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including the right to development**

Human rights to water and sanitation in spheres of life beyond the household with an emphasis on public spaces

Report of the Special Rapporteur on the human rights to safe drinking water and sanitation

Summary

Access to water and sanitation in spheres of life beyond the household, particularly in public spaces, is an essential element of the human rights to water and sanitation. However, service provision and monitoring are often neglected in such places. As a result, potential violations of human rights occur frequently and disproportionately impact persons that live in vulnerable situations, such as the homeless. In such cases, the violations of the rights to water and sanitation determine the violation of several other related rights. The failure of States to include access to water and sanitation in public spaces and in other spheres of life beyond the household within their policy and planning is also inconsistent with the commitment they have made to the Sustainable Development Goals.



I. Introduction

1. Pursuant to Human Rights Council resolution 33/10, the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller, was mandated to work on identifying challenges and obstacles to the full realization of those rights, as well as protection gaps, good practices and enabling factors. In the present report, he focuses on the realization of the human rights to water and sanitation in spheres of life beyond the household, with a particular emphasis on public spaces.

2. The methodology for the report included desk research and responses to questionnaires sent to States and to civil society organizations, which elicited 15 submissions.¹ In addition, the Special Rapporteur convened a brainstorming round table on 11 September 2018 in Geneva.

3. In most societies, many groups and individuals rely on places beyond the scope of the household to live and enjoy their rights, including their rights to water and sanitation. These groups include persons in penal institutions and detention centres, health-care professionals and patients who spend long periods in hospitals and health centres, students in boarding schools and workers who are required to spend considerable lengths of time in open workplaces. They also include people who reside in those spheres because of homelessness, people living in poverty who may lack access to water and sanitation in or near their homes and people who work formally or informally in the public spaces of urban areas. More broadly, they include the general public who commute daily. Even if people can access water and sanitation at the household level, spheres of life beyond the household remain highly relevant, as the need to access water and sanitation does not simply abate during periods when people are outside the home. Indeed, it is vital that everyone is able to fully enjoy their human rights to water and sanitation everywhere.

4. However, recognition of the relevance of the human rights to water and sanitation in many spheres beyond the home is evidently lacking and few States have adopted measures to ensure the realization of those rights. As a result, for many, water and sanitation in spheres beyond the home are not adequately available, accessible, acceptable, safe or affordable and either people who rely on such services are invisible for monitoring purposes.² Despite the focus of State water and sanitation policies falling largely on improving access at the household level, the importance of access to water and sanitation in many spheres outside the home has been largely recognized by the mandate of the Special Rapporteur in country visit reports and through communication letters. During his official visits, the Special Rapporteur has encountered numerous individuals, groups and communities whose need for access to water and sanitation extends beyond the household and whose lives are negatively impacted when such access is inadequate. In India, owing to the insufficient number of public toilets, he discovered street vendors who had no choice but to pay the guards of nearby buildings to access their facilities (A/HRC/39/55/Add.1, para. 23). In Malaysia, he learned of the difficulties faced by transgender and gender non-conforming persons when accessing sanitation amenities in their workplaces, owing to their employers forcing them to only use toilets which match the gender they were assigned at birth (A/HRC/42/47/Add.2, para. 58).

5. In light of the clear need for people to access water and sanitation beyond the domestic sphere and in consideration of the obligations of States to respect, protect and fulfil the human rights to water and sanitation for all people, ignoring those needs can result in a human rights gap. Accordingly, in the present report the Special Rapporteur seeks to provide a platform to clarify the vital need for a greater consideration of spheres of life beyond the household when determining how to progressively realize the human rights to water and sanitation. Among the different spheres of life beyond the household, the report

¹ See www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/PublicSpaces.aspx.

² See Roy Carr-Hill, "Missing millions and measuring development progress", *World Development*, vol. 46 (June 2013).

places a particular emphasis on public spaces, given the significant gaps found worldwide and the importance of highlighting those spaces in the efforts of States to progressively realize the rights to water and sanitation.

