

UNIVERSIDADE DE MACAU

BOLETIM



DA FACULDADE DE DIREITO

A N O XXI • N° 42 • 2017

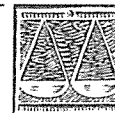
法 律 學 院 學 報

42



UNIVERSIDADE DE MACAU

**BOLETIM**



DA FACULDADE DE DIREITO

法 律 學 院 學 報

As 50 sombras do Código Penal: a propósito do bem jurídico protegido nos crimes sexuais <i>Vera Lúcia Raposo</i> .....	229
Análise da proposta de introdução de dois novos crimes sexuais: prostituição de menor e pornografia de menor <i>Miguel Lemos</i> .....	245
The Acquisitions of the Chinese State-Owned Enterprises under the EU Merger Control Regime: Time to Revisit the Concepts of ‘Control’ and ‘Single Economic Entity’? <i>Alexandr Svetlicinii</i> .....	259

#### VIDA DA FACULDADE

Notícia dos Mestrados.....	277
Actividades: Centro de Estudos Jurídicos .....	283
Actividades: Instituto de Estudos Jurídicos Avançados .....	288

## ÍNDICE

Nota de Abertura ..... 13

Estatuto Editorial..... 15

### DOCTRINA

A indignidade sucessória no Direito Romano: Reflexos no Direito Português  
*António dos Santos Justo* ..... 19

O Mecanismo de Resolução de Conflitos Comerciais da Comunidade para o  
Desenvolvimento da África Austral (SADC)  
*Almeida Machava* ..... 99

### LIÇÕES

Women and Water: Overview of the Problem and the International Legal and Policy  
Discourse – Promoting the Access of Women to Water and Sanitation  
*Paulo Canelas de Castro*..... 125

### ESTUDOS DE PÓS-GRADUAÇÃO

O direito de conflitos da República Popular da China  
*Júlio Anjos*..... 149

Estudo sobre a legitimidade da utilização dos meios de videovigilância como prova em  
processos disciplinares dos militarizados das Forças de Segurança de Macau  
*Rui Manuel Gomes Vieira* ..... 175

A Prova e a Decisão: Apreciação da Teoria da Exclusão da Prova de Bentham  
*Chen Yi*..... 191

### VÁRIA

O médico e o juiz, a saúde e a liberdade do portador de distúrbio mental  
*Jerónimo Santos* ..... 215

PERIODICIDADE  
Semestral

NÚMERO 42, ANO XXI, 2017

DIRECTOR  
Tong Io Cheng

SUBDIRECTOR  
Augusto Teixeira Garcia e  
Wei Dan

DIRECTOR EXECUTIVO  
Manuel M. E. Trigo

COORDENAÇÃO CIENTÍFICA  
Membros do Conselho Científico da Faculdade de Direito da Universidade de Macau

COORDENADOR EXECUTIVO  
Chu Lam Lam (Língua Chinesa)  
Miguel Quental (Língua Portuguesa)

CONSELHO EDITORIAL  
Mo Shijian, Liu Gaolong, Zhao Guoqiang, Lok Wai Kin, Fan Jianhong, Tong Io Cheng,  
Manuel Trigo, Augusto Teixeira Garcia, Paulo Canelas de Castro, Cândida Antunes Pires,  
Paula Nunes Correia, José António Pinheiro Torres, Paula Ling, Chu Lam Lam e Miguel Quental,  
da Faculdade de Direito, e Tou Wai Fong, em representação da  
Associação de Estudos de Direito, Administração e Tradução

COLABORADORES PERMANENTES  
Docentes dos Cursos de Mestrado e Doutoramento da FDUM  
Docentes do Curso de Direito da FDUM em língua portuguesa  
Docentes do Curso de Direito da FDUM em língua chinesa  
Outros colaboradores convidados

COLABORADORES NO PRESENTE NÚMERO  
Alexandr Svetlicinii, Almeida Machava, António dos Santos Justo, Chen Yi, Jerónimo Santos,  
Júlio Anjos, Miguel Lemos, Paulo Canelas de Castro, Rui Manuel Gomes Vieira e Vera Raposo

PROPRIEDADE  
Universidade de Macau

CAPA, DESIGN, EDIÇÃO, DISTRIBUIÇÃO E SECRETARIADO  
Centro de Estudos Jurídicos da Faculdade de Direito da Universidade de Macau

PAGINAÇÃO E IMPRESSÃO  
Jimmy Label Co.

TIRAGEM  
500 exemplares

ISSN n.º 0873-9854

**WOMEN AND WATER:  
OVERVIEW OF THE PROBLEM AND  
THE INTERNATIONAL LEGAL AND POLICY DISCOURSE  
— PROMOTING THE ACCESS OF WOMEN  
TO WATER AND SANITATION\***

Paulo Canelas de Castro  
*Associate Professor, Faculty of Law, University of Macau*

**Abstract:** Women have always maintained a special relation with water. Women also have special needs regarding water and are especially vulnerable to the lack of access thereto and sanitation. This special relation of women with water has over time tended to accentuate the hardships in life which are bound to persist so long as discrimination, inequalities, and stereotyping remain entrenched. While there is no simple solution to improving the lot of women and girls and their access to water and sanitation and other social goods, the human rights framework seems to offer an analytic and normative toolkit that simultaneously reveals and permits to address the structural causes of inadequate access to water and sanitation and offer solutions that can contribute to both ensuring equal access to water and sanitation and improving the status of women and girls. A first move in this direction resulted from the recognition of a human right to water and sanitation. This occurred already in the 21<sup>st</sup> century, at the end of a long and erratic process of legal construction. It is however necessary to move forward and consolidate this legal empowerment of women as well as address the entrenched discriminations and gender inequalities that they suffer, by further exploring the potential that the whole toolkit of human rights seems to bear. This



approach has started to be followed in the latest years; at a policy level with the Sustainable Development Goals agenda and legally by systematically pooling on human rights principles and procedural rights and obligations. However, in order to fundamentally change the situation locally, where women feel the impacts, it also seems necessary to maintain a dynamic interaction between different levels of governance and legal orders. Progressive legal thinking in the international context, together with international policy initiatives and institutions seem to hold inspiring indications for and promote the legal and deep social and cultural changes that states have to bring about, for the sake of full realisation of the human right to water and sanitation and, more fundamentally, the dignity of an important part of Humankind.

**Keywords:** access to water; gender inequalities; health; human needs; human rights; human rights to water and sanitation; non-discrimination; procedural rights; sanitation; Sustainable Development goals; vulnerable groups; women.

*"It is no longer acceptable to discuss women's rights as separate from human rights... human rights are women's rights and women's rights are human rights."*

Hillary Clinton,  
United Nations Fourth World Conference on  
Women, Beijing, 1995.

### Introduction

International Water Law has been witnessing major paradigm-shifts over the last three decades to meet the challenges of our times of water crisis and water scarcity, where the value of water has become undeniable. One of the

\* This text corresponds in part to the presentation made by the author in the context of the Seminário sobre "Direitos da Criança e da Mulher", jointly organised by the Faculty of Law of the University of Macau, Macau Special Administrative Region, China and the Faculty of Law of the Universidade Eduardo Mondlane, Mozambique, which was held in Macau on the 26th October 2016. It fundamentally reproduces the substance, the structure, and the oral style of that presentation.

