

Realising the Human Right to Water and Sanitation

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Abstract

This paper critically explores the human right to water and sanitation. The paper argues that access to safe, affordable and reliable drinking water and sanitation services are basic human rights that are indispensable for Sustainable Development and human well-being. The paper tracks the progress made towards realising the human right to water and sanitation at the global, regional, and national levels. It further examines the challenges facing the attainment of the human right to water and sanitation. In addition, the paper provides recommendations towards realising the human right to water and sanitation.

1.0 Introduction

Water is at the core of Sustainable Development and is a vital resource for socio-economic development, energy and food production, healthy ecosystems and for human survival¹. It has been pointed out that by managing water sustainably, it is possible to better manage our production of food and energy and contribute to decent work and economic growth.² In addition, water is also at the heart of adaptation to climate change, serving as the crucial link between society and the environment³. Protecting and restoring ecosystems such as mangroves and wetlands is a key approach in reducing greenhouse gas emissions, while also benefitting nature and wildlife, as well as economies and societies since these ecosystems can act as a buffer to extreme events, such as floods and droughts,

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¹ United Nations., 'Water' Available at <https://www.un.org/en/global-issues/water#:~:text=The%20UN%20and%20Water,human%2C%20commercial%20and%20agricultural%20needs> (Accessed on 28/08/2024)

² United Nations., 'Goal 6: Clean Water and Sanitation' Available at <https://www.un.org/sustainabledevelopment/water-and-sanitation/> (Accessed on 28/08/2024)

³ United Nations., 'Water' Op Cit

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therefore protecting humanity from disaster risks⁴. Water is therefore vital for Sustainable Development and offers benefits for climate adaptation, biodiversity, ecosystem services and human health⁵.

Sanitation generally entails the provision of facilities and services for the safe disposal of human urine and faeces⁶. According to the World Health Organization (WHO), inadequate sanitation is a major cause of disease world-wide and improving sanitation is known to have a significant beneficial impact on health both in households and across communities⁷. In addition, WHO further notes that sanitation also refers to the maintenance of hygienic conditions, through services such as garbage collection and wastewater disposal⁸. Sanitation therefore involves more than the provision of facilities such as toilets⁹. It entails behaviour, facilities and services which together provide the hygienic environment to fight diseases and ensure human health and well-being¹⁰.

The United Nations *2030 Agenda for Sustainable Development*¹¹ recognizes the crucial role of water and sanitation in development. Sustainable Development Goal (SDG) 6 seeks to ensure availability and sustainable management of water and sanitation for all¹². In order to realise the human right to water and sanitation, SDG 6 seeks to: achieve universal and

⁴ Stockholm International Water Institute., 'Why Water is Crucial to Climate Mitigation' Available at <https://siwi.org/latest/why-water-is-crucial-to-climate-mitigation/#:~:text=Protecting%20and%20restoring%20freshwater%20ecosystems,protecting%20us%20from%20disaster%20risks>. (Accessed on 28/08/2024)

⁵ Ibid

⁶ World Health Organization., 'Overview (Sanitation)' Available at <https://www.afro.who.int/node/5691> (Accessed on 28/08/2024)

⁷ Ibid

⁸ Ibid

⁹ UNICEF., 'Sanitation' Available at <https://www.unicef.org/wash/sanitation#:~:text=Sanitation%20is%20about%20more%20than,people%20practice%20%E2%80%9Copen%20defecation%E2%80%9D>. (Accessed on 28/08/2024)

¹⁰ Ibid

¹¹ United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Available at <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Accessed on 28/08/2024)

¹² Ibid

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equitable access to safe and affordable drinking water for all; achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations; improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally; substantially increase water-use efficiency across all sectors and ensure sustainable withdrawals and supply of freshwater to address water scarcity and substantially reduce the number of people suffering from water scarcity; implement integrated water resources management at all levels, including through transboundary cooperation as appropriate; support and strengthen the participation of local communities in improving water and sanitation management; and protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes¹³. Achieving the targets of SDG 6 is therefore key in realising the human right to water and sanitation.