6. In the present report, the Special Rapporteur initially addresses access to water and sanitation services in spheres of life beyond the household (section II). He then outlines how the human rights to water and sanitation apply within public spaces (section III), before considering how States should ensure access to water and sanitation in public spaces in line with the normative content of the rights (section IV). In section V, he addresses the interlinkages of the rights to water and sanitation and other human rights in the context of public spaces and the report concludes with recommendations.

II. Spheres of life beyond the household

7. Although the obligations of States to respect, protect and fulfil the human rights to water and sanitation extend to all persons without discrimination, national policy and practice regarding the progressive realization of those rights has had a tendency to be limited, wholly or mostly, to the implementation of projects aimed at improving access within formal households. However, the Human Rights Committee in its general comment No. 16 (1998) on the right to privacy extended the concept of “home” to a “place where a person resides or carries out his usual occupation”. Equally, in its resolution 72/178, the General Assembly recognized the human rights to water and sanitation and stated that “the human right to safe drinking water entitles everyone ... to have access to ... water and ... the human right to sanitation entitles everyone ... to have ... access to sanitation ... in all spheres of life”.

8. Different definitions can be adopted for spheres of life beyond the household, particularly when looking at relevant global gaps in access to water and sanitation. Those spheres may include spaces where people live that are different from conventional households (streets, prisons, dormitories, refugee camps); places where people work; places where people systematically spend significant time (public spaces, schools, places of worship); and places where people go occasionally and might spend significant time (stores, public transit hubs, health-care facilities, government offices, other public buildings, parks, mass gatherings, restaurants, public buildings). All those spheres of life require that attention be paid to the enjoyment of the human rights to water and sanitation, but they constitute a heterogeneous landscape, differing substantially in terms of needs and appropriate approaches. The following section illustrates this, highlighting some spheres of life requiring particular attention and concerns and initiatives related to them.

A. Spheres of concern for the realization of the human rights to water and sanitation

9. In educational establishments the need to be able to access water and sanitation has been well rehearsed. The World Health Organization/United Nations Children’s Fund (WHO/UNICEF) joint monitoring programme report on access to water and sanitation in schools has, for instance, provided guidance regarding how States should ensure access to water and sanitation, emphasizing that drinking water should be available and should come from an improved source, while sanitation facilities must be single-sex, functional, private, improved and available.³ Access to water and sanitation in schools has also been addressed by the Special Rapporteur, for example during his visit to El Salvador, where he drew attention to the lack of availability of water in rural schools, with responsibility for the provision of water placed on the directors of the school, rather than on the Government (A/HRC/33/49/Add.1, paras. 46–47).

10. The WHO/UNICEF report on health-care facilities also outlines the need for hospitals and clinics to provide access to improved water on the premises, as well as

³ See UNICEF/WHO “Drinking water, sanitation and hygiene in schools: global baseline report 2018”.

improved sanitation, which should include at least one staff toilet, one sex-separated toilet, with facilities for menstrual hygiene management, and one accessible toilet for use by persons with disabilities. The report equally specifies that compliance with the Sustainable Development Goals regarding hygiene means that hand-washing facilities with soap and water should be provided within five metres of toilets.⁴

11. Workplaces have also been considered as spheres of life where water and sanitation should be provided to sufficient standards. Workspaces can be both formal, when they may be established and operated by one's employer, or informal where people may use public spaces to conduct their economic activities. The Committee on Economic, Social and Cultural Rights has made clear that the right to just and favourable conditions of work includes ensuring that water and sanitation are available for all workers and, importantly, has acknowledged that these rights extend also to people working informally.⁵ In addition, the International Labour Organization has published a number of conventions, recommendations and reports, in which it sets out the necessity of providing adequate water and sanitation facilities in workplaces in general and has equally addressed water and sanitation issues in relation to many open workspace industries.