We have been trying to apprehend and analyse these paradigm-shifts in several writings. Permit us to enlist the following, all by Paulo Canelas de Castro: "The Human Right to Water: Another building

block in the international water law edifice", *Boletim da Faculdade de Direito da Universidade de Macau*, n.º 42, 2018, pp. 12-28; *Mutações e Constâncias do Direito Internacional da Água: Transição de Paradigmas*, Coimbra, Universidade de Coimbra, 2018; "Towards the Harmonization of the Human Right to Water with the Protection of International Investments in the Context of Processes of Privatization of Water Services? - A New Development in International Water Law?", *Soochow Law Journal*, 2016, n.º 13:1, pp. 43-57; "Trends of Development of International Water Law", *Beijing Law Review*, 2015, vol. 6, n. 4, pp. 285-295; "A solução pacífica de litígios internacionais relativos à água", *In Jorge Miranda, J.J. Gomes Canotilho, José de Sousa e Brito, Miguel Nogueira de Brito, Margarida Lima Rego, Pedro Múrias (eds.), Estudos em Homenagem a Miguel Galvão Teles*, vol. III, Coimbra, 2012, Almedina, pp. 73-97; "A água e o direito do comércio internacional: que relação?", *In Fernando Alves Correia, Jónatas E. M. Machado, João Carlos Loureiro (eds.), Estudos em Homenagem ao Prof. Doutor José Joaquim Gomes Canotilho*, Vol. I, *Administração e Sustentabilidade: entre Risco(s) e Garantia(s)*, Coimbra, 2012, Coimbra Editora, pp.117-143; "Section 15: Special paper - Climate change and water management: Is EU Water Law adapted to climate change?", *In C.A. Brebbia and V. Popov (eds.), Water Resources Management VI*, Southampton, 2011, WIT Press, pp. 827-839; *The European Union at 50: Assessing the Past, Looking Ahead*, Macau, University of Macau Press, 2010; "From a common concept to a common experimentation? - An Assessment of the Water Framework Directive's Impact on Water Management in Europe", *In Slavko Bogdanovic (ed.), Water policy and Law in the Mediterranean - An Evolving Nexus*, Novi Sad, 2011, Faculty of Law of the University Business Academy, pp. 146-168; "Climate Change and Adaptive Water Management - How Much Adaptation does EU Water Law Need?", Working Paper, The World Jurist Association, *Addressing Climate Change: A Survey of National and International Laws*, 2010, World Jurist Association; "Regional responses to the global water crisis - The EU and SADC experiences compared", *In Finn Laursen (ed.), The EU and Federalism. Politics and Policies Compared*, Farnham, Burlington, 2010, Ashgate, pp. 101-132; "European Community Water Policy", *In Joseph Dellapenna and Joyeeta Gupta (eds.), The Evolution of the Law and Politics of Water*, Berlin, 2009, Springer, pp. 227-244; "Convenções sobre Rios Internacionais: a fundamental transição de paradigmas do Direito Internacional da Água contemporâneo", *Boletim da Faculdade de Direito da Universidade Eduardo Mondlane*, 2009; "O Direito Humano à Água à Luz do Comentário Geral número 15 do Comité dos Direitos Económicos, Sociais e Culturais da ONU", *Revista Internacional em Língua Portuguesa*, N.º22, Setembro de 2009, pp. 23-41; "Transição de paradigmas no direito internacional da água", *In Luís Veiga da Cunha et al. (eds.), Reflexos da Água*, Lisboa, 2008, APRH, pp. 104-105 (also published in Spanish and English); "Paradigm-shifts in International Water Law and European Union Water Law", *Soochow University Law Journal*, 2008, pp. 1-50; *Recent Developments in Water Law. Principles and Comparative Cases*, Lisboa, 2006, Luso-American Foundation; "Cambiamento dei paradigmi nella legislazione internazionale e europea a tutela delle acque", *Rivista Giuridica dell'Ambiente*, 2006, n.º6, pp. 829-853; "A nova geração dos tratados internacionais sobre águas no contexto da África Austral: Rumo à sustentabilidade", *In Carlos Alberto de Bragança (Coord.), 5º Congresso Ibérico, Gestão e Planeamento da Água - Bacias Partilhadas, Bases para a Gestão Sustentável da Água e do Território*, FCT, 2006, Lisboa, pp. 115-116; "Mudança de Paradigmas no Direito Internacional da Água? As "Regras de Berlim" da Associação de Direito Internacional", *In Carlos Alberto de Bragança (Coord.), 5º Congresso Ibérico, Gestão e Planeamento da Água - Bacias Partilhadas, Bases para a Gestão Sustentável da Água e do Território*, FCT, 2006, Lisboa, pp.125-126; "Nova Era nas Relações Luso-Espanholas na Gestão das Bacias Partilhadas? Em busca da Sustentabilidade", *In J.J. Gomes Canotilho (org.), O regime jurídico internacional dos rios transfronteiriços*, Coimbra, 2006, Coimbra Editora, pp. 75-144; "Freshwaters-Sea Interface: Emerging Legal Field?", *Boletim da Faculdade de*

developments is what may be termed its humanisation<sup>1</sup>, a keen attention on the human relevance of water for all human beings. This explains a growing interface between this body of law and the vibrant body of law dedicated to human rights and the protection of the human beings<sup>2</sup>. It is in this context of an international law in a state of flux that we should assess how this International Law dedicated to water has been addressing the specific problem of the relationship women and water, the relationship of a significant part of Humankind, facing specific conditions and challenges, and this vital natural resource.

### 1. Social-factual starting point: women's special relation with water and women's special needs

Women together with children usually have a special relationship with water. Women bear the primary responsibility for water collection in the vast majority of households worldwide<sup>3</sup>. Often natural resource managers, women and girls are responsible for collecting water for cooking, cleaning, drinking, health and hygiene, and growing food<sup>4</sup>. However, almost paradoxically, women and girls tend to experience and manage access – and the lack of access – to water and sanitation differently from men and boys; with more hardships. Time spent collecting water translates for women into time lost at school, generating an

*Direito da Universidade de Macau*, 2004, n.º 16, pp. 179-220; “Evolução do regime jurídico da relação rio-mar: rumo a um Direito (integrado) das águas?”, *Revista Jurídica do Urbanismo e do Ambiente*, N.ºs. 21/22, Junho-Dezembro 2004, pp. 159-232; “Water Law: the View Projected by the Epistemic Community”, in *The Permanent Court of Arbitration/Peace Palace Papers, Resolution of International Water Disputes*, The Hague, February 2003, Kluwer Law International, pp. 371-416; “New Era in Luso-Spanish Relations in the Management of Shared Basins? The Challenge of Sustainability”, in *Malgosia Fitzmaurice and M. Szumiewicz (eds.), Exploitation of Natural Resources in the 21st Century*, London, 2003, Kluwer Law International, pp. 191-234.