This paper critically explores the human right to water and sanitation. The paper argues that access to safe, affordable and reliable drinking water and sanitation services are basic human rights that are indispensable for Sustainable Development and human well-being. The paper tracks the progress made towards realising the human right to water and sanitation at the global, regional, and national levels. It further examines the challenges facing the attainment of the human right to water and sanitation. In addition, the paper provides recommendations towards realising the human right to water and sanitation.

2.0 The Human Right to Water and Sanitation

Access to safe, affordable and reliable drinking water and sanitation services are fundamental human rights¹⁴. The human right to water and sanitation is indispensable to sustaining healthy livelihoods and maintaining people's dignity¹⁵. This right is also

¹³ Ibid

¹⁴ Office of the United Nations High Commissioner for Human Rights., 'OHCHR and the Rights to Water and Sanitation' Available at <https://www.ohchr.org/en/water-and-sanitation> (Accessed on 28/08/2024)

¹⁵ Ibid

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essential for eradicating poverty, building peaceful and prosperous societies and nations, and ensuring that ‘no one is left behind’ on the road towards Sustainable Development¹⁶. According to the United Nations, safe, affordable and reliable drinking water and adequate sanitation are crucial for poverty reduction and Sustainable Development¹⁷.

It has been argued that there is need to embrace water and sanitation as two separate human rights¹⁸. For example, when water and sanitation are mentioned together, the importance of sanitation is downgraded because of the political and cultural preference given to the right to water¹⁹. Delimiting the human rights to water and sanitation as separate and distinct allows stakeholders including governments and the civil society to create standards specifically for the human right to sanitation and for its realisation²⁰. Further, distinguishing between these two rights also makes it easier for states and other stakeholders to understand their distinct responsibilities, obligations and roles implicit in the realisation of each of the rights²¹.

Water and sanitation should therefore be embraced as two distinct rights in order to ensure their realisation. The human right to water entitles everyone to have access to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic use²². On the other hand, the human right to sanitation entitles everyone

¹⁶ Ibid

¹⁷ United Nations., ‘The Human Right to Water and Sanitation’ Available at https://www.un.org/waterforlifedecade/pdf/human_right_to_water_and_sanitation_media_brief.pdf (Accessed on 28/08/2024)

¹⁸ United Nations Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation., ‘Realising the Human Rights to water and Sanitation: A Handbook by the UN Special Rapporteur Catarina de Albuquerque’ Available at https://www.pseau.org/outils/ouvrages/ohchr_realizing_the_human_rights_to_water_and_sanitation_a_handbook_2014.pdf (Accessed on 28/08/2024)

¹⁹ Ibid

²⁰ Ibid

²¹ Ibid

²² United Nations., ‘Human Rights to Water and Sanitation’ Available at <https://www.unwater.org/water-facts/human-rights-water-and-sanitation#:~:text=Water%20and%20sanitation%20are%20critical%20to%20achieving%20the%20SDGs.&t>

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to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, and socially and culturally acceptable and that provides privacy and ensures dignity²³.

The human rights to water and sanitation are anchored by several key principles. These include: availability; accessibility; affordability; quality and safety; and acceptability²⁴. On accessibility, it has been noted that everyone has the right to water and sanitation services that are physically accessible within, or in the immediate vicinity of the household, educational institution, workplace or health institution²⁵. However, it is imperative to note that physical presence is not the same as accessibility²⁶. Water or sanitation services that are too expensive, unreliable, unhygienic, unsafely located, unadapted for less able groups or children, or non gender-segregated, in the case of toilets and washing facilities do not meet the threshold of accessibility even if they physically accessible²⁷. It is also vital to ensure that such services are affordable, in quality and safe conditions, acceptable, and able to meet the needs of diverse groups including children, women, and persons with disabilities in order to fully realise the human rights to water and sanitation²⁸.