12. The enjoyment of the human rights to water and sanitation has also been well recognized as applicable in prisons and detention facilities. For instance, rule 20.2 of the Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) stipulates that "drinking water shall be available to every prisoner whenever he or she needs it". In his joint communication to Bahrain, the Special Rapporteur raised concerns regarding the prison authorities shutting off water, including drinking water, for up to 36 hours, leading to outbreaks of illness among prisoners.⁶ Furthermore, during his visit to El Salvador he found prison toilets that were simply holes in the floor, which had to be used by 15 to 25 people and which afforded no privacy at all (A/HRC/33/49/Add.1, para. 86).

B. Sustainable Development Goals and the spheres of life beyond the household

13. A number of the Sustainable Development Goals and related targets speak to the need to ensure that water and sanitation services are available in relevant spheres of life. For instance, targets 6.1 and 6.2 respectively require that by 2030 States should "achieve universal and equitable access to safe and affordable drinking water for all" and "achieve equitable sanitation and hygiene for all and end open defecation". By specifying that all people are entitled to benefit from actions to achieve those targets and by stating that access to water must be universal, Goal 6 clearly looks beyond merely addressing access to water and sanitation at the household level. Rather, it requires States to implement actions to improve access for everyone, wherever needed. As part of that commitment, the careful interpretation of other goals and targets, looking at water and sanitation as a cross-cutting issue, clarifies and affirms the commitment of providing access to water and sanitation in various spheres beyond the household.

14. In that regard, target 3.3 of the Sustainable Development Goals requires States to combat "water-borne diseases and other communicable diseases", while in target 3.9 States are called upon to "substantially reduce the number of deaths and illnesses from ... water and soil pollution and contamination". It can be easily recognized that for those targets to be met, it will not be sufficient to focus on the provision of services at the household level. Furthermore, target 4.a requires States to build educational facilities in a way that is "child, disability and gender sensitive" so as to provide a positive learning environment; the related

⁴ See WHO/UNICEF, "Water, sanitation and hygiene in health care facilities: status in low- and middle-income countries and way forward" (2015); and WHO/UNICEF, "WASH in Healthcare Facilities: Global Baseline Report 2019"

⁵ See Committee on Economic, Social and Cultural Rights, general comment No. 23 (2016) on the right to just and favourable conditions of work, paras. 30 and 47 (d).

⁶ UA BHR 4/2018, available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23996>.

indicator includes the proportion of schools with access to basic drinking water, to single-sex basic sanitation facilities and to basic facilities for washing hands. Similarly, target 8.8 holds that States must “protect labour rights and promote safe and secure working environments for all workers”. The vital importance of spheres beyond the household in the development of settlements that are “inclusive, safe, resilient and sustainable” is also recognized (Goal 11). According to target 11.7, to achieve this, States are required to “provide universal access to safe, inclusive and accessible, green and public spaces, in particular for women and children, older persons and persons with disabilities”. The same logic applies in relation to target 1.4, in which States are called upon to ensure that men and women, particularly those who are vulnerable and poor, have access to, inter alia, basic services, without specifying a restriction on access exclusively at the household level. Furthermore, target 2.2 relates to malnutrition and has clear links to access to water and sanitation, including access to water and sanitation in spheres of life beyond the household. By paying special attention to children and adolescent girls in relation to that target, States must necessarily implement actions beyond the household, particularly in educational establishments where children and young people are likely to spend a considerable time.

15. Finally, in the Goals and targets in which an end to discrimination is sought and inclusion and equality promoted, States are arguably also required to ensure the adequate provision of water and sanitation in spheres beyond the household. They include target 5.1, in which an end to “all forms of discrimination against all women and girls everywhere” is called for, and target 10.2, whereby States are required to “empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status”. As will be shown, poor access to water and sanitation in places outside the household can generate considerable inequality and lead to the economic and social disempowerment of numerous marginalized groups, particularly women, persons with disabilities and lesbian, gay, bisexual, transgender and intersex persons. Accordingly, promoting access to water and sanitation facilities in spaces outside the household represents a vital piece of the puzzle in achieving an end to inequality and discrimination.