- 1 Similarly, Laurence Boisson de Chazournes, *Fresh Water in International Law*. Oxford, 2015, Oxford University Press.
- 2 Highlighted, amongst many other ones, by A.H. Robertson, *Human Rights in the World*, Manchester, 1972, Manchester University Press; Louis Henkin (ed.), *The International Bill of Rights: The Covenant on Civil and Political Rights*. New York, 1981, Columbia University Press; and Mashood A. Baderin and Manisuli Ssenyonjo (eds.), *International Human Rights Law: Six Decades after the UDHR and Beyond*, Farnham, 2010, Ashgate.
- 3 See *Progress on Drinking Water, Sanitation and Hygiene: 2017 Update and SDG Baselines*. Geneva, 2017, World Health Organization (WHO) and the United Nations Children's Fund (UNICEF). It is stated that women and girls are responsible for water collection in 8 out of 10 households with water off premises.
- 4 World Health Organisation and the United Nations Children's Fund (UNICEF), *Progress on Sanitation and Drinking Water 34 (2010)* [http://www.wssinfo.org/fileadmin/user\\_upload/resources/1278061137-JMP\\_report\\_2010\\_en.pdf](http://www.wssinfo.org/fileadmin/user_upload/resources/1278061137-JMP_report_2010_en.pdf).

income, or caring for family members<sup>5</sup>. If they manage to attend school in spite of the time consumed in fetching water, and since about half of the schools in low-income countries lack adequate drinking water, sanitation and hygiene<sup>6</sup> crucial for girls and female teachers to manage their period, they face other difficulties which can cause them to miss school altogether particularly during their period. The relation between gender and water is inseparable<sup>7</sup>. The traditional role of women in society, particularly with respect to management of the home and women's role as carers, also means that they often have a greater need in terms of access to water and sanitation services compared to men. And yet women and girls are often excluded from or hold a marginal role in the decision-making related to their access to water and sanitation. Women's generally lower economic and political status in comparison to men leaves them with reduced choices in how they access services. This impacts important dimensions of their human right to water, namely the core demands implied by this right of accessibility, quality, affordability, and acceptability of services available. The needs of menstruating women and girls are also seldom considered in the provision of such services, particularly outside the home in schools or other institutions. The lack of access to adequate sanitation in the home, which often leads to people being forced to defecate in the open, has a different social and cultural impact on women and girls' health and safety and reflects in their status within most societies. These factors directly affect gender equality and women and girls' ability to enjoy their human rights.

Gender inequalities often stem from deeply entrenched customs and behaviours. Together they certainly tend to limit women's participation in social and economic development.

Gender inequalities are exacerbated by other social and cultural inequalities based on religion, caste, class, or income. For example, in India, there is often discrimination regarding who is allowed to use public water and sanitation services. Women and girls of lower caste or women who are menstruating may not be permitted to use the same well as higher caste women or must wait for others to finish using the well before they can fetch water. Women and girls also face the danger of sexual assault when they leave the home to relieve themselves in fields or go to public toilets, simply for needing to fulfil a bodily function.

These impacts on women and girls globally are bound to persist so long as discrimination, inequalities, and stereotyping remain entrenched.

5 This is reminded by UNEP, *Women and the Environment*, <http://www.unep.org/PDF/Women/ChapterFive.pdf> (2004).

6 UNICEF and WHO, *Progress on Sanitation and Drinking Water: 2015 Update and MDG Assessment*, Geneva, 2015, UNICEF.

7 In the same vein, see <http://www.un.org/womenwatch/daw/public/Feb05.pdf>.



While better access to water and sanitation will always lighten the domestic load, it will not be sufficient if women and girls still bear the bulk of the responsibility for these duties. Therefore, using the legal construct of human rights more generally and women's rights more specifically, should help to understand, highlight, and correct inequalities in the access to water and sanitation experienced by women and girls. However, any approach to improving access to domestic water and sanitation services must also include a challenge to the stereotype of the woman or girl in the home and serving the family, rather providing images of women and girls fulfilling a broad range of social, cultural, and economic roles.

While there is no simple solution to improving the lot of women and girls and their access to water and sanitation, the human rights framework seems to offer an analytic and normative toolkit that simultaneously reveals and permits to address the structural causes of inadequate water and sanitation service provision, offering specific solutions that can contribute to improving the status of women and girls with respect to both the global political challenge and the human right of equal access to water and sanitation (comprehending hygiene).

## 2. The general normative response: the late emergence of a human right to water and sanitation

We have seen in other writings that these needs of women and girls, specifically, but even more generally the vital human need for water generally by all human beings at large, have been responded with a normative black hole, with a normative vacuum<sup>8</sup>. Indeed, paradoxically as it may seem, since water is so crucially needed for every human expression, and the second half of the 20th century was so marked by the development of the body of law of Human Rights internationally, has for long nowhere to be seen in the international legal construction. It certainly did not make way to the "International Bill of Rights"<sup>9</sup>.

8 See Paulo Canelas de Castro, "Paradigm-shifts in International Water Law and European Union Water Law", *Soochow Law Journal*, 2008, pp. 1-50; "O Direito Humano à Água à Luz do Comentário Geral número 15 do Comité dos Direitos Económicos, Sociais e Culturais da ONU", *Revista Internacional em Língua Portuguesa* n.º 22, Setembro de 2009, pp. 23-41; Paulo Canelas de Castro, "Trends of Development of International Water Law", *Beijing Law Review*, 2015, vol. 6, n.º 4, pp. 285-295; Paulo Canelas de Castro, "Towards the Harmonization of the Human Right to Water with the Protection of International Investments in the Context of Processes of Privatization of Water Services? - A New Development in International Water Law?", *Soochow Law Journal*, 2016, n.º 13:1, pp. 43-57; Paulo Canelas de Castro, "The Human Right to Water: Another building block in the international water law edifice", *Boletim da Faculdade de Direito da Universidade de Macau*, n.º 42, 2018, pp. 12-28; Paulo Canelas de Castro, *Mutações e Constâncias do Direito Internacional da Água: Transição de Paradigmas*, Coimbra, Universidade de Coimbra, 2018.

9 The International Bill of Human Rights" is an expression covering the Universal Declaration of

The right to water is not specifically mentioned in the Universal Declaration of Human Rights of 1948, nor in the International Covenants adopted in 1966: the one on Civil and Political Rights and the one on Economic, Social and Cultural Rights.

Obviously, without access to water, other rights could not be exercised such as the "right to a standard of living adequate for the health and well-being", in regard case with Article 6 of the UN Covenant on Civil and Political Rights, which guarantees the right to life, as well as Articles 11 and 12 of the International Covenant on Economic and Social Rights, which together guarantee that adequate standard of living.

For that reason, several Authors<sup>10</sup> already had been maintaining that some of the rights enshrined in the "International Bill of Human Rights" should be interpreted as encompassing the human right to water: the right to water was thus not considered as a self-standing right in itself in earlier UN human rights texts, but merely as a tool to guarantee other rights. Even the scholastic interpretations which attempted to accredit it were highly controverted, thus rendering the claim to the right's existence uncertain at best.

This originated a very erratic and piecemeal process of law making which translated into specific, sparse provisions in scattered legal instruments<sup>11</sup>:

Their first expression in treaty instruments occurred with in particular three conventions, meant to counteracting non-discrimination regarding three vulnerable groups of human beings, first of whom women. Indeed, the main international treaties explicitly recognizing the human right to water include the 1979 Convention on the Elimination of All Forms of Discrimination Against Women<sup>12</sup>, whose Article 14 (2) reads: "States parties shall take all appropriate

Human Rights of 1848 and the International Covenant on Civil and Political Rights of 1966 as well as the International Covenant of Economic, Social, and Cultural Rights also of 1966.

10 In particular, Stephen C. McCaffrey, "Human Right to Water: Domestic and International Implications." *Georgetown International Environmental Law Review*, 1992, n.º 1, p. 5 where he stated that "Such a right could be envisaged as part and parcel of the right to food or sustenance, the right to health, or most fundamentally, the right to life" and Peter H. Gleick, "The Human Right to Water", *Water Policy*, 1999, Vol. 1, Issue 5, pp. 487-503, where he asserts that "access to a basic water requirement is a fundamental human right implicitly and explicitly supported by international law, declarations, and State practice." In both cases, the argument is that this is a derivative right, implicit in other rights enshrined in major human rights treaties, and particularly from key provisions of the 1966 International Covenants.

11 More detailed recounting of this historical development in Paulo Canelas de Castro: "The Human Right to Water: Another building block in the international water law edifice", *Boletim da Faculdade de Direito da Universidade de Macau*, n.º 42, 2018, pp. 12-28; *Mutações e Constâncias do Direito Internacional da Água: Transição de Paradigmas*, Coimbra, Universidade de Coimbra, 2018; "Trends of Development of International Water Law", *Beijing Law Review*, 2015, vol. 6, n. 4, pp. 285-295.

12 United Nations, Treaty Series, vol. 1249, N.º 20378; also available at <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>.

measures to eliminate discrimination against women in rural areas to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular shall ensure to women the right: ... (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”; the 1989 Convention on the Rights of the Child<sup>13</sup>, whose article 24 states: “States parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health ... 2. States parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, (...) the provision of adequate nutritious foods and clean drinking water (...)”; and Article 28(2)(a) of the Convention on the Rights of Persons with Disabilities<sup>14</sup>, which provides: “States parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures to ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs”.

Other treaties, both global or regional in scope, equally comprehend disparate provisions on a human right to water or a human right to sanitation. For the former ones, reference may be made to Article 5 of ILO Convention N.º 161 of 1985 on Occupational Health Services; and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949<sup>15</sup>. In regard to the latter regional sparse normative law-making, one may point to the African Charter on the Rights and Welfare of the Child (article 14); and Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (article 15). Other regional commitments include the Protocol on Water and Health, adopted by the United Nations Economic Commission for Europe in 1999, the European Charter on Water Resources, adopted by the Council of Europe in 2001. This disparate law-making may also be illustrated by looking at the conventions specifically related to water matters, where scattered provisions may equally be read as setting out elements of an emerging human right to water

or allowing for such interpretative construction<sup>16</sup>.

Furthermore, also non-binding but still influential rules or standards, again both of a global<sup>17</sup> or regional<sup>18</sup> reach, converge on promoting the further realization of human rights obligations related to access to safe drinking water and sanitation in many areas of action: this is demonstrated, exemplarily by rules of the Standard Minimum Rules for the Treatment of Prisoners<sup>19</sup>, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty<sup>20</sup>, the United Nations Principles for Older Persons<sup>21</sup>; the Guiding Principles on Internal Displacement<sup>22</sup>, ILO Recommendation N.º 115 of 1961 on Workers’ Housing<sup>23</sup>,

13 United Nations, Treaty Series, vol. 1577, N.º 27531 also available at <http://www2.ohchr.org/english/law/crc.htm>.

14 It was adopted by General Assembly Resolution 61/106, annex 1. The text is available at <http://www.un.org/esa/socdev/enable/rights/convtexte.htm>.

15 United Nations, Treaty Series, vol. 75, N.º 973.

16 See, for instance, the *Statement of Understanding* accompanying the United Nations Convention on the Law of Non-Navigational Uses of International Watercourses (A/51/869 of 11 April 1997), which declared that, in determining vital human needs in the event of conflicts over the use of watercourses “special attention is to be paid to providing sufficient water to sustain human life, including both drinking water and water required for production of food in order to prevent starvation”.

17 See, in particular the 2006 Sub-Commission on the Promotion and Protection of Human Rights’ Guidelines for the Realization of the Right to Drinking Water and Sanitation.

18 E.g., the Abuja Declaration, adopted at the first Africa-South America summit in 2006, the message from Beppu, adopted at the first Asian-Pacific Water Summit in 2007; the Delhi Declaration, adopted at the third South Asian Conference on Sanitation, in 2008, the Sharm el-Sheikh Final Document, adopted at the Fifteenth Summit Conference of Heads of State and Government of the Movement of Non-Aligned Countries, in 2009; and the Colombo Declaration, adopted at the fourth South Asian Conference on Sanitation, in 2011.

19 See “15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.” and “20. (2) Drinking water shall be available to every prisoner whenever he needs it.”

20 “Article 34: Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.” And “Article 37: Every detention facility shall ensure that every juvenile receives food that is suitably prepared ... Clean drinking water should be available to every juvenile at any time.”

21 “Independence: 1. Older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help.”

22 “Principle 18: 1. All internally displaced persons have the right to an adequate standard of living. 2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: (a) Essential food and potable water; (...) (d) Essential medical services and sanitation. 3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.”

23 “Suggestions concerning methods of application (...): 7. The housing standards referred to in paragraph 19 of the General Principles should relate in particular to ... (b) The supply of safe water in the workers’ dwelling in such ample quantities as to provide for all personal and household uses; (c) Adequate sewage and garbage disposal systems; ... 8. Where housing and accommodation for single workers or workers separated from their families is collective, the competent authorities should establish housing standards providing, as a minimum, for: ... (c) Adequate supply of safe water; (d) Adequate drainage and sanitary conveniences; ...”.

FAO's Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national security<sup>24</sup>.

Finally, both international<sup>25</sup> and domestic<sup>26</sup> case law further contributed to the recognition of this right<sup>27</sup>.

### 3. Latest developments in the 21<sup>st</sup> Century: the consolidation of the human right to water and sanitation

These first steps into the recognition of a human right to water contrast with the contemporary legal landscape today, where the human rights to water and sanitation are not to be doubted anymore. Human rights to water and sanitation have indeed risen dramatically in importance over the last two decades; so much that today almost all States have at least ratified one human rights convention which explicitly or implicitly recognizes the right, and they all have signed at least one political declaration recognizing this right. Some States have even enshrined this right or these rights in their national Constitution<sup>28</sup>. When incorporated in

24 "3.6 In their poverty reduction strategies, States should also give priority to providing basic services for the poorest, and investing in human resources by ensuring access to ... clean drinking water, adequate sanitation ...; 8.1 States should facilitate sustainable, non-discriminatory and secure access and utilization of resources consistent with their national law and with international law and protect the assets that are important for people's livelihoods. States should respect and protect the rights of individuals with respect to resources such as land, water, ..."

25 For instance, through a leading ruling like the one in the *Sawhoyamaxa Indigenous Community v. Paraguay* case, by the Inter-American Court on Human Rights. Also, arbitral awards like the ones in several cases (*Agua del Tunari, Azurix, Bivwater, Suez, Urbaser*), before arbitral courts set up with the facilitation of the International Centre for Settlement of Investment Disputes. We analysed most of them and their significance in Paulo Canelas de Castro, "Trends of Development of International Water Law, *Beijing Law Review*, 2015, vol. 6, n. 4, pp 285-295; Paulo Canelas de Castro, "Towards the Harmonization of the Human Right to Water with the Protection of International Investments in the Context of Processes of Privatization of Water Services? - A New Development in International Water Law?", *Soochow Law Journal*, 2016, n.º 13:1, pp. 43-57; Paulo Canelas de Castro, "The Human Right to Water: Another building block in the international water law edifice", *Boletim da Faculdade de Direito da Universidade de Macau*, vol. 42, 2018, pp. 12-28; Paulo Canelas de Castro, *Mutações e Constâncias do Direito Internacional da Água: Transição de Paradigmas*, Coimbra, 2018, Universidade de Coimbra.

26 *The Residents of Bon Vista Mansions v. Southern Metropolitan Local Council* case and the *Mazibuko v. City of Johannesburg* in South Africa, the *Delhi Water Supply v. State of Haryana* case and the *Subhash Kumar v. State of Bihar* case in India.

27 See Paulo Canelas de Castro, *Mutações e Constâncias do Direito Internacional da Água: Transição de Paradigmas*, Coimbra, 2018, Universidade de Coimbra.

28 Cf [http://www.worldwatercouncil.org/fileadmin/world\\_water\\_council/documents\\_old/Programs/Right\\_to\\_Water/Pdf\\_doct/Story\\_RTW\\_CD\\_March07\\_compressed.pdf](http://www.worldwatercouncil.org/fileadmin/world_water_council/documents_old/Programs/Right_to_Water/Pdf_doct/Story_RTW_CD_March07_compressed.pdf). The list of countries includes: Belgium, Colombia, Democratic Republic of Congo, Ecuador, Ethiopia, Gambia, India, Kenya, Panama,

national legal frameworks, this right is articulated to other water rights within the broader body of water law. The main responsibilities to deliver on this normative message and to ensure that people can enjoy this "sufficient, safe, accessible and affordable water and sanitation, without discrimination" in accordance to this human right to water and sanitation are placed primarily upon State governments.

Two international normative documents or sets of legal instruments stand out for their particularly responsibility in ensuring that this important evolution came about:

In 2002, the UN Committee on Economic, Social and Cultural Rights adopted a document that explained for the first time, how central access to water is for the right to health and the right to an adequate standard of living and, as such, should be considered as a right itself<sup>29</sup>. This instrument which is an authoritative interpretation of the 1966 International Covenant states, in its Article I.1, that "The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights"<sup>30</sup>. Comment N.º 15 also defined the normative content of the right to water as comprehending the right of everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses<sup>31</sup>. It stated that "The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses". This is to be granted without discrimination. It further stated 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 requirements."<sup>32</sup> These requirements were subsequently developed by other resolutions: for instance, Human Rights Council Resolution 27/7, of the 2<sup>nd</sup> of October 2014, states that "the human right to safe drinking water entitle(s)

the Philippines, South Africa, Spain, Uganda, Uruguay, Venezuela and Zambia.

29 General Comment N.º 15 (2002) of the Committee on Economic, Social and Cultural Rights on the right to water (articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights). See *Official Records of the Economic and Social Council*, 2003, Supplement N.º 2 (E/2003/22), annex IV, and the statement on the right to sanitation of the Committee of 19 November 2010 - *Ibid.*, 2011, Supplement N.º 2 (E/2011/22), annex VI.

30 Subsequent resolutions, with some variations, adopt the formula: "the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity" (e.g., HRC Resolution 18/1, of 28 September 2011).

31 General Comment N.º 15 (2002) of the Committee on Economic, Social and Cultural Rights on the right to water (articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights). See *Official Records of the Economic and Social Council*, 2003, Supplement N.º 2 (E/2003/22), caption II. *Normative content of the right to water*.

32 UN Committee on Economic, Social and Cultural Rights, *General Comment 15*, para.2.

everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use". In special regard to the right to sanitation, still coupled to the one of safe water or already decoupled, it is said that "the human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity"<sup>33</sup>. Moreover, subsequently, different UN bodies have endeavoured to determine further the implications of these conditions of "sufficient", "safe", "accessible" and "affordable" water/sanitation, "without discrimination". We hence now know that "sufficient", sometimes also equated or designated as "availability", water is deemed to be the water supply for each person which is sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene<sup>34</sup>. According to the World Health Organization (WHO), between 50 and 100 litres of water per person per day are needed to ensure that most basic needs are met, and few health concerns arise. "Safe" water is the (quality of) water required for each personal or domestic use which is free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health<sup>35</sup>. Measures of drinking-water safety are usually defined by national and/or local standards for drinking-water quality. The World Health Organization (WHO) Guidelines for drinking-water quality provide a basis for the development of national standards that, if properly implemented, will ensure the safety of drinking-water. "Acceptable" water implies that water should be of an acceptable colour, odour and taste for each personal or domestic use. All water facilities and services must be culturally appropriate and sensitive to gender, lifecycle and privacy requirements<sup>36</sup>. To be "Physically accessible", means that everyone has the right to a water service that is physically accessible within, or in the immediate vicinity of the household, educational institution, workplace or health institution. According to WHO, the water source has to be within 1,000 metres of the home and collection time should not exceed 30 minutes. The requirement of "Affordable" calls for water, water services, to be affordable for all. The United Nations Development Programme (UNDP) suggests that water costs should not exceed 3 per cent of household income. This does not imply that

33 Thus, Human Rights Council Resolution 33/10 of 29 September 2016.

34 CESCR, *General Comment N.º 15* (E/C.12/2002/11), para. 12 (a).

35 CESCR, *General Comment N.º 15* (E/C.12/2002/11) and CESCR, *Statement on the right to sanitation* (E/C.12/2010/1), para. 12.

36 ESCR, *General Comment N.º 15* (E/C.12/2002/11) and CESCR, *Statement on the right to sanitation* (E/C.12/2010/1), para. 12 (b).

water provision be made free of charge. Most especially, States are expected to take reasonable steps to avoid a contaminated water supply and to ensure there are no water access distinctions amongst citizens.

This first constitutional moment set by General Comment 15 was later followed<sup>37</sup> by decisive statements on the right to water and sanitation in 2010. This was particularly so with General Assembly resolution 64/292 of 28 July 2010<sup>38</sup> which recognizes that water and sanitation should be a human right: "(...) the right to safe and clean drinking water and sanitation as a human right. It further stated that this right "(...) is essential for the full enjoyment of life and all human rights". Subsequent resolutions, sometimes of other United Nations organs, also with some variations, adopt a similar formula. Thus, for instance, Human Rights Council Resolution 18/1, of 28 September 2011: "the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity"<sup>39</sup>.

37 Some other initiatives intercurrent: in 2005 the former UN Sub-Commission on the Promotion and Protection of Human Rights issued guidelines to assist governments to achieve and respect the human right to water and sanitation. Cf. UN Sub-Commission on the Promotion and Protection of Human Rights, *Sub-commission guidelines on the realization of the right to drinking water and sanitation*, Report of the Special Rapporteur El Hadji Guissé, UN document E/CN.4/Sub.2/2005/25, 2006, at: [http://www2.ohchr.org/english/issues/water/docs/SUB\\_Com\\_Guisse\\_guidelines.pdf](http://www2.ohchr.org/english/issues/water/docs/SUB_Com_Guisse_guidelines.pdf). These guidelines led the UN Human Rights Council to appoint Catarina de Albuquerque as independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation in 2008. Cf. <http://www2.ohchr.org/english/issues/water/ieexpert/overview.htm>. She wrote a detailed report in 2009 that outlined human rights obligations to sanitation, and the CESCR responded by stating that sanitation should be recognized by all states. See Catarina de Albuquerque, *Realising the human rights to water and sanitation: A Handbook by the UN Special Rapporteur*, Lisbon, 2014, United Nations. The mandate of Catarina de Albuquerque as "Independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation" was extended and renamed as "Special Rapporteur on the human right to safe drinking water and sanitation" after the resolutions of 2010. Through her reports to the Human Rights Council and the UN General Assembly, she continued clarifying the scope and content of the human right to water and sanitation. As Special Rapporteur, she addressed issues such as: *Human Rights Obligations Related to Non-State Service Provision in Water and Sanitation*, 2010; *Financing for the Realization of the Rights to Water and Sanitation*, 2011; *Wastewater management in the realization of the rights to water and sanitation*, 2013; and *Sustainability and non-retrogression in the realization of the rights to water and sanitation*, 2013. In 2014, Léo Heller became the second Special Rapporteur on the human rights to safe drinking water and sanitation.

38 General Assembly resolution 64/292 was pioneer in recognizing the right to safe and clean drinking water and sanitation as a self-standing human right.

39 The Human Right Council actually has a rich record of resolutions on the subject: resolutions 7/22 of 28 March 2008, 12/8 of 1 October 2009, 15/9 of 30 September 2010, 16/2 of 24 March 2011, 18/1 of 28 September 2011, 21/2 of 27 September 2012, 24/18 of 27 September 2013 and 27/7 of 2 October 2014, 33/10 of 29 September 2016 (contrary to former ones, this later resolution was voted).

Almost simultaneously with General Assembly resolution 64/292, the Human Rights Council adopted resolution 15/9, entitled *Human rights and access to safe drinking water and sanitation*<sup>40</sup>.

Since these founding times, huge progress has been made. For instance, more recently some resolutions<sup>41</sup>, claiming that they reflect the coinciding understanding by the Committee on Economic, Social and Cultural Rights and the Special Rapporteur on the human right to safe drinking water and sanitation<sup>42</sup>, speak of the rights to safe drinking water and sanitation, call for treating the right to safe water and the right to sanitation as (related but) different rights. They admit that these rights are closely related, and especially that both rights are components of the right to an adequate standard of living<sup>43</sup>. However, it is also sustained that the rights to safe drinking water and sanitation have special features that warrant a distinct treatment justified by the need to address specific challenges in their implementation. It is argued that this is needed particularly in regard to sanitation, that too often remains neglected, were it not to be addressed as a separate right<sup>44</sup>. More so than in conceptually defining the rights, this normative progress has principally translated in different actions aimed at promoting, and practically implementing the human rights to water and sanitation.

#### 4. From the general protection deriving from the recognition of the human right to water and sanitation to the specific focus on the problems of women

A first normative layer of the more recent, contemporary plural response

<sup>40</sup> This occurred October 6, 2010.

<sup>41</sup> General Assembly resolution 72/178, of 19 December 2017 and Human Right Council resolution 33/10 of 29 September 2016.

<sup>42</sup> This is spelled out in very clear terms in her *Realising the Human Rights to Water and Sanitation: A Handbook by the Special Rapporteur Catarina de Albuquerque*, Lisbon, 2014, p. 19.

<sup>43</sup> See Human Rights Council Resolution 33/10, 29/9/2016.

<sup>44</sup> See Catarina de Albuquerque: *"Defining the human rights to water and sanitation as separate and distinct allows governments, civil society and other stakeholders to create standards specifically for the human right to sanitation and for its realisation. Distinguishing between these two rights also makes it easier for States and other stakeholders to understand the distinct responsibilities, obligations and roles implicit in the realisation of each of them. The situation of people who lack sanitation differs from that of people who lack water. One household's lack of adequate, safe and hygienic sanitation can have a negative impact on the health not just of the people in that dwelling, but also on others living nearby (even where these neighbours do have access to sanitation). This means that people have a responsibility to improve their sanitation, for the sake of those around them as well as their own. One household's lack of access to water, on the other hand, would not generally have such an impact on the health and access to water of its neighbours"*.

to the specific issues of women and water derives from the 2030 Agenda for Sustainable Development adopted by the United Nations in 2015<sup>45</sup> and the Sustainable Development Goals. It complements and is complemented by other efforts of a more pointedly legal nature.

One of the main vectors thereof is the highlighting that these human rights were developed in order to protect vulnerable, marginalized, and oppressed individuals and groups, together with providing a useful framework for generally enhancing the global response in terms of water management to the global later crisis. This was visibly so for women, children, persons with disabilities, which, as aforementioned, were the object of specific treaties protecting these groups deemed to be particularly vulnerable. This important recognition facilitates the additional step consisting in further understanding, analysing, and addressing the continuing lack of access to water and sanitation by providing a more practical response to the implementation deficits. In that more particular, progressive, enhanced normative thinking, the human rights principles of non-discrimination and equality, and the procedural principles and obligations of participation, access to information, and accountability seem to bear the potential to not only add robustness to the human rights to water and sanitation generally apprehended, but also to more specifically help ensure a more pertinent, subject-specific realization of the women's rights and their actual effective implementation.

Jointly, these two vectors of an overall normative development strategy centred on the toolkit of human rights and the principles and full gamut of rights and obligations connected should contribute to bridging the remaining barriers in women's access to water and good sanitation and instead further promoting the access of women to water and sanitation.

#### 4.1. The UN 2030 Sustainable Development Agenda

The Sustainable Development Goals (SDGs) call for the integrated implementation of the entire 2030 Agenda and put human rights and corresponding principles at the centre.

The rights to water and sanitation have in this context a central relevance which is foremost evidenced in Goal 6 which seeks to ensure the availability and sustainable management of water and sanitation for all. Nearly every one of the other goals rely in some way on water, sanitation and hygiene. Moreover, the SDGs recognize the importance of human rights for eliminating gender inequality (Goal 5) and for reducing inequality in general (Goal 10). Goals 3 and 4, respectively on health and education, also contain requirements to achieve gender equality.