The human right to water and sanitation has been recognized at the global level. The Committee on Economic, Social and Cultural Rights adopted *General Comment No. 15 on*

[ext=A%20society%20can%20only%20achieve,rights%20to%20water%20and%20sanitation](#) (Accessed on 28/08/2024)

²³ Ibid

²⁴ Office of the United Nations High Commissioner for Human Rights., 'OHCHR and the Rights to Water and Sanitation' Op Cit

²⁵ United Nations., 'The Human Right to Water and Sanitation' Available at https://www.un.org/waterforlifedecade/human_right_to_water.shtml#:~:text=The%20human%20right%20to%20water%20and%20sanitation&text=On%2028%20July%202010%2C%20through,realisation%20of%20all%20human%20rights (Accessed on 28/08/2024)

²⁶ United Nations., 'Human Rights to Water and Sanitation' Op Cit

²⁷ Ibid

²⁸ Ibid

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*the Right to Water*²⁹. General Comment No. 15 recognizes that the human right to water is indispensable for leading a life in human dignity and that it is a prerequisite for the realization of other human rights³⁰. It also acknowledges that the human right to water entitles everyone to sufficient, safe, quality, acceptable, physically accessible and affordable water for personal and domestic uses³¹. In addition, it notes that an adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements³². This document further points out that the right to water contains both freedoms and entitlements. The freedoms under right to water include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies³³. On the other hand, entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water³⁴. General Comment No. 15 also sets out the importance of ensuring that the right to water is enjoyed without discrimination and equally between men and women³⁵.

The United Nations General Assembly has also adopted a *Resolution*³⁶ that explicitly recognises the human right to water and sanitation. The Resolution acknowledges the importance of equitable access to safe and clean drinking water and sanitation as an integral component of the realization of all human rights³⁷. It notes that the right to safe and clean drinking water and sanitation is a key human right that is essential for the full

²⁹ United Nations, General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), Adopted at the Twenty-ninth Session of the Committee on Economic, Social and Cultural Rights, on 20 January 2003 (Contained in Document E/C.12/2002/11)

³⁰ Ibid

³¹ Ibid

³² Ibid

³³ Ibid

³⁴ Ibid

³⁵ Ibid

³⁶ United Nations General Assembly., 'The Human Right to Water and Sanitation' A/RES/64/292

³⁷ Ibid

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enjoyment of life and all human rights³⁸. In order to realise this right, the Resolution by the United Nations General Assembly calls upon states and international organizations to provide financial resources, capacity-building and technology transfer, through international assistance and cooperation, in particular to developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all³⁹.

The African Commission on Human and Peoples' Rights has also issued *Guidelines on the Right to Water in Africa*⁴⁰. The Guidelines note that the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses⁴¹. In addition, the Guidelines state that under no circumstances may an individual be deprived of the minimum essential amount of water for basic human needs and survival⁴². They require water to be treated first and foremost as a social and cultural good, not as an economic good⁴³. The Guidelines note that states have an obligation to respect, protect, promote and fulfil the right to water⁴⁴. They urge states to take deliberate, concrete and targeted steps to move as expeditiously and effectively as possible towards the goal of full realisation of the right to water, using the maximum available resources⁴⁵. In addition, the Guidelines require African states to ensure a non-discriminatory participation to all stakeholders in the water sector, as well as equal access to water and water facilities and services⁴⁶. In particular, they require states to take positive measures to ensure that vulnerable and marginalized groups and groups with special needs, including cultural, spiritual and religious needs, participate

³⁸ Ibid

³⁹ Ibid

⁴⁰ African Commission on Human and Peoples' Rights., 'Guidelines on the Right to Water in Africa' Available at <https://achpr.au.int/en/node/904#:~:text=Thus%20the%20realisation%20of%20the,realise%20the%20ri ght%20to%20health> (Accessed on 29/08/2024)

⁴¹ Ibid

⁴² Ibid

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ Ibid

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in the water sector and have access to water⁴⁷. Further, in order to realise the right to water and sanitation in Africa, the Guidelines require states to adopt a rights-based approach to water management that takes into account community-based water management, access to information, public participation, and sustainability⁴⁸. Implementing these Guidelines is key in realising the human right to water and sanitation in Africa.

At a national level, the *Constitution of Kenya*⁴⁹ enshrines the right of every person to clean and safe water in adequate quantities to reasonable standards of sanitation⁵⁰. Further, the *Water Act*⁵¹ provides for the regulation, management and development of water resources and water and sewerage services towards fostering the right to water in Kenya. The Act notes that every person in Kenya has the right to clean and safe water in adequate quantities and to reasonable standards of sanitation as stipulated in article 43 of the Constitution of Kenya⁵².

The right to water and sanitation has therefore been recognized at the global, regional, and national levels. However, despite its recognition, it has been noted that globally, billions of people lack access to safe, adequate, and readily available water at home, and safely managed sanitation services⁵³. This problem is especially prevalent in Sub-Saharan Africa which has the largest number of water-stressed countries than any other place on the planet⁵⁴. In addition, the negative effects of overuse and pollution of water resources and other development activities in Africa are threatening the rights of present and future generations, the realisation of which depends on equitable access to water⁵⁵. Lack of

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ Constitution of Kenya., 2010., Government Printer, Nairobi

⁵⁰ Ibid, article 43

⁵¹ Water Act., Cap 372, Government Printer, Nairobi

⁵² Ibid, S 63

⁵³ Office of the United Nations High Commissioner for Human Rights., 'OHCHR and the Rights to Water and Sanitation' Op Cit

⁵⁴ African Commission on Human and Peoples' Rights., 'Guidelines on the Right to Water in Africa' Op Cit

⁵⁵ Ibid

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access to adequate sanitation has been identified as the primary cause of water contamination and diseases linked to water⁵⁶. WHO notes that inadequate sanitation is a major cause of disease world-wide and improving sanitation is known to have a significant beneficial impact on health both in households and across communities⁵⁷. Lack of adequate sanitation services results in challenges such as open defecation which has devastating impacts for public health⁵⁸. Exposed faecal matter contaminates food, water and the environment, and can spread serious diseases, such as cholera⁵⁹. It also undermines individual dignity and safety⁶⁰. It is therefore evident that despite progress, significant challenges still remain for the achievement of the human right to water and sanitation and in addressing huge inequalities between and within countries in accessing basic water and sanitation services. It is imperative to address these challenges in order to realise the human right to water and sanitation.

3.0 Realising the Human Right to Water and Sanitation

It is imperative to realise the human right to water and sanitation. In order to achieve this goal, water should be regarded not just as a natural resource to be managed and used, but as a fundamental human right to which all people are entitled without discrimination⁶¹. Access to safe water and sanitation for all is essential for eradicating poverty, building peaceful and prosperous societies, and fostering an inclusive path towards Sustainable Development⁶².

Realising the human right to water and sanitation requires states to work towards achieving universal access to water and sanitation for all, without any discrimination,

⁵⁶ United Nations General Assembly., 'The Human Right to Water and Sanitation' Op Cit

⁵⁷ World Health Organization., 'Overview (Sanitation)' Op Cit

⁵⁸ UNICEF., 'Sanitation' Op Cit

⁵⁹ Ibid

⁶⁰ Ibid

⁶¹ Office of the United Nations High Commissioner for Human Rights., 'OHCHR and the Rights to Water and Sanitation' Op Cit

⁶² UN-Habitat., 'Water and Sanitation' Available at <https://unhabitat.org/topic/water-and-sanitation> (Accessed on 30/08/2024)

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while prioritizing those most in need⁶³. It is therefore important for states to enhance investments in water and sanitation services for all⁶⁴. This is key in ensuring universal access to safe and affordable drinking water⁶⁵. Providing safe sanitation for the world's most vulnerable communities in rural and urban areas, and during emergencies is also important in tackling the problem of open defecation which has devastating impacts on public health⁶⁶. States have also been urged to foster progressive realization of the right to water and sanitation in light of different capabilities⁶⁷.

Ensuring equality and non-discrimination is vital in realising the human right to water and sanitation⁶⁸. The principle of equality and non-discrimination require states to eliminate inequalities in access to water and sanitation⁶⁹. States should therefore ensure progressive allocation of funding for the highly disadvantaged and vulnerable groups, with the aim of making up for long-standing marginalization of these groups⁷⁰.

Sound governance of water resources is also vital in realising the human right to water and sanitation⁷¹. Competition in water uses and over access to water resources are key challenges in realising the right to water especially in the context of shared water resources⁷². These factors often contribute to pollution, overexploitation, conflicts, and water scarcity therefore undermining efforts towards achieving the human right to water⁷³. The *Dublin Statement* that was adopted during *the International Conference on*

⁶³ Office of the United Nations High Commissioner for Human Rights., 'OHCHR and the Rights to Water and Sanitation' Op Cit

⁶⁴ United Nations., 'Goal 6: Clean Water and Sanitation' Op Cit

⁶⁵ Ibid

⁶⁶ UNICEF., 'Sanitation' Op Cit

⁶⁷ Kenya National Commission on Human Rights., 'Framework for Monitoring Realization of the Rights to Water and Sanitation in Kenya' Available at <https://www.knchr.org/Portals/0/EcosocReports/PHE-Framework.pdf> (Accessed on 30/08/2024)

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ African Commission on Human and Peoples' Rights., 'Guidelines on the Right to Water in Africa' Op Cit

⁷² Ibid

⁷³ Ibid

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*Water and the Environment (Dublin Conference)*⁷⁴ identifies key principles for sound water governance which include participatory approaches involving users, planners and policy-makers at all levels⁷⁵; the role of women in the provision, management and safeguarding of water⁷⁶; the basic right of all human beings to have access to clean water and sanitation at an affordable price⁷⁷; and effective management of water resources that takes a holistic approach, linking social and economic development with protection of natural ecosystems⁷⁸. States should therefore embrace a participatory approach towards governance of water and sanitation services that takes into account the role of women, youth and indigenous communities⁷⁹. States should also enhance access to information on water and sanitation in order to effectively realise these rights⁸⁰. It has been noted that information empowers people to pursue their rights to water and sanitation⁸¹. Protecting and restoring water-related ecosystems is also essential for sound water governance towards realising the human right to water and sanitation⁸².

4.0 Conclusion

Access to safe, affordable and reliable drinking water and sanitation services are fundamental human rights that are key in fostering Sustainable Development⁸³. The human right to water and sanitation is key in sustaining healthy livelihoods and maintaining people's dignity⁸⁴. The human right to water and sanitation entitles every

⁷⁴ International Conference on Water and the Environment: 26-31 January 1992, Dublin, Ireland., Available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/30961/ICWE.pdf?sequence=1&isAllowed=y> (Accessed on 30/08/2024)

⁷⁵ Ibid

⁷⁶ Ibid

⁷⁷ Ibid

⁷⁸ Ibid

⁷⁹ Ibid

⁸⁰ Kenya National Commission on Human Rights., 'Framework for Monitoring Realization of the Rights to Water and Sanitation in Kenya' Op Cit

⁸¹ Ibid

⁸² United Nations Development Programme., 'Goal 6: Clean Water and Sanitation' Available at <https://www.undp.org/sustainable-development-goals/clean-water-and-sanitation> (Accessed on 30/08/2024)

⁸³ Office of the United Nations High Commissioner for Human Rights., 'OHCHR and the Rights to Water and Sanitation' Op Cit

⁸⁴ Ibid

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person to have access to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic use and to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, and socially and culturally acceptable and that provides privacy and ensures dignity⁸⁵. The human right to water and sanitation has been recognized at the global, regional, and national levels. However, despite its recognition, billions of people all over the world lack access to safe, adequate, and readily available water at home, and safely managed sanitation services⁸⁶.

Realising the human right to water and sanitation is therefore an urgent priority for development. In order to achieve this right, it is imperative for states to: enhance investments in water and sanitation services for all⁸⁷; prioritise the needs of disadvantaged groups in order to ensure equality and non-discrimination⁸⁸; ensure access to information and participation by all stakeholders including women, youth, and indigenous communities in the governance of water and sanitation services⁸⁹; and protect and restore water-related ecosystems⁹⁰.

It is therefore important for all states to work towards realising the human right to water and sanitation for development.

⁸⁵ United Nations., 'Human Rights to Water and Sanitation' Op Cit

⁸⁶ Office of the United Nations High Commissioner for Human Rights., 'OHCHR and the Rights to Water and Sanitation' Op Cit

⁸⁷ United Nations., 'Goal 6: Clean Water and Sanitation' Op Cit

⁸⁸ Office of the United Nations High Commissioner for Human Rights., 'OHCHR and the Rights to Water and Sanitation' Op Cit

⁸⁹ International Conference on Water and the Environment: 26-31 January 1992, Dublin, Ireland., Op Cit

⁹⁰ United Nations Development Programme., 'Goal 6: Clean Water and Sanitation' Op Cit

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