16. While the recent above-mentioned WHO/UNICEF reports on access to water and sanitation in schools and in health-care facilities are welcome and much needed (although there is room for strengthening a human rights approach), those spheres represent a restricted view of the diverse array of places beyond the household where ensuring access to water and sanitation is essential. Without proper consideration of all the places in which access to water and sanitation is vital for people, not only are people being left behind, but so are spheres of life as well.

17. The Special Rapporteur emphasizes that to achieve universal and equitable access to safe and affordable water and sanitation for all, as stated in the Sustainable Development Goals, it is essential to reflect the importance of the requirements of “universal” and “for all” in policy and practice. That will allow the inclusion of a wide range of spheres beyond the household, in addition to those already under the purview of international organizations and regulated by international instruments.

III. The human rights to water and sanitation in public spaces

A. Concepts

18. Within discourses and policies surrounding public spaces, much emphasis has traditionally been placed upon the physical characteristics of a place, its location, or the ways in which it is accessed, when seeking to determine whether a particular location falls under the rubric of “public space”. Control of property has also been used as a determinant of whether a space is public or not, with only those places under public stewardship being

classified as such.⁷ Other understanding draws upon how a place is used to decide whether it warrants the status of public space, with places that are utilized as communal zones for interpersonal interaction deemed worthy of that title.⁸ Additionally, however, newer, progressive definitions are slowly coming to reflect the reality that public space is a much broader, more nuanced concept than previously recognized. For example, the New Urban Agenda, adopted by the General Assembly in 2016, situates the definition of public space in the outputs that such places are capable of achieving, defining them as “multifunctional areas for social interaction and inclusion, human health and well-being, economic exchange and cultural expression ... and that are designed and managed to ensure human development and build peaceful, inclusive and participatory societies, as well as to promote living together, connectivity and social inclusion.”

19. Those more nuanced definitions more accurately capture the reality of what public spaces are and what they mean to individuals and communities. They reflect the potential of public spaces to be places of participation, association and inclusion that can serve a vital role in society, rather than simply acknowledging their tangible reality, and they implicitly open the door for the consideration of public spaces as zones for the progressive realization of human rights.

20. The present report takes into account elements of the latter definitions relating to access to water and sanitation services under the idea that public spaces are places that facilitate positive social, economic, and cultural effects on individuals, societies and States. However, the Special Rapporteur is of the view that the concept of public space must also recognize the vital role of these places as spheres where people can exercise their human rights and where those rights are respected, protected and fulfilled. By reflecting that element in definitions of public space, policy decisions on those spaces will be required to acknowledge their importance to human rights and, accordingly, proper consideration given in such decisions as to how best to ensure human rights. In national law and policies, States should therefore recognize such places as domains of participation, equality and inclusion, accessible to all, and which may be utilized by all to claim their human rights, including their human rights to water and sanitation.

B. Legislative framework

21. In order for public spaces to be duly recognized as arenas of importance to the enjoyment of the rights to water and sanitation and for concerted measures to be taken towards the progressive realization of those rights, it is critical that legislative frameworks underpinning those rights in that context are in place to ensure that responsibility is taken for achieving those objectives.

22. In his previous report on the regulation of service provision, the Special Rapporteur emphasized the importance of States taking concerted and immediate steps towards the implementation of effective national legal frameworks to implement and regulate the provision of water and sanitation services (A/HRC/36/45). In the present report, he highlights the need to broaden regulatory frameworks, including the obligation to implement regulation of access to services in public spaces.

