declaration (no other single right is explicitly mentioned).

- Human rights are LEGAL in nature: They are in treaties that states have signed up to.
- So the idea is: Use the human rights obligations and make the thinking contained in it PRACTICAL, so that the political commitment contained in the SDGs will be achieved.

Add question on connection between different human rights bodies, e.g. African Commission.

- **What about the regional human rights bodies (e.g. the African Commission on Human and People's Rights)? Are they connected to the international bodies?**

Next to the international human rights system, there are different regional human rights systems in Africa and the Americas (not really in Asia). These have their own human rights treaties and their own systems for monitoring and compliance – but these are often similar to the international system.

Generally, the regional commissions work in similar ways to the Commissions/Committees at the UN:

- They monitor states' implementation of the regional human rights treaties in Africa, Americas and Europe through periodic reports submitted by states
- They have Special Rapporteurs and Working Groups on specific topics. I know that the African Commission discussed at some point the creation of a water & sanitation mandate, but I don't know how this has evolved. From looking through some activity reports, I remember that they were very thin in substance. I imagine that Special Rapporteurs at least at the African Commission are even more under-resourced than they are at the UN.
- They have different kinds opportunities for individual complaints (through a complaint or court mechanism or a combination of both).

In terms of their importance, I think it is again similar to the UN: If CSOs can engage them, then useful recommendations can come out of resolutions, reports or individual cases – which can then be taken back to the national level and used for advocacy purposes. Given that the mechanisms are regional as opposed to global, these can be more context specific.

- **Have all countries recognised water and sanitation as human rights?**

Yes, internationally they have!

Most people know about the UN General Assembly resolution in 2010 in which the human right to water and sanitation was first recognised. There was a vote on this text, so in 2010, there was not yet consensus among all UN Member States. More resolutions were passed since then by the Human Rights Council and the General Assembly. And in 2015, the General Assembly passed a resolution by consensus that recognised water and sanitation as (separate) human rights. Since then at the latest, all UN Member States agree that water and sanitation are human rights. Before then, there was universal recognition too, but it was not expressed in a single document – so it was a bit hard to count.

“Passed by consensus” means that there was no vote on a resolution. It was simply tabled and passed. In the UN General Assembly, every one of the 193 UN Member States has one seat and one vote. So if the UN General Assembly passes a text by consensus, it means that every UN Member State agrees to it.