<sup>45</sup> Resolution adopted by the General Assembly on 25 September 2015, entitled *Transforming our world: the 2030 Agenda for Sustainable Development*.



Overall, the SDGs thus add relevance and timeliness to the discussion on how actual gender inequalities effectively limit the progress in social and economic development, specifically in the water and sanitation sectors.

Increasing gender equality can only have a positive impact on access to water and sanitation for women. The converse is equally true. Greater gender equality leads to women and girls having a greater say in how water services are delivered, improving the likelihood that these services meet their multifarious needs. Conversely, improving water and sanitation services for women and girls can only contribute to the reduction of their vulnerabilities and improvements in gender equality, given the importance of water and sanitation to fulfilling traditional roles of women and girls. Even there though, a holistic treatment is required: improving water and sanitation for women and girls without simultaneously challenging the stereotypical vision of women as caregivers will not lead to the gender equality demanded by Goal 5.

The human rights to water and sanitation include specific obligations for states. Amongst these, the immediate obligation to ensure that human rights are realized in a participatory, accountable, and non-discriminatory way, and a longer-term obligation to progressively realize the human rights to water and sanitation using the maximum available resources are included. This calls for structural changes that will require the reform of laws and government institutions, but that can also be achieved through good governance, with the engagement of all stakeholders.

At the global level, initiatives or bodies, like the Special Rapporteur on the human right to safe drinking water and sanitation<sup>46</sup> and the Sanitation and Water for All partnership<sup>47</sup> are aligning all activities with the requirements of the SDGs, including those stemming from human rights norms and principles. This should also work towards eliminating inequalities in access to water and sanitation. Through a multi-stakeholder process, partnerships between states, and processes and systems, the Sanitation and Water for All agenda, in particular, provides an opportunity to openly discuss with decision-makers and civil societies the structural reasons for inequalities in access to water and sanitation and seek appropriate solutions. Admittedly, this is a long and challenging process where interaction with other approaches is much in need: in particular, this partnership that promotes open and transparent sharing of ideas, solutions, and challenges

46 See [www.ohchr.org/srwaterandsanitation](http://www.ohchr.org/srwaterandsanitation).

47 See <http://sanitationandwaterforall.org>. It is there presented as a global partnership of governments, donors, civil society organizations and other development partners working together to coordinate high-level action, improve accountability and use scarce resources more effectively, namely to achieve universal access to clean water and adequate sanitation.

gains in not losing sight of and instead coordinating with the work based on the substantive human rights principles that promote non-discrimination, participation, access to information, and accountability.

#### 4.2. Pooling the Human Rights toolkit of principles and procedural obligations to further promote women's equal access to water and sanitation

The need for further developing and lending precision and practical relevance to the rights to water and sanitation has been trailing another pathway, generally premised on the normative capital related to the body of law of human rights: in particular, some of the key substantive principles of the international law of human rights as well as some of the corresponding procedural obligations and principles are thus explored. Articulated with the more immediate contents of the rights of access to water and sanitation as well as a progressive interpretation thereof, this approach seems to bear the potential for bringing these rights to new normative frontiers and more progressive legal consequences.

*Non-discrimination* and *equality* are central to all international human rights treaties. This is so with the more specific Convention on the Elimination of all Forms of Discrimination Against Women of 1979 and the provision of article 5 on non-discrimination as well as the provision therein relating to water (article 14 (2)), but this also holds in regard to the other human rights treaties. Together, all of these treaties include provisions to protect against discrimination and ensure equality from which corresponding principles derive. Furthermore, human rights law generally has made clear that the obligation to respect, protect, and fulfil human rights<sup>48</sup> in a non-discriminatory way is a duty that is immediately binding<sup>49</sup>. This means that this body of law generally also commands that the actual situation of women and girls is examined and the inequalities and effective obstacles to the access to water and sanitation be clearly addressed.

Inequality between men and women can be witnessed in every country, in every culture and religion, as well as within the households. The gender roles held by women and men, and girls and boys, often contribute to the stigma,

48 In contemporary international law of human rights, it is well accepted that the ICESCR imposes duties on states to 'respect', 'protect' and 'fulfil' its rights. Firstly, the *obligation to respect* requires states to refrain from interfering in rights. This means that states are obliged not to jeopardise the realization and enjoyment of the right. Secondly, the *obligation to protect* rights against private interference demands that states prevent attacks to the rights and right holders by non-state actors. Thirdly, the *obligation to fulfil* requires states to take positive measures by facilitating, promoting and providing rights. In this regard, the duty to *facilitate* rights can be pursued through the adoption of national laws, policies and practices that recognize and effectively protect the right.

49 CESCR, *General Comment N.º 3, The Nature of States Parties' Obligations* (E/1991/23), para. 10, and CESCR, *General Comment N.º 15* (E/C.12/2002/11), para. 37.

discrimination, and stereotyping that affect how people access water and sanitation in high-, middle-, and low-income countries.

Another relevant principle that has to be associated within the effort to repel non-discrimination and inequality is the one of the *universality* of the rights. The human rights to water and sanitation require that appropriate safe water and sanitation services are accessible and affordable for all<sup>50</sup>. This holds particularly for those who are marginalized and/or vulnerable. The lack of adequate access afforded to so many women and girls deepens other social inequalities. Women and girls who belong to minorities, such as particular language groups in parts of Southeast Asia, will suffer from additional discriminations. A lack of access for groups already stigmatized can directly lead to hygiene hardships, further aggravating the stigma felt by those groups and the individuals therein and reinforcing negative stereotypes. Ensuring that girls have equal opportunities to education requires many different initiatives, including the basic provision of adequate latrines in schools, so that girls feel confident about engaging in schooling. Even more fundamentally, many countries still have a lot of work to be done on attitudes towards menstruation.

Overall, there is a clear correlation between the lack of access to water and sanitation suffered by many women and girls and broader inequalities within society. The former stands as a crying sign of the latter. States in taking the rights to water and sanitation seriously must identify these inequalities and recognize the more significant impact that a lack of these services has on the lives of women and girls, their special needs and special vulnerabilities. The next logical step is for states to review existing policies and legislation that may have an impact on women and girls' ability to access water and sanitation. The solutions that work for women and girls may be different or more specific than the ones which are deemed necessary to achieve universal access to water and sanitation. Looking at the problem specifically for women and girls should permit to find unsuspected solutions. For instance, in some countries, women are not supposed to use the same latrine as men, either due to menstruation or other norms and taboos related to women. This remains unnoticed in many monitoring exercises – the fact that a toilet exists in a certain facility does not ensure that all the people there use it or are allowed to use it according to the prevailing social, cultural conventions.

As happens generally with many forms of discrimination and stigma, empowering women and girls through diverse means, like through access to

information, education, and, more broadly, by strengthening their ability to engage in cultural and social life, certainly assists them in confronting and challenging negative stereotypes about what women and girls are capable of doing; and this further impacts positively on the perceptions of the group and their roles in the whole society.