23. The implementation of effective legislative frameworks in public spaces can assist in addressing the difficulties that are regularly faced when seeking ways to implement or maintain access to water and sanitation. Such difficulties can hamper access or even generate retrogressive effects in the progressive realization of those rights. Public spaces often fall outside the remit of formal water and sanitation providers and those actors are rarely encouraged to include public spaces in their operational mandates, thereby limiting the availability of services. Furthermore, public authorities, and local authorities in

⁷ See Lidia Mierzejewska, “Appropriation of public urban space as an effect of privatisation and globalisation”, *Quaestiones Geographicae*, vol. 30, No. 4 (2011).

⁸ See Hare Kılıçaslan, “Urban metaphors in the interaction of child with public space”, *Rupkatha Journal on Interdisciplinary Studies in Humanities*, vol. 10, No. 3 (2018).

particular, are sometimes pressured to provide water and sanitation services in public spaces, but lack the means or power to force providers who operate such spaces to do so.

24. Evidence of effective regulation relating to the provision of water and sanitation services in public spaces is generally lacking. However, some Governments have developed and implemented frameworks to ensure access to water and sanitation in such spaces. In the Philippines, for example, pursuant to a presidential decree, specific regulations are in place that govern the design, availability and accessibility of water and sanitation in bus stations.⁹ Pursuant to those regulations, the local health officers are mandated to oversee the implementation and enforcement of the regulations in their area. The regulations also specify the standards of provision required by the legislation and set out penalties for failure to adhere to them

25. However, consistency regarding the introduction of legislative and regulatory frameworks relating to services in public spaces is troublingly absent. In some States, those providing water and sanitation services in public spaces are left to simply self-regulate their service provision. Self-regulation internalizes oversight of activities, allowing providers to judge their own actions and inactions against internally determined criteria without independent supervision. In Sri Lanka, water and sanitation provision in public spaces is implemented by local bodies pursuant to local government ordinances. Water provision is then regulated through self-monitoring and quality assurance processes, which utilize the WHO standards for drinking-water quality.¹⁰ In other instances, regulations are introduced in the form of non-binding administrative guidelines. In India, the Ministry of Railways has developed a manual for standards and specifications for railway stations, which, it notes, provides direction on many aspects of railway station construction and renovation, including access to water and sanitation, but without imposing any binding requirements on concessionaires.¹¹

26. Where regulatory regimes fail to provide for the essential elements of access to services in public spaces, such as compliance monitoring, those weaknesses may have an impact on the realization of the human rights to water and sanitation. Regulations analysed for the present report are, for instance, largely silent on key human rights principles, such as affordability and non-discrimination, and few contain provisions for monitoring implementation. Even where regulations do follow human rights values, this is often done in a patchwork manner, containing, for example, rules regarding accessibility but not affordability,¹² or protecting one group from discrimination in access, but not others. Typically, regulations aim to ensure some level of parity between men's and women's access to public toilets, but in none that the Special Rapporteur has found is the need discussed for any unisex or third-gender toilets to be constructed. Accordingly, despite there being some examples of regulatory frameworks governing access to water and sanitation in public spaces, no State seemingly yet regulates such access from a human rights perspective, constructing their regulations around the normative content of the rights to water and sanitation.

C. Accountability framework

27. An absence of national standards against which provision can be judged, or simply a failure to uphold those standards, can severely undermine the enjoyment of the rights to water and sanitation in the context of public spaces by limiting the potential for actors to be held accountable for their actions and failures. In Kenya, for example, while national

⁹ See Code of Sanitation of the Philippines, Presidential Decree No. 856, chapter IX: Rest areas, bus stops, bus terminals and service stations.

¹⁰ See submission from Sri Lanka, available from www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/PublicSpaces.aspx.

¹¹ Ministry of Railways, Government of India, *Manual for Standards and Specifications for Railway Stations*, vol. 1 (2009).

¹² See, Newfoundland and Labrador, "Public market guidelines" (September 2011); and Housing and Land Use Regulatory Board, Philippines, "Implementing rules and regulations to govern the processing of applications for locational clearance of markets (as amended), B1 (a) and (b)".

guidelines have been established to limit the tariffs levied by small independent providers and water kiosks, on which many people rely to satisfy their water needs in public spaces, those standards are not applied to informal vendors who cannot therefore be held accountable for breaches.¹³ Furthermore, the State authorities, while bearing the primary duty for human rights breaches arising from the actions of independent water vendors, are not held accountable for their non-compliance.

28. In his previous report on the concept of accountability within the context of the human rights to water and sanitation, the Special Rapporteur highlighted the essential importance of ensuring accountability if States are to progressively realize those rights (A/73/162). In achieving that objective, it is understood that the concept of accountability contains a number of distinct, yet interrelated dimensions that must each be achieved in the context of enabling access to water and sanitation in public spaces.

29. The first dimension requires that all actors partaking in the provision of water and sanitation services in public spaces have clearly defined roles, responsibilities and performance standards. That is crucial in the light of the commonly found fragmentation of responsibility for water and sanitation in public spaces. Although responsibility for the provision of water and sanitation facilities in public spaces was traditionally held by States, particularly local authorities,¹⁴ in recent years the delegation of all or part of this role to private providers or non-governmental organizations (NGOs) has increased.¹⁵ Furthermore, it is now common for different aspects of the operation and maintenance of public water and sanitation facilities (i.e. construction, cleaning, restocking) to be a responsibility shared between different agencies, which may often undermine the clear accountability of the services.¹⁶ In India, for example, the World Bank has identified private leasing as being one of the common forms of public toilet operation, where toilets are constructed using municipal funds but then operated by the private sector or NGOs, which charge a fee.¹⁷

30. Where the authorities have complete control of water and sanitation facilities in public spaces to private and non-governmental entities, the ability to determine who has responsibility for their operation can be hampered by the veil of corporate responsibility, as well as potential corporate events, such as takeovers, liquidation and the appointment of administrators. In Nairobi, city officials gave complete control of the city's public toilets to the Nairobi Central Business District Association. However, following the collapse of the association, the issue of who then owned and controlled the toilets became marred by confusion, with the Chair of the organization suggesting that a former Chair might have sold them to other private entities, but noting that no documentation had been provided to that effect.¹⁸

¹³ See Sohel Ahmed and others, "Cooking up a storm: community-led mapping and advocacy with food vendors in Nairobi's informal settlements", International Institute for Environment and Development working paper (June 2015).

¹⁴ See Maureen Flanagan, "Private needs, public space: public toilets provision in the Anglo-Atlantic patriarchal city: London, Dublin, Toronto and Chicago", *Urban History*, vol. 41, No. 2 (May 2014).

¹⁵ See Transparent Chennai, "Public sanitation management models: providing toilets for the urban poor in Chennai", (November 2012); Sjaak van der Geest and Nelson Obirih-Opareh, "Getting out of the shit: toilets and the daily failure of governance in Ghana", *Bulletin de l'APAD*, (2002); and F. Khan and others, "Promoting entrepreneurship and affordable financing for uptake of improved toilets in Nigeria", 41st Water Engineering and Development Centre international conference, Nakuru, Kenya (July 2018).

¹⁶ See Adriana Allen, Pascale Hofmann and Hannah Griffiths, "Moving down the ladder: governance and sanitation that works for the urban poor" in *Sanitation Services for the Urban Poor: Partnerships and Governance*, J. Verhagen and others, eds. (The Hague, IRC International Water and Sanitation Centre, 2010).

¹⁷ See F. Khan, N. Dosumu and S. Otusanya, "The role of entrepreneurs in provision and sustainable operations of sanitation facilities in public places in Nigeria".

¹⁸ See Lee Mwititi, "Cashing in on public toilets: what Kenya can learn from Tanzania" *Standard Digital* (2nd February 2016). The idea of privatizing public toilets has also been discussed by the Borders Local Authority in Scotland, see www.thesouthernreporