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**Human Rights Council****Twenty fourth session**

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****Report of the Special Rapporteur on the human  
right to safe drinking water and sanitation,  
Catarina de Albuquerque***Summary*

The Special Rapporteur on the human right to safe drinking water and sanitation submits the present report in accordance with Human Rights Council resolutions 16/2 and 21/2. Focusing on sustainability in the realization of the human rights to water and sanitation, the Special Rapporteur examines how the rights to water and sanitation can and must be met for present and future generations. She highlights challenges to sustainability and particularly aggravated risks in times of economic and financial crisis. After addressing the relevance of sustainability to the core human rights concepts of “progressive realization” and “non-retrogression”, the Special Rapporteur explains how the normative content and principles of the human rights to water and sanitation contribute to ensuring sustainability.

Using the human rights framework, the Special Rapporteur analyses States’ common approaches to water and sanitation, particularly in adopting measures both during times of normalcy and during economic and financial crises, and shows how those approaches often fail to incorporate sustainability. She then demonstrates that the human rights framework can and should facilitate improvement in such policies. A key finding of the report is that developing policies and programmes in accordance with human rights standards and principles will ensure that such measures will last for future generations – they will stand the test of time.

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## I. Introduction

1. The present report is submitted to the Human Rights Council by the Special Rapporteur on the human right to safe drinking water and sanitation in accordance with Human Rights Council resolutions 16/2 and 21/2. The focus is on sustainability in realizing the human rights to water and sanitation.

2. In preparing the report the Special Rapporteur engaged in a wide consultative process, which included numerous written contributions received from States and others, and the holding of a multi-stakeholder expert consultation. She is grateful to all those who contributed with their time and expertise.

3. While the benefits of access to safe water and sanitation have been widely pronounced, the international community is currently failing to ensure the availability of safe water and sanitation for all, without discrimination, including for future generations. About 1.8 billion people are estimated to lack access to safe water,<sup>1</sup> 2.5 billion have no toilets, septic tanks, piped sewer systems or other means of improved sanitation and about 1.1 billion people still practice open defecation.<sup>2</sup>

4. Moreover, while the Millennium Development Goals target calls for sustainable access, the monitoring framework not only fails to capture this dimension, but to some extent provides an incentive for quick solutions that have proven unsustainable in the long term. In a period of 20 years, more than 180,000 hand pumps installed in rural sub-Saharan Africa failed prematurely, representing a total failed investment of between \$1.2 billion and \$1.5 billion;<sup>3</sup> if all of the pumps had continued to work, 70 million more people would have had access to water.<sup>4</sup> Data available for some regions show that between 35 and 80 per cent of water systems, such as hand pumps, were not functioning at the time the data was collected.<sup>5</sup> Similar problems arise with sanitation, as various wastewater plants have stopped being operational a short time after their construction.<sup>6</sup> Deteriorating water and sanitation infrastructure, compounded by rapid urbanization and insufficient maintenance, causes yearly water losses of between 250 million to 500 million cubic metres in many megacities' supply systems.<sup>7</sup> However these "slippages" are not systematically monitored globally.

5. Another dimension that challenges sustainability is increasing water scarcity. In 2010, nearly all megacities were facing water scarcity.<sup>8</sup> As the world population continues to grow, so has the demand for water: water withdrawals tripled over the last 50 years and

<sup>1</sup> Kyle Onda and others, "Global access to safe Water: accounting for water quality and the resulting impact on MDG progress", *International Journal of Environmental Research and Public Health*, vol. 9, No. 3, p. 880.

<sup>2</sup> United Nations Children's Fund and the World Health Organization (WHO), *Progress on Drinking Water and Sanitation: 2012 Update* (2012), p. 15.

<sup>3</sup> IRC International Water and Sanitation Centre, "Ghana and Uganda to pilot new model to improve rural water services" (2009). Available from [www.source.irc.nl/page/48398](http://www.source.irc.nl/page/48398).

<sup>4</sup> Global Water Challenge, WASH Sustainability Charter: Collaborating for Best Practices, slide 4. Available from [www.slideshare.net/GlobalGiving/wash-sustainability-charter-collaborating-for-best-practices](http://www.slideshare.net/GlobalGiving/wash-sustainability-charter-collaborating-for-best-practices).

<sup>5</sup> S. Sutton, "Preliminary desk study of potential for self-supply in sub-Saharan Africa" (2004), p. 7.

<sup>6</sup> E. Corcoran and others, *Sick Water? The Central Role of Wastewater Management in Sustainable Development* (United Nations Environment Programme and United Nations Human Settlements Programme, 2010), p. 60.

<sup>7</sup> UN-Water Decade Programme on Advocacy and Communication, *Water and Cities Facts and Figures*, p. 2. Megacities are those with over 10 million inhabitants.

<sup>8</sup> *Ibid.*, p. 3.

demand for water for food production is projected to double by 2050.<sup>9</sup> With the existing climate change scenario, almost half of the world population will be living in areas of high water stress by 2030.<sup>10</sup> Even under conditions of water scarcity, global water availability is sufficient to meet the personal and domestic needs of all human beings. However, since the overall demand for water from all sectors exceeds availability, prioritization of uses becomes all the more important.

6. This lack of access to safe water and sanitation has severe human costs, such as poor health, as well as major economic losses – an estimated US\$ 260 billion lost yearly due to lack of access to sanitation alone.<sup>11</sup> Conversely, it is estimated that in developing regions the return on a US\$ 1 investment in water and sanitation was in the range of US\$ 5 to US\$ 28.<sup>12</sup>

7. As these examples illustrate, the world is facing enormous challenges in the area of safe water and sanitation, as regards not only improving access but also ensuring quality and sustainability. The difficulties are compounded by the effects of climate change, a decrease in financial resources and the ever-growing demands for water, which put additional stress on resources. Urgent efforts and a change of mindset are needed. Without modifications in practices and policies the situation will only deteriorate. In the present report, the Special Rapporteur demonstrates that integrating sustainability is key to securing the human rights to water and sanitation, today and for future generations.

8. The Special Rapporteur considers this report to be especially timely, in particular given that many countries are currently facing periods of crisis. Austerity measures are being implemented all over the world, with significant impacts on the realization of human rights. The Special Rapporteur is concerned that States often do not use the policy space they have to protect human rights, but follow a strict course of budget consolidation with austerity measures that often have a disproportionate impact on those who are already disadvantaged in society. She also considers that the impacts currently felt represent only the tip of the iceberg. Challenges to sustainability and retrogressions in the water and sanitation sector run much deeper, and examining merely the impacts of the crisis underestimates the challenges faced. The Special Rapporteur therefore seeks to address such challenges holistically, both in times of economic growth and in times of economic crisis. In doing so, she underscores that States have an obligation to address challenges to sustainability at all times, which would in turn help them to be better prepared for times of crisis.

## II. Sustainability and the human rights to water and sanitation

9. The Special Rapporteur considers the concept of sustainability to be non-dissociable from human rights law, in particular from the scope and content of the International Covenant on Economic, Social and Cultural Rights. Along with the core human rights

<sup>9</sup> United Nations Development Programme, *Human Development Report 2011: Sustainability and Equity—A Better Future for All* (2011), pp. 37-38.

<sup>10</sup> “Water scarcity”, International Decade for Action “Water for Life” 2005–2015 website, available from [www.un.org/waterforlifedecade/scarcity.shtml](http://www.un.org/waterforlifedecade/scarcity.shtml).