One fundamental obligation of states committed to human rights is naturally that these substantive determinations have to find way to the legal system, by means of revised legislation, policies, and regulations. Achieving gender equality within the context of a full implementation of a human right requires as a first necessary step a full review of the gendered impact of previous legislation, policies, and regulatory processes relating to access to water and sanitation, to ensure that these do not permit discriminatory practices. Policies that are premised on taking note of the fact that so often women and girls have a predominant role in collecting and managing water and sanitation for the household may be or are unintentionally perpetuating that role, rather than exploring measures and processes that instead counter gender stereotypes and practically spur gender equality.

Naturally, revised laws must also be accompanied by changes in the institutions and the corresponding social and cultural practices. For that, states must systematically engage in examining how existing access to water and sanitation strategies impact women and maintain gender inequalities. This review is a necessity deriving from their human rights obligations, the co-respective for states of the human rights recognised. They result from their obligations to respect and to fulfil. Further, in regard to their obligations to protect, states must ensure that others, including private sector or civil society organizations, do not perpetuate inequalities through discriminatory practices. The Convention on the Elimination of all Forms of Discrimination Against Women provides, in Article 5, to “*modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.*”

*Access to information* is another human rights principle, as well as a human right in itself. Information plays a crucial role in ensuring that people are able to understand what they are entitled to with respect to water and sanitation and how they can gain access to these services. Several factors usually impact negatively women and girls' adequate access to information on water and sanitation. This is the case, for instance, with illiteracy, or the outright exclusion from meetings where such the discussions on the access to water and sanitation take place. Ensuring that women and girls have the information that they need to access services of water provision and sanitation and understand their rights requires a broad panoply of solutions over different timespans. A long-term approach, for instance, mandates

50 Besides General Comment 15, thus states General Assembly resolution 7/169, The human rights to safe drinking water and sanitation, (18 November 2015), available at <http://www.endwaterpoverty.org/sites/endwaterpoverty.org/files/The%20Human%20Rights%20To%20Water%20And%20Sanitation%20UN%20resolution.pdf>.



that girls have equal access to education, as a pre-condition for them to later engage in the different processes in a meaningful way. In the more immediate short-term, the requirement commands that women and girls obtain the information that they need in order to access services in the clearest and more direct or local language available. Moreover, straightforward information on menstruation and corresponding hygiene is of necessity to help women and girls both understand and manage their periods. Rendering menstruation a normal, accepted fact of life should contribute towards ensuring that women and girls continue going to school and work and participate in cultural and social activities.

The *right to participation*, participation itself in decision-making, is equally essential to ensuring that women and girls are able to engage meaningfully in the processes pertaining to their access to water and sanitation. Because of the prejudice of theirs as the 'second sex,' securing opportunities for women to participate fully in relevant decision-making processes will require an examination of assumptions of who can participate and how participation is conducted. For example, women's lives are often circumscribed by their domestic responsibilities and their duty to care for children, the sick, or older persons within the household. This may prevent them from travelling longer distances to meetings or participating at times of the day when the domestic, household governance is more intense. If women's views are to be taken into account, participatory processes must explore ways of circumventing these factual hindrances. Additionally, given the multiple layers of exclusion – women and girls with disabilities or from an ethnic minority will often have more problems engaging with decision-making processes – specific care must be taken that women and girls from all social and cultural groupings are able to participate.

*Accountability* is also an obligation imparted on States in the human rights context generally and for the realization of the human rights to water and sanitation. State accountability mainly supposes two forms of monitoring: monitoring of access to services, institutions, policies, and legislation, and, setting up access to and redress mechanisms for the cases where governments are not addressing inequality in access to services.

*Monitoring*: In order to address inequalities effectively, the inequalities must firstly be known, and their root causes understood. Since the causes of gender inequalities are generally deeply embedded in culture and stereotypes of what men and women (and girls and boys) are to do, it is often difficult to both identify and address inequalities. For this reason, it is important that surveys are carried out by culturally aware, trained individuals. However difficult it may be to collect accurate data, efforts must be made to understand and measure discriminatory or stigmatizing practices. These better data are indispensable to develop policies that are gender-sensitive and provide dedicated funding for gender-sensitive

programming.

*Access to justice*: As inequalities in access to water and sanitation for women and girls are established through monitoring processes, access to justice must also be available. This may be through complaints procedures managed by service providers or through independent bodies including regulators, national human rights commissions, and local authorities. While in theory, access to justice should be equally available to all people, the reality is that there are often barriers that must be removed to ensure equal access to all. For this, it is necessary to ensure that information about how to lodge a complaint is easily available in straightforward and local language. Service providers that are serious about responding to complaints will consider a range of measures comprehending, for instance, free hotlines to call when there is a problem.

Where service providers are not able to address specific complaints, there are also courts that can consider violations of the human rights to water and sanitation. Again, care needs to be taken to ensure that barriers to accessing courts are removed and take into account the particular difficulties faced by women seeking justice. These may have deep historical and cultural habits which belittle women in practice. Women's domestic responsibilities and frequently greater poverty will also prevent them from paying the necessary fees, travel, and time costs to lodge complaints. Thus, focusing on the norms of behaviour for women and girls, rather than the norms for men, will highlight approaches to assist women in achieving justice for failures of the state to ensure access to water and sanitation.

**Final Thought: a mutually beneficial interplay between legal orders and levels of governance for the sake of the full realisation of the human right to water and sanitation and a fair share of Humankind**

While changing national legislation, strategies, and policies will have the broadest impact on women's rights in regard to access to water and sanitation in the local settings where they live, in the long-term, local authorities, service providers, and other development actors can achieve a great deal more, even locally, by applying the non-discriminatory, gender-responsive approach that International Law and corresponding international institutions have progressively opened themselves up to and that they have been exploring in an effort to improve the implementation of these human rights. Indeed, the more local developments of a law more attuned to the specific needs and condition of women gain in being closely connected with, inspired in, and complemented by international normative thinking and action associated with the works of International Organizations, such as United Nations bodies, like the Special Rapporteur on the human right to safe drinking water and sanitation, or processes, like Sanitation and Water



for All<sup>51</sup>. These works and processes have been evidencing a keen attention to the practical consequences of the rights to water and sanitation and utilising the broader potential of the whole human rights approach and corresponding toolkit for achieving progress in the application of these rights. Harnessing valuable comparative data across different levels of governance, from which lessons derive that will play key and catalytic roles in supporting efforts to fully eliminate gender-based inequalities through national laws, policies, and action, should result in further cementing in the local domestic settings the progressive outlook that has been followed in recent years regarding the rights of access to water and sanitation. This forward-looking, taking-rights-seriously-approach is not only legally justified – it is the right implementation strategy, premised on the soundest legal principles, since it purports to pursue the object and purpose of treaty provisions and other rights and obligations in this area of international law –, but also, more fundamentally and crucially, it is the right one, ethically speaking, since it contributes to improving the condition of a significant part of Humankind.

---

## ESTUDOS DE PÓS-GRADUAÇÃO

---

---

51 SWA is a global platform for achieving the United Nation's Sustainable Development Goal 6 - Ensure availability and sustainable management of water and sanitation for all.