<sup>11</sup> World Bank, “WB confronts US\$260 billion a year in global economic losses from lack of sanitation”, 19 April 2013. Available from [www.worldbank.org/en/news/press-release/2013/04/19/wb-confronts-us-260-billion-a-year-in-global-economic-losses-from-lack-of-sanitation](http://www.worldbank.org/en/news/press-release/2013/04/19/wb-confronts-us-260-billion-a-year-in-global-economic-losses-from-lack-of-sanitation).

<sup>12</sup> Guy Hutton and Laurence Haller, *Evaluation of the Costs and Benefits of Water and Sanitation Improvements at the Global Level* (WHO, Geneva, 2004), p. 3. Available from [www.who.int/water\\_sanitation\\_health/wsh0404.pdf](http://www.who.int/water_sanitation_health/wsh0404.pdf).

principles of participation and empowerment, accountability, non-discrimination and equality, transparency and access to information, she deems sustainability to be a human rights principle fundamental for the realization of human rights.

10. The subsections below explore the links between sustainability and the obligation of States to progressively realize the rights to water and sanitation using maximum available resources, the principle of non-retrogression, and the human rights principle of non-discrimination.

### **A. Progressive realization and the use of maximum available resources**

11. Article 2, paragraph 1, of the Covenant requires States to take steps progressively to realize economic, social and cultural rights. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.<sup>13</sup> States have an obligation to move as expeditiously and effectively as possible towards the goal of full realization, using the maximum available resources.<sup>14</sup> The Committee on Economic, Social and Cultural Rights affirmed the link between this obligation of progressive realization (meaning that States must achieve rights over the long term), and the way progressive realization of the right to water “must also be sustainable, ensuring that the right can be realized for present and future generations”.<sup>15</sup> In fact, the spirit of all international human rights instruments is “intergenerational”: human rights instruments do not have expiration dates.

12. The Committee also interprets the Covenant as imposing “minimum core obligations” to provide essential levels of each right,<sup>16</sup> below which States are not permitted to regress. These are not static obligations, set at a single point in time. Rather, they must be considered over the long term, including with respect to the requirements of future generations. The Covenant obliges States to plan to ensure that a minimum level of each right will be enjoyed by all in years to come. Also, even if resources are highly constrained, such as during financial or economic crises, measures taken must include the use of targeted programmes aimed at those most at risk.<sup>17</sup>

### **B. The principle of non-retrogression and austerity measures**

13. A failure to take steps to progressively realize human rights would be contrary to States’ obligations under the Covenant.<sup>18</sup> A “strong presumption” exists that retrogressive measures are prohibited.<sup>19</sup> States must be careful to ensure that certain restraints and safeguards are met when considering such measures. To do otherwise undermines the *raison d’être* of the Covenant.

14. A retrogressive measure is one that, directly or indirectly, leads to backward steps in the enjoyment of human rights. Examples include raising the price of services disproportionately so that poor people can no longer afford water and sanitation, and letting

<sup>13</sup> Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990), para. 2.

<sup>14</sup> *Ibid.*, para. 9.

<sup>15</sup> General comment No. 15 (2002), para. 11.

<sup>16</sup> General comment No. 3, para. 10.

<sup>17</sup> *Ibid.*, para. 12.

<sup>18</sup> Statement by the Chairperson of the Committee on Economic, Social and Cultural Rights, at the sixty-seventh session of the General Assembly, New York, 23 October 2012.

<sup>19</sup> Committee on Economic, Social and Cultural Rights, general comment No. 19 (2007), para. 42.

infrastructure deteriorate due to a lack of investment in operation and maintenance.<sup>20</sup> In times of financial and economic crisis, retrogressive measures are more common and their impacts often exacerbated by austerity measures.<sup>21</sup>

15. From a human rights standpoint, retrogressive measures are prohibited if they deliberately interfere with the progressive realization of rights.<sup>22</sup> States must justify such measures according to the following criteria:

(a) There must be a reasonable justification for the steps taken and the subsequent regression in the implementation of rights.<sup>23</sup> The measure must be necessary and proportionate<sup>24</sup> “in the sense that the adoption of any other policy, or a failure to act, would be more detrimental”<sup>25</sup> to human rights. The State must prove the measures were “introduced after the most careful consideration of all alternatives and that they are justified by reference to the totality of rights”;<sup>26</sup>

(b) In addition to meeting core obligations as a matter of priority, maximum available resources must be fully used to progressively realize all levels of human rights in a way that guards against retrogressive steps or impacts and/or maintaining the status quo.<sup>27</sup> A social protection floor, especially for disadvantaged and marginalized groups and individuals, should ensure access to basic social services, shelter, food, water and sanitation, and empowerment and protection of the poor and vulnerable (A/HRC/13/38, paras. 21 and 25);

(c) Measures must not be discriminatory.<sup>28</sup> Even where resources are tightly constrained, for example during times of austerity, targeted programmes aimed at those most at risk are needed.<sup>29</sup> Policies and legislation should not be designed to benefit already advantaged groups at the expense of others;<sup>30</sup>

(d) Meaningful participation of affected groups and individuals in examining proposed measures and alternatives is required when considering a retrogressive measure;<sup>31</sup>

(e) Retrogressive measures should be temporary and short term in nature (E/C.12/ISL/CO/4, para. 6). Where implemented in times of crisis, they should cover only the period of the crisis;<sup>32</sup>

(f) There should be accountability mechanisms in place that ensure the possibility of independent review of the measures at a national level<sup>33</sup> and provide access to remedies for victims of rights violations;

<sup>20</sup> Catarina de Albuquerque, *On the Right Track: Good Practices in Realising the Rights to Water and Sanitation* (2012), pp. 32 and 79-81.

<sup>21</sup> See A. Nolan (ed.), *Economic and Social Rights after the Global Financial Crisis* (forthcoming).

<sup>22</sup> General comment No. 3, para. 9.

<sup>23</sup> General comment No. 19, para. 42.

<sup>24</sup> Committee on Economic, Social and Human Rights, concluding observations: Iceland (E/C.12/ISL/CO/4), para. 6.

<sup>25</sup> Chairperson of the Committee on Economic, Social and Cultural Rights, letter to State parties, 16 May 2012.

<sup>26</sup> General comments No. 13, para. 45 and No. 19, para. 42.

<sup>27</sup> General comments No. 13, para. 45 and No. 19, para. 42.

<sup>28</sup> E/C.12/ISL/CO/4, para. 6 and general comment No. 19, para. 42.

<sup>29</sup> General comment No. 15, para. 13.

<sup>30</sup> Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991), para. 11.

<sup>31</sup> General comment No. 19, para. 42.

<sup>32</sup> Chairperson of the Committee on Economic, Social and Cultural Rights, letter to State parties.

<sup>33</sup> General comment No. 19, para. 42.

(g) The State has the burden of proof regarding compliance with the above criteria.<sup>34</sup>

16. The Committee on Economic, Social and Cultural Rights has addressed retrogression mainly in the context of decisions by States to adopt austerity measures that may have a negative impact on the realization of human rights.<sup>35</sup> Hence, its focus has been on criticizing measures that are deliberately retrogressive.<sup>36</sup> However, in line with the scope of her report, which examines not only times of crisis, but also broader challenges of ensuring sustainability in times of economic growth, the Special Rapporteur considers it necessary to look at retrogression more broadly. Even if not deliberately regressive, some State acts, as well as omissions, may have a retrogressive effect. Where States fail to ensure adequate operation and maintenance, where they fail to implement adequate mechanisms for regulation, monitoring and sector oversight, or where they fail to build and strengthen their capacity in the long term, the result may be unsustainable interventions that lead to slippages in access to water and sanitation and retrogression in the realization of the human rights to water and sanitation. While such retrogression cannot always be avoided, the human rights framework puts forward certain requirements for States even where retrogression is non-deliberate: States must act with care and deliberation, exercise due diligence to assess the impacts of their actions and omissions on the realization of human rights, and adjust their policies and measures as soon as they become aware that current policies might lead to unsustainable results.

17. There is a clear link between non-retrogression and sustainability. Acts or omissions that result in retrogressions in the progressive realization of the rights to water and sanitation jeopardize sustainability. Unless the criteria outlined above have been satisfied during the States' decision-making processes, it is unlikely that such processes will result in the sustainable provision of water and sanitation. Rather, retrogressive steps will perpetuate unsustainable practices and create a constant threat to the full realization of economic, social and cultural rights in general and the rights to water and sanitation in particular.

### C. The human rights principle of sustainability

18. Since the 1980s, the international community has repeatedly emphasized that development must be sustainable and must protect the environment on which present and future generations depend.<sup>37</sup> The common definition of "sustainable development" was established in the landmark report of the World Commission on Environment and Development entitled "Our common future" (A/42/427, annex). It underlines striking a balance among three mutually reinforcing dimensions – economic, social and environmental – while "meet[ing] the need of the present without compromising the ability of future generations to meet their own needs" (*ibid.*, para. 27).

19. More recent expressions of sustainability continue to recognize these three interdependent dimensions. In the outcome document of the United Nations Conference on Sustainable Development (Rio+20), entitled "The future we want", States reaffirmed the need to achieve sustainable development by promoting inclusive and equitable economic growth, promoting respect for all human rights, reducing inequalities, raising basic standards of living, fostering equitable social development and inclusion, and promoting the

<sup>34</sup> Statement of the Committee on Economic, Social and Cultural Rights: An evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the Covenant (E/CN.12/2007/1), para. 9.

<sup>35</sup> See for example E/C.12/ESP/CO/5, para. 8; and E/C.12/ISL/CO/4, para. 6.

<sup>36</sup> See general comment No. 19, para. 42.

<sup>37</sup> See, for example, the Rio Declaration on Environment and Development.

integrated and sustainable management of natural resources and ecosystems that support economic, social and human development.<sup>38</sup> The Special Rapporteur has made use of the notion of sustainability for her analysis in various thematic and country mission reports,<sup>39</sup> and has also identified sustainability as one of the criteria that serve to identify good practices for the realization of the rights to water and sanitation (see A/HRC/15/31/Add.1).

20. Based on these human rights principles and taking into account the different dimensions of sustainable development, the Special Rapporteur puts forward a holistic understanding of sustainability as the direct counterpart to retrogression. In order for services to be sustainable, they must be available and accessible to everyone on a continuous and predictable basis, without discrimination. There must be “permanent beneficial change” that flows from quality services and sustained behavioural change,<sup>40</sup> or, in human rights terms, progressive realization towards fully realizing the human rights to water and sanitation for everyone. Once services and facilities have been improved, the positive change must be maintained and slippages or retrogression must be avoided.<sup>41</sup> Services must be available for present and future generations and the provision of services today should not compromise the ability of future generations to realize the human rights to water and sanitation (A/HRC/15/31/Add.1, para. 65).

21. Sustainability is more than mere reliability or functionality, and requires a balance of its different dimensions. Water and sanitation must be provided in a way that respects the natural environment; finite resources must be protected and overexploitation cannot occur.<sup>42</sup> Likewise, the economic and social dimensions have to be balanced: while service provision relies on raising sufficient revenue, this must be achieved in such a way as to ensure affordability for all people in society, including those living in poverty.

22. The provision of services and systems should be properly planned in a strategic manner, such that ongoing assessments of risks across the entire infrastructure are conducted. Services and systems must be appropriately financed for their full life cycle,<sup>43</sup> including for operation, maintenance, repair and replacement. Technology must be appropriate for the given need and must also be appropriately maintained.<sup>44</sup>

23. To enable the sustainable provision of services, a number of factors within and beyond the water and sanitation sector must be reinforced, in particular, accountable governance. Water and sanitation services must be embedded in a sound legislative policy and regulatory framework.<sup>45</sup> Institutions involved in the water and sanitation sectors must be responsive and accountable for their actions, and decisions must be participatory and transparent. All groups and individuals concerned and all relevant stakeholders must be provided with genuine opportunities to meaningfully participate and must be empowered in these processes.

<sup>38</sup> General Assembly resolution 66/288, annex, paras. 4 and 8.

<sup>39</sup> See, for example, the Special Rapporteur’s reports on financing (A/66/255), national plans of action (A/HRC/18/33), and A/HRC/21/42/Add.1, A/HRC/15/55 and Corr.1, and A/HRC/18/33/Add.4.

<sup>40</sup> See for example the WASH Sustainability Charter (2011), available from [http://sustainablewash.org/sites/sustainablewash.org/files/page/the\\_wash\\_sustainability\\_charter.pdf](http://sustainablewash.org/sites/sustainablewash.org/files/page/the_wash_sustainability_charter.pdf); WaterAid, *Sustainability Framework* (2011), p. 11; Water for People, *Tracking Water Sustainability* (2011).

<sup>41</sup> WaterAid, *Sustainability Framework*, p. 5.

<sup>42</sup> General comment No. 15, para. 28; see also the Triple-S WASH Sustainability Assessment Tool, available from [http://waterservicesthatlast.org/news/new\\_wash\\_sustainability\\_assessment\\_tool](http://waterservicesthatlast.org/news/new_wash_sustainability_assessment_tool).

<sup>43</sup> See the Triple-S WASH Sustainability Assessment Tool and the WASH Sustainability Charter.

<sup>44</sup> WASH Sustainability Charter.

<sup>45</sup> See the Triple-S WASH Sustainability Assessment Tool.

#### **D. Sustainability and the principle of non-discrimination**

24. States must actively and immediately ensure that the principle of non-discrimination is upheld in decisions and practices relating to the rights to water and sanitation. This principle requires States to eliminate both formal and substantive discrimination on all prohibited grounds<sup>46</sup> and requires the adoption of positive measures where necessary to dismantle unequal access to water and sanitation. Lack of sustainability, slippages and backward steps will primarily affect the most marginalized members of society, since they will often lack the means to adjust, a necessary voice, visibility, and access to mechanisms of redress. Moreover, the elimination of inequalities is essential to ensuring sustainable water and sanitation, as inequality can also be destructive to growth, amplifies the risk of crisis and makes it difficult for the poor to invest in water and sanitation.

### **III. Betraying present and future generations: failure to incorporate sustainability in times of economic growth and crisis**

25. In this section the Special Rapporteur outlines approaches taken by States that fail to incorporate sustainability in the water and sanitation sectors in times of economic growth as well as during times of crises when sustainability is under an aggravated threat. If even in times of economic growth States fail to adopt the necessary measures and policies to make sure sustainability and human rights are protected, sustainability will be at risk. This risk will occur not only in the wake of an economic crisis, but might be present even in times of economic growth. In both cases, the State is at the origin of impermissible retrogressions (by action or by inaction, voluntary or involuntary) of the human rights to water and sanitation.

#### **A. Inadequate planning and institutional fragmentation**

26. The importance of effective planning has been elucidated many times,<sup>47</sup> but a lack of planning and institutional coordination for the long-term realization of the rights to water and sanitation persists. Competencies for water and sanitation are often spread both horizontally (falling within the auspices of many national authorities) and vertically (shared between central, regional and local governments). Other actors also have a relevant role to play – as public or private service providers, international donors, regulators or civil society organizations.

27. During periods of growth, States should plan for the long-term realization of the rights to water and sanitation, so as to ensure the prioritization of water for personal and domestic uses, and avoid duplication of efforts and waste of resources, as well as a power vacuum where no institutional responsibility is assigned for water and sanitation. While there are challenges, including differing priorities between institutions, corruption, power struggles, lack of consideration for operation and maintenance, and lack of independent regulation, monitoring and accountability (see A/HRC/18/33), these are more easily addressed in times of economic growth, as States do not act under time pressure and have more resources available. Establishing well-functioning water and sanitation systems in good economic times will help to withstand the additional pressure on scarce resources during times of crisis.

<sup>46</sup> Committee on Economic, Social and Cultural Rights, general comment No. 20.

<sup>47</sup> Human Rights Council resolution 12/8, para. 4 (c) and (d); and general comment No. 15, para. 47.

## B. Insufficient financing and inadequate targeting of funding

28. Challenges related to financing pose significant threats to sustainability (see A/66/255). The current global landscape is rife with rapidly deteriorating infrastructure<sup>48</sup> and with insufficient funding for operating and maintaining these systems. It is estimated that the costs of replacing ageing water supply and sanitation infrastructure in developed countries may be as high as US\$ 200 billion a year.<sup>49</sup> Underfunding is a present-day issue and a major restriction on the ability to provide sustainable water and sanitation. This is exacerbated during times of crisis.

### 1. Reductions in spending

29. Where States reduce funding for water and sanitation, there can be major consequences for sustainability, both in growth and crisis periods. Reduction in expenditure can take many forms, such as reducing subsidies to people with low incomes or divesting from the monitoring of service provision. Private sector service providers may also diminish spending, in response to a decrease in revenues as a result of cuts in subsidies or increasing number of users unable to pay for water and sanitation services due to loss of jobs or social benefits in times of crisis.

30. Cuts to public spending particularly affect the poorest and most marginalized, who tend to receive a higher proportion of their income from social security benefits, rely heavily on public services, and spend a higher proportion of their income on basic services.<sup>50</sup> Decreases in social spending lead to decreasing social subsidies, which hitherto enabled people to access to affordable water and sanitation. Thus people may be confronted with the dilemma of having to choose between food, water and medicine, which undermines the realization of their human rights.

31. Since 2010 cuts in public expenditure have been the most common reaction to the crisis in Europe. Budget consolidation plans have been introduced, inter alia, in Ireland, Greece, Portugal and Spain, with decreased public expenditure programmes introduced at the request of the European Central Bank, the European Commission, and the International Monetary Fund.<sup>51</sup>

### 2. Increased prices and unaffordability-related disconnections

32. Water sector reform often leads to increases in water prices, as can be seen from the recent examples in the United States of America and around Europe.<sup>52</sup> Even though these price rises might be indispensable to ensure sustainability, such decisions need to be carefully considered during times of economic and financial crisis because increases occur

<sup>48</sup> See Organization for Economic Cooperation and Development (OECD), “Managing water for all: an OECD perspective on pricing and financing” (2009), available from [www.oecd.org/env/resources/42350563.pdf](http://www.oecd.org/env/resources/42350563.pdf).

<sup>49</sup> World Water Assessment Programme, *World Water Development Report 3: Water in a Changing World* (2009), p. 5. Available from [www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SC/pdf/WWDR3\\_Facts\\_and\\_Figures.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SC/pdf/WWDR3_Facts_and_Figures.pdf).

<sup>50</sup> James Harrison and Mary-Ann Stephenson, “Assessing the impact of the public spending cuts: taking human rights and equality seriously”, University of Warwick, Legal Studies Research Paper No. 2011-07, p. 3.

<sup>51</sup> See, for example, European Commission, Directorate-General for Economic and Financial Affairs, “The Second Economic Adjustment Programme for Greece: First review December 2012”. Available from [http://ec.europa.eu/economy\\_finance/publications/occasional\\_paper/2012/pdf/ocp123\\_en.pdf](http://ec.europa.eu/economy_finance/publications/occasional_paper/2012/pdf/ocp123_en.pdf).

<sup>52</sup> See Global Water Intelligence, “Global water tariffs continue upward trend” (2011). Available from [www.globalwaterintel.com/archive/12/9/market-profile/global-water-tariffs-continue-upward-trend.html](http://www.globalwaterintel.com/archive/12/9/market-profile/global-water-tariffs-continue-upward-trend.html).

when people have the least personal resources to adjust. Price increases are instituted concurrent with rising unemployment and social spending reductions, leaving many unable to afford essential services. This may lead to disconnections by service providers or to private individuals cancelling their water provision contracts (see A/HRC/18/33/Add.4, para. 50). Water unaffordability also can lead people to seek alternative and potentially unsafe water sources. Overall, these circumstances undermine the sustainability of systems, by reducing the number of users of the network or giving rise to a spiral of rising prices to compensate for the number of consumers lost.

### 3. Budgeting

33. The Special Rapporteur has previously discussed some of the gaps that arise in financing and budgeting for the water and sanitation sectors, which all affect the ability of States to provide water and sanitation in a sustainable way (see A/66/255).

34. Insufficient budgeting for the water and sanitation sectors which fails to prioritize the most marginalized people, a lack of overview of all resources (both national and international) devoted to the sectors and a lack of national budgeting that incorporates a long-term perspective and in particular operation and maintenance costs, jeopardizes sustainable provision. In times of economic growth, developing new water and sanitation infrastructure has often been prioritized. However, planning and budgeting to ensure that existing infrastructure or new infrastructure remains functional does not often take into account recurrent operation and maintenance costs. Instead of devoting the necessary 75 per cent of water and sanitation funds to operation and maintenance, on average only 31 per cent is devoted to these recurrent costs.<sup>53</sup>

35. The lack of budgeting for operation and maintenance raises some important questions about sustainability: will there be enough specialized human resources to look after the investments made, are there spare parts available, and do providers have the resources and capacity to operate and maintain the infrastructure?

36. Often States fail to adopt a tariff structure which is both affordable and promotes enough revenue to ensure financial sustainability. In most urban public water systems, charges often barely cover the recurrent costs of operation and maintenance, leaving little or no funds to recover the capital costs of modernization and expansion. A survey of such systems in 132 cities in high-, middle- and low-income countries found that 39 per cent did not recover even their operation and maintenance costs.<sup>54</sup> The impact of decreased spending then threatens the sustainability of water systems as lack of reinvestment leads to deterioration of the system and leakages, and the low level of investment in the water sector hampers growth. In rural areas neglect of operation and maintenance budgets and cost recovery contribute to widespread non-functionality.<sup>55</sup> Accessibility and quality are compromised because of limitations on services, lack of expansion and lack of maintenance. Affordability is also affected because funds that would have been available before the financial downturn have been decreased or reallocated, and therefore prices to the user increase to cover the shortfall.

37. States must allocate funding to operation and maintenance in times of stability to ensure that systems and facilities do not deteriorate.<sup>56</sup> Not doing so creates a significant risk

<sup>53</sup> *UN-Water Global Analysis and Assessment of Sanitation and Drinking-Water (GLAAS) 2012 Report: The Challenge of Extending and Sustaining Services* (WHO, 2012), p. 29.

<sup>54</sup> World Water Assessment Programme, *World Water*, p. 5.

<sup>55</sup> See OECD, "Managing water" (footnote 48 above).

<sup>56</sup> WaterAid, *Sustainability Framework*, p. 16.

that in times of crisis the upkeep of systems will deteriorate to a point where previous investments in the infrastructure are lost.

#### **4. Foreign aid: low levels and ineffectiveness**

38. Adding to the challenges, particularly in developing countries, decreases in foreign aid in times of economic crisis have restricted the ability of States to sustainably realize the rights to water and sanitation. The Special Rapporteur has previously outlined shortfalls in, and ineffective targeting of, overseas development aid (see A/66/255). These problems are exacerbated in times of crisis as donor countries decrease aid, unless additional measures are taken to ensure that marginalized people are prioritized in the allocation of the remaining aid.

39. Development assistance and cooperation fluctuate with donor countries' fiscal policies and public spending priorities. Data published by OECD shows that official development assistance provided by members of the Development Assistance Committee of OECD fell by nearly 3 per cent (to 133.5 billion) in 2011 compared to 2010. This was the first drop in assistance since 1997.<sup>57</sup> While the water and sanitation sectors have not been as affected by decreasing aid commitments as other sectors, commitments to sanitation and water were already lower than those for most social sectors.<sup>58</sup>

40. Since the start of the global financial crisis, the majority of European countries have cut their aid budgets; for example, Ireland announced a cut of nearly €100 million (a 10.6 per cent decrease) in its 2009 budget and Spain cut its aid budget globally by approximately 75 per cent. For the poorest countries, sustainable and predictable flows of funds are therefore unlikely to be forthcoming at least until the recession is over.

### **C. Challenges in non-State service provision**

41. Human rights are neutral as to economic models and modes of service delivery. States may involve non-State actors in service provision, including private service providers, donors, and non-governmental organizations (NGOs). However, the delegation of water and sanitation service delivery does not exempt the State from its human rights obligations, including acting in a sustainable manner. Irrespective of the responsibilities of non-State service providers, the State remains the primary duty-bearer for the realization of human rights.

#### **1. Service provision by donors and non-governmental organizations**

42. While support and participation of donors and NGOs in water and sanitation service delivery is welcome, there are challenges to sustainability when they become service providers and questions of accountability and transparency arise. A key risk to sustainability is the fact that few NGOs provide services on a permanent or long-term basis. Most usually disengage from projects after a certain period, which may have negative impacts on the long-term viability of services if no proper sustainability strategy is put in place. Even with the best of intentions, these systems may be responding to immediate and concrete needs to the detriment of building a system that can remain functional over time. While providing immediate access is important, it is equally central to guarantee long-term operation and maintenance, and to plan with government and communities for phased exits

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<sup>57</sup> OECD, "Development: aid to developing countries falls because of global recession", April 2012. Available from [www.oecd.org/newsroom/developmentaidtodevelopingcountriesfallsbecauseofglobalrecession.htm](http://www.oecd.org/newsroom/developmentaidtodevelopingcountriesfallsbecauseofglobalrecession.htm).

<sup>58</sup> *GLAAS Report*, p. 50.

and local ownership. The lack of long-term focus has been linked to a lack of political incentives, particularly for donors, to put resources towards maintaining existing infrastructure, over building new ones that give better visibility for their investment and support.

## 2. Private service provision

43. Austerity measures are often accompanied by calls for increased private sector participation, including in the water and sanitation sectors, as a means for governments to raise revenue. The Special Rapporteur has previously outlined key challenges from a human rights perspective relating to private water and sanitation service provision (see A/HRC/15/31).

44. While certain safeguards are in place in several countries to protect consumers, for example from disconnections due to non-payment of bills in cases of inability to pay, there remain concerns relating to sustainability. Often profits made by private operators are almost fully distributed among shareholders, rather than being partially reinvested in maintaining and extending service provision, the result being increased prices for consumers, continued need for public investment, and potentially unsustainable services. For instance, when contracts fail to incorporate minimum levels of spending on operation and maintenance of systems, this affects their sustainability.

45. Private service provision can also create concerns for other important human rights principles and standards, such as the principles of participation and accountability. During the current crisis, private sector participation in public services delivery, including in water provision, has been a condition for bailout packages signed with indebted countries.<sup>59</sup> Once the decision to privatize has been made, and especially in the context of economic crisis, the process of selling the assets often does not include sufficient opportunities for meaningful public participation.

## D. Inappropriate technology choices

46. Choosing the right technology is essential to achieving sustainability of water and sanitation services. While human rights law does not call for or reject any specific type of technology, States have often made wrong or inappropriate decisions to invest in technology that is either too costly or complicated; uses too much water or too much electricity; is very cheap, but does not last; or is inappropriate in a given context, not taking into account cultural or other preferences. One example is the installation of flush toilets in water-scarce regions, which people are forced to stop using after a certain time (A/HRC/21/42/Add.3, para. 33).

47. During one country mission, the Special Rapporteur witnessed a donor-led solution responding to limited freshwater availability that has led to the installment of desalination plants, despite few successes. The operation and maintenance of desalination plants is costly and requires a high level of technical capacity. On isolated small islands, solely relying on desalination plants for water provision is unsustainable but the strategy continues to attract donors and Governments (see A/HRC/24/44/Add.1). In another country, the Special Rapporteur learned about decisions taken by municipalities to invest in conventional centralized systems in areas of low population density, the results being high per-household costs, when small-scale on-site systems could be significantly cheaper and

<sup>59</sup> See for example the Memorandum of Economic and Financial Policies and Technical Memorandum of Understanding between the International Monetary Fund and Greece of 21 December 2012. Available from [www.imf.org/external/np/loi/2012/grc/122112.pdf](http://www.imf.org/external/np/loi/2012/grc/122112.pdf)

more sustainable (A/HRC/18/33/Add.4, paras. 25-27). In times of crisis the impact of past inappropriate decisions becomes visible.

### **E. Lack of meaningful participation**

48. Ensuring participation proves to be a consistent challenge, and lack of participation has negative impacts on sustainability. Such challenges are exacerbated in times of crisis, where the State seeks to avoid the financial costs of participation and is under time pressure to adopt austerity-related measures. However, States are never exempted from their human rights obligations, including the duty to give people the opportunity to pronounce themselves on issues that concern them. Where meaningful participation does not occur, States often misunderstand the barriers to access, and fail to pinpoint how these barriers might be overcome. Lack of participatory processes might result in choices which might simply be unacceptable to the people they aim to serve, hence condemning the said solutions to unsustainability, as they may not be used at all or people might revert to old habits after using the new services for a while. During her mission to Tuvalu the Special Rapporteur witnessed a change of perception among the general public concerning previously rejected eco-sanitation solutions, attributable to a new participatory approach comprising education, awareness-raising to address misconceptions, and a redesign of the toilets (A/HRC/24/44/Add.2, para. 30).

49. Furthermore, States might put in place decision-making processes without ensuring meaningful participation by the most disadvantaged, who generally tend to have less ability to voice their opinions and needs. This will have an impact on the use and sustainability of decisions aimed at ensuring water and sanitation.

### **F. A pattern of neglect of the most vulnerable and marginalized**

50. What emerges from the above is a pattern of neglect of the needs of the most vulnerable and marginalized groups in society across planning, institutional responsibilities and resource allocation. Disadvantaged groups can often be identified along ethnic, geographic, and socioeconomic divides (see, for example, A/HRC/18/33/Add.4, para. 79). Indigenous peoples, Dalits and Roma are among such groups facing discrimination with whom the Special Rapporteur has met during the course of her mandate.<sup>60</sup> Moreover, there are vast gender inequalities – in many poor communities, the task of collecting water overwhelmingly falls to women and girls (see, for example, A/HRC/15/31/Add.3 and Corr.1, para. 22). Persons with disabilities are also disproportionately represented among those lacking access to water and sanitation (A/HRC/15/55, para. 21). Neglect can occur for a variety of reasons: groups and individuals may experience stigmatization, they may live in remote areas making serving them costly, or politicians may be indifferent to their needs.

51. Such inequality tends to become even more aggravated during crises. With a decrease in budget and personal incomes, people are confronted with the need to prioritize among different human rights. Furthermore, in times of crisis there will be an even greater temptation for States and service providers to focus on those who are relatively easy to reach, and no efforts will be made to reach the most marginalized people living, for instance, in remote rural areas.

52. Neglecting the rights of marginalized people violates human rights law and its fundamental principle of non-discrimination. Moreover, doing so might render services unsustainable. When a water and sanitation system is designed for a city or town with a

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<sup>60</sup> See A/HRC/12/24/Add.1, para. 48, A/HRC/15/55, para. 25, A/HRC/18/33/Add.2, para. 33.

certain number of inhabitants, ignoring the affordability challenges faced by poorer people will mean these people will eventually be disconnected from services. Those numbers can rise significantly in times of crisis; in such cases the system becomes unsustainable and underfunded, unless tariffs increase for those who stay connected (which in turn might lead to more disconnections). On the other hand, the inclusion of those previously excluded from water and sanitation networks, such as slum dwellers, will bring more revenues to the system and promote a more sustainable use of water resources, as everybody will contribute to paying for the system. In many instances, paying regular tariffs will be significantly more affordable to people than paying for informal services at often exorbitant prices. Finally, from an environmental perspective, extending networked provision also contributes to sustainability as unauthorized abstraction from groundwater sources will be significantly reduced.

## G. Lack of monitoring, regulation and accountability

53. Monitoring and data collection are essential in giving States a basis for planning and budgeting, and ensuring informed decisions. In a large number of States, information systems for financial planning and reporting are still inadequate.<sup>61</sup> Monitoring the sustainability of interventions is generally insufficient, including in the framework of the Millennium Development Goals. This creates a major gap in the ability of States to understand what policies, infrastructure and service delivery practices are able to last and be effective in the long term, as well as the negative consequences of certain (in)action.

54. For service provision to be sustainable, States must utilize effective monitoring and data collection practices. Monitoring the effects of decisions made and steps taken enables accountability and allows States to assess which decisions and processes produced quality impactful outcomes, which is useful for informing future decisions that are sustainable.

55. A related issue is that of independent regulation and accountability mechanisms: lack of regulation undermines sustainable investment in the water and sanitation sectors. Where States fail to establish regulatory and accountability mechanisms when the economy is going well, they open the door to corruption and to risks that the realization of the rights to water and sanitation might be jeopardized, and such abuses might go unnoticed by authorities. Accountability is essential for closing the loop and bringing unsustainable practices to the public eye and exerting pressure on authorities. However, accountability cannot be ensured if national human rights institutions have no mandate or capacity to deal with economic, social and cultural rights, or if such rights are not considered justiciable.

56. In times of crisis, accountability may weaken even further when existing regulatory institutions become underfunded. Examples exist of independent regulators receiving reduced funding to perform more functions, creating concerns about how the regulator could effectively fulfil its mandate and ensure accountability.<sup>62</sup> This can happen in times of either growth or crisis, but the consequences are greater when other accountability mechanisms are removed due to financial pressures. For example, under various different austerity measures, judges are paid less, civil servants are laid off, and resources for courts,

<sup>61</sup> *GLAAS Report*, p. 25. For example, over 60 per cent of countries surveyed either have no financial information management systems in place or the one used provides only partial information (*ibid.*, p. 33).

<sup>62</sup> For example, in the context of the austerity measures, the 2013 Portuguese budget foresees budget freezes of between 10 and 60 per cent; the country's water and wastewater regulator is suffering a decrease in funding for operational expenses of approximately 32 per cent in 2013, while its competences have recently increased.

police, and national human rights institutions, which are all important for accountability, are decreased.<sup>63</sup>

## **IV. Adopting measures compliant with human rights**

57. This section illustrates the contribution that human rights, including the incorporation of sustainability, can have in providing safe and affordable water and sanitation to all, both in times of economic growth and in times of crisis.

### **A. Use of well-targeted fiscal policies and devoting maximum available resources**

58. States cannot expect to meet the obligation to progressively realize human rights with minimal investments in the water and sanitation sectors that merely enable countries to make “some” progress over time. Human rights standards demand that States invest the “maximum available resources” in the sectors. They also require the use of resources in ways that have the greatest possible impact on achieving universal realization of these rights, by prioritizing essential levels of access to the most marginalized. In times of prosperity, spending on water and sanitation has to include planning, independent monitoring, establishment of accountability mechanisms, and operation and maintenance, so as to enable the progressive realization of the rights even during times of crisis, hence preventing slippages and retrogression.

59. From a human rights perspective it is crucial to balance economic and social sustainability. The human rights framework does not require that water and sanitation services be provided free of charge, and State revenues have to be raised in order to ensure universal access to services. If everyone obtained water and sanitation at no cost this would actually harm low-income households by depriving governments and service providers of the revenue needed to expand and maintain the service, jeopardizing the overall economic sustainability of the system and the State’s capacity to protect and fulfil other human rights. However, implementing the human rights to water and sanitation has important implications as to how to raise revenues while ensuring social sustainability. They oblige States to ensure that the cost of accessing water and sanitation remains affordable and appropriately reflects the needs of marginalized and vulnerable groups, and that there is a safety net in place for those who cannot afford to pay full costs.

#### **1. Use of maximum available resources**

60. The obligation of States to progressively realize the rights to water and sanitation through the use of maximum available resources, including through international cooperation and assistance, is essential to achieving sustainability. “Lack of resources” is sometimes invoked by States to justify insufficient and inadequate investments for the sector, when often the true reason is the lack of political will to prioritize social services, and in particular water and sanitation for the most disadvantaged. Thus it is important to assess whether maximum available resources are truly being devoted to the sectors by examining the national allocation of funds to areas such as the military, bailouts for banks,

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<sup>63</sup> See for example the situation in Spain: David Román, “Austerity adds to Spain’s jobless woes”, *Wall Street Journal*, 29 April 2012.

and the construction of infrastructure for the hosting of mega-events, as well as the amount of funds lost due to the toleration of corruption.<sup>64</sup>

61. Comparing per capita incomes against water and sanitation indicators among countries with comparable levels of development provides a more objective benchmark. Analysing the magnitude, composition and distribution of resources allocated to the water and sanitation sectors,<sup>65</sup> as well as the expenditure per capita, can help identify common policy problems that curtail the progressive realization of the rights to water and sanitation, as well as effective policy and strategies that have led to improvements in a specific area.

## 2. Fiscal policies and taxes

62. During times of economic prosperity there will be more financial resources available to the State to maintain and develop the water and sanitation sectors than in times of economic and financial crisis. Yet, times of crisis per se do not inevitably lead to regressions in implementing the rights to water and sanitation. Fiscal austerity can be achieved not only by cutting government spending, but also by increasing government revenue. From a human rights perspective, a crucial question is how such revenue is raised.

63. Ensuring efficient tax systems that enable continued investments in the water and sanitation sectors contributes to sustainability and guards against impermissible retrogressions. Mobilizing tax revenue, in an appropriately targeted manner, is the responsibility of governments,<sup>66</sup> and a way of implementing their human rights obligations. Methods such as assessing the effective tax rate (or tax to gross domestic product ratio) can be utilized to provide indicators for reviewing and benchmarking States, identifying failures in their efforts to mobilize resources to meet the need for a water and sanitation sector that is sustainable for all, forever.

## 3. Targeting of resources

64. The Special Rapporteur is aware that resources available to States are limited, despite efforts to mobilize revenue. As noted in a previous report (A/66/255, para. 41 ff), this highlights the need for appropriate targeting of available resources. Human rights principles give clear guidance on this: States should initially direct resources and efforts towards meeting obligations with immediate effect, for example, targeting the realization of the core content of the human rights to water and sanitation without discrimination and protecting existing access. One of the challenges highlighted above demonstrates this need for targeting of resources: while potentially necessary for long-term sustainability of the sector, the introduction of metred service delivery at cost price can have discriminatory effects. Thus the pricing of services (as well as taxation) needs to be targeted and appropriately adjusted for the most disadvantaged and for people living in poverty. For example, scarcity pricing, penalties or higher pricing structures for non-essential use, well-

<sup>64</sup> European Union commitments in the wake of the financial crisis were US\$ 1 trillion and the global defence budget is over US\$ 1.7 trillion per year. The annual costs of achieving universal access to drinking-water and sanitation are estimated at US\$ 215 billion per year. WHO, “Global costs and benefits of drinking-water supply and sanitation interventions to reach the MDG target and universal coverage” (2012), p. 43. Available from [www.who.int/water\\_sanitation\\_health/publications/2012/globalcosts.pdf](http://www.who.int/water_sanitation_health/publications/2012/globalcosts.pdf).

<sup>65</sup> See, for example, E. Felner, “Closing the ‘escape hatch’: a toolkit to monitor the progressive realization of economic, social, and cultural rights”, *Journal of Human Rights Practice*, vol. 1, No. 3 (2009), pp. 416-419.

<sup>66</sup> Rhadika Balakrishna and others, *Maximum Available Resources & Human Rights* (Centre for Women’s Global Leadership, 2011), p. 10.

designed increasing-block tariffs, subsidies for those in need,<sup>67</sup> and institutional and distributive taxes,<sup>68</sup> are all examples of approaches used to raise revenue and recover costs. These should be implemented in a fair manner that promotes sustainability and access for all to water and sanitation services.

65. Two of the biggest challenges in the sector are: ensuring sustainability (the dimension of “forever”) through, inter alia, the investment of sufficient resources in the operation, maintenance and rehabilitation of systems; and expanding services to those yet unserved (the dimension of “everyone”). As resources are scarce, policymakers, donors and sector professionals perceive a dilemma of prioritizing “forever” or “everyone”.

66. It has been argued that the maintenance and rehabilitation of existing systems should be given priority in order to ensure that investments are not lost. The human rights framework stresses the imperative of achieving equality as well as the efficient use of resources. States must eliminate inequalities in access to water and sanitation and expand access to minimum essential service levels, to meet the core content of the human rights to water and sanitation, before improving service levels for those who already enjoy this level of access. If the available resources were to be invested only in maintaining existing systems, inequalities in access would never be overcome.

67. In many instances, this perceived dilemma of sustainability versus equality does not exist as such. Rather, both notions should complement each other, which requires appropriate planning in both the short and long term. True sustainability can be achieved only when everyone has access to services. Moreover, the consideration of equality needs to guide decision-making processes for both requirements: maintenance and rehabilitation as well as the expansion of services. Where it is decided to repair rather than newly build, how, when and where services are repaired or rehabilitated should be considered to ensure equality of access. When services are constructed or expanded, the financial and human resource requirements, including capacity-building and training, must also be planned for. And since slippages disproportionately affect excluded or marginalized communities, it is crucial to ensure that the “forever” dimension – including considerations of how operation and maintenance will be paid for and managed – is built into policymaking from the outset, so as to avoid discrimination and retrogression in realizing the rights. Investing in poor quality, low-cost options may not be best in the longer term, while some high quality, high-technology options may also be a poor investment, particularly in situations where there is insufficient technical and financial capacity and limited access to spare parts to operate and maintain the system.

68. Decisions on the prioritization of resources can be taken only on a case-by-case basis that balances all resources and human needs. Decision makers need to determine the most appropriate use of funds to work towards both “forever” and “for everyone”, addressing inequalities wherever they occur.

## **B. Human rights budgeting**

69. Transparent budgeting is central to the realization of the rights to water and sanitation and all other human rights.<sup>69</sup> It fosters accountability and public participation,

<sup>67</sup> Centre on Housing Rights and Evictions and others, *Manual on the Right to Water and Sanitation* (Geneva, 2007), p. 147.

<sup>68</sup> Balakrishna and others, *Maximum*, p. 10.

<sup>69</sup> Report of the United Nations High Commissioner for Human Rights on implementation of economic, social and cultural rights (E/2009/90), para. 44.

and contributes to greater predictability and long-term planning. This has clear benefits for the sustainability of water and sanitation systems.

70. Transparency cannot be achieved by simply making budgets publicly available, but not making the data accessible. In order for members of affected communities and civil society to work together with governments to find workable long-term solutions that promote sustainability, there is also a need for education with respect to understanding budgets and budgetary processes, as well as true participation by affected communities in the decision-making processes.

71. The Social Justice Coalition in Cape Town provides an example of how budgeting in the water and sanitation sectors that incorporates transparency, education and participation can result in gains in sustainability and better implementation of the rights to water and sanitation.<sup>70</sup>

### **C. Effective planning towards people-centred service delivery: addressing inequalities and discrimination**

72. Planning processes that accord sufficient priority to the rights to water and sanitation help ensure sustainable results and strengthen accountability. A clearly articulated vision can serve as a firm foundation for prioritizing funding to the sector, and inspire confidence about spending. Such planning must target the elimination of inequalities: centring national planning in the water and sanitation sectors around the obligation of non-discrimination helps Governments ensure not only that the most marginalized people are able to access services, but also that such access is maintained in a sustainable manner.

73. One mechanism for achieving this is to establish social protection floors. Adequate planning must ensure that basic social security guarantees exist to enable access to essential social services. Social protection floors need to be a priority in periods of economic and financial growth and sustained in times of crisis. At the same time, when economic and financial crises strike, special measures to protect the most vulnerable must be set in place.

74. One way to minimize reliance on social protection floors during times of crisis is to ensure that inequalities are dealt with during times of growth as a matter of priority, ensuring that the sustainability of existing services is not an excuse to continue prioritizing provision to middle-class, urban formal residential areas to the detriment of extending coverage to informal settlements, remote or rural areas, and ensuring that existing gaps between the haves and have-nots are eliminated.

75. In India, the Bangalore Water Supply and Sewerage Board connected more than 5 per cent of the city's informal settlements to the network between 2000 and 2005. This initiative not only aimed at providing safe water for people living in informal settlements who were previously excluded from the formal network, but also reduced non-revenue water and decreased residents' dependency on free water through public taps or illegal connections. Even though challenges remain, connection costs and tariffs were adjusted to ensure affordability, leading to an increase in the revenue base and sustainability.<sup>71</sup>

<sup>70</sup> See Neil Overly, "The Social Justice Coalition and access to basic sanitation in informal settlements in Cape Town, South Africa", International Budget Partnership study No. 11, March 2013.

<sup>71</sup> See "Connecting the slums. a utility's pro-poor approach in Bangalore", Water and Sanitation Program Field Note, February 2006, p. 2. Available from [https://www.wsp.org/sites/wsp.org/files/publications/319200735514\\_Connectingtheslums.pdf](https://www.wsp.org/sites/wsp.org/files/publications/319200735514_Connectingtheslums.pdf).

## **D. Ensuring participation and empowerment**

76. The participation of concerned communities in decision-making processes is a human rights principle and a human right in itself. Some see it as a hurdle as it costs money and time. However, meaningful participation is also a guarantee of sustainability – as the integral basic sanitation (SABA) model in Peru or the safe water committees in Nicaragua have shown, the participation of communities in the design, construction, management and operation of services creates a greater willingness to use and to pay for water and sanitation, and better entrenches hygiene habits. True participation requires meaningful opportunities to freely and actively influence decisions, not mere superficial consultation or information sharing (A/HRC/18/33, paras. 68-69). Such a process entails providing information through multiple channels, enabling participation in transparent and inclusive processes, ensuring that funds are appropriately spent on interventions that are needed and strengthening the capacities of individuals and civil society to engage (*ibid.*).

## **E. Effective monitoring and independent regulation**

77. A well-structured system of monitoring will incorporate indicators and collect disaggregated data to determine if access to water and sanitation is sustained and non-discriminatory. Governments must look beyond the averages and aggregated data to consider inequalities based on where an individual lives, the wealth quintile he or she is in, to which ethnic group he or she belongs, and how other forms of discrimination affect him or her. Moreover they must monitor whether services are sustained, and in cases of slippage must collect information on the reasons for the latter.

78. Strong community-based monitoring strategies can improve how information is specifically disaggregated to identify marginalized groups and the reasons why retrogressions or slippages occur. This also promotes transparency, participation and accountability, as the community becomes more involved and information becomes easily accessible.

79. The monitoring of sustainability is not being undertaken in a systematic manner. Only 7 per cent of total investments in water are devoted to maintenance and monitoring;<sup>72</sup> and water systems are rarely visited after being built. One of the reasons for this lack of sustainability monitoring might reside in the fact that the Millennium Development Goals framework counts only the numbers of those who have gained access, ignoring whether anyone among those have lost access.

80. Donors increasingly advocate for comprehensive systems for monitoring the sustainability of water and sanitation interventions. Some seek to include a sustainability clause in their contracts with implementers as a means to verify whether sustainability criteria are being met. Similarly, the United Nations Children's Fund (UNICEF) has developed sustainability checks aimed at auditing the water supply and open-defecation-free status of communities after the project has ended. These checks examine several institutional, social, technical and financial indicators to measure sustainability. From a human rights perspective, it is crucial to complement such tools with equality criteria to ensure that all in society benefit. Moreover, such sustainability checks must not be perceived as a donor-driven initiative applied on a project level, but must be incorporated more broadly in the sector.

81. When it comes to the adoption of policies that might have a detrimental effect on the human rights to water and sanitation, *ex ante* and *ex post* human rights assessments are

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<sup>72</sup> *GLAAS Report*, p. 4.

useful tools in monitoring implementation and guiding stakeholders. Before implementation, environmental, social and specific human rights impact assessments can help in deciding if proposed policies will have a retrogressive effect, or if they will be sustainable. Likewise, after implementation, ex post human rights impact assessments are an important tool that governments can use to discharge their obligation to monitor the implementation of the rights to water and sanitation.

82. Independent regulation to ensure water quality, accessibility, reliability and affordability is also key to implementing and monitoring the rights to water and sanitation. It is the role of a regulator to ensure a fair distribution of service coverage and promote a focus on serving the poorer neighbourhoods, since those residents are less likely to be able to gain access to water and sanitation services.

## F. Accountability and justiciability

83. Sustainable, long-term realization of the rights to water and sanitation demands accountability. Accountability, likewise, is interrelated with and based on other principles, such as transparency, access to information and participation. Accountability requires States to provide effective remedies for breaches of the rights to water and sanitation. For this, a legal framework, appropriate policies, functioning institutions, and the necessary procedures and mechanisms must exist so that individuals and communities can seek redress and secure their rights to water and sanitation. The rights to water and sanitation are justiciable human rights, and should be recognized as such by governments and courts.

84. In the water and sanitation sectors, accountability can also be enhanced, and the sustainability of the sectors improved, by fighting corruption and opaque decision-making by agencies lacking transparency. There are a variety of ways that States can work to address this, inter alia through integrity pacts between NGOs such as Transparency International and government agencies,<sup>73</sup> and broad-based partnerships, which, among other things, seek to improve accountability at a local level. National human rights institutions are also engaged in a number of activities which help to foster greater accountability in the sectors. Where such mechanisms are established during times of “normalcy”, they can be maintained during times of economic and financial crisis.

## V. Conclusions and recommendations

**85. The Special Rapporteur considers sustainability to be a fundamental human rights principle essential for realizing the human rights to water and sanitation. She understands sustainability as the direct counterpart to retrogression; it requires that services be available and accessible to everyone on an almost permanent basis, without discrimination, while ensuring beneficial change through quality services and sustained behavior change. Water and sanitation must be available for present and future generations, and the provision of services today should not compromise the future ability to realize these human rights. Understanding sustainability from a human rights perspective greatly contributes to achieving lasting solutions to water and sanitation challenges for present and future generations.**

<sup>73</sup> For example, the integrity pact between Transparency International Pakistan and the Karachi Water and Sewerage Board.

86. In line with the above, the Special Rapporteur recommends that States:

(a) Undertake holistic planning aimed at achieving universal coverage forever, including in instances where the private sector, donors and non-governmental organizations are involved in service provision. It is the State's obligation to develop its vision of how to ensure services for everyone, forever. Long-term planning needs to take place in times of prosperity so as to prepare and build resilience for times of crisis;

(b) Strengthen national capacity for coordination and integrated planning, and ensure that both domestic and external resources are better consolidated to enable the State to target resources better and ensure the maximum use of available resources;

(c) Use maximum available resources and raise tax revenue in a targeted way so as to ensure redistributive impact;

(d) Target resources so as to prioritize essential levels of access for everyone;

(e) Carefully balance obligations to ensure non-discrimination and sustainability (for everyone and forever) as well as economic and social sustainability in access to water and sanitation;

(f) Devote more financial and institutional resources, and improve planning, to ensure constant investment in operation and maintenance costs in order to avoid slippages. Other actors should proceed likewise;

(g) Carefully assess and justify any retrogression that might occur in the context of adopting austerity measures. This should be done in a manner that ensures that those already disadvantaged do not suffer the greatest impact and according to the criteria developed by the Committee on Economic, Social and Cultural Rights;

(h) Adopt social protection floors nationally and agree on including social protection floors as a post-2015 development goal;

(i) Ensure meaningful participation in order to make sure that water, sanitation and hygiene solutions are socially and culturally acceptable, as well as sustainably used and practiced;

(j) Improve the continuous and independent monitoring of water and sanitation, including of the sustainability of interventions, at the national and global levels.

(k) Ensure independent regulation of the water and sanitation sectors;

(l) Put in place accountability mechanisms at the national and international levels to deal with unsustainable and retrogressive practices in the areas of water and sanitation;

(m) Include a water and sanitation goal in the United Nations development agenda beyond 2015 targeted at eliminating inequalities in access and ensuring sustainability.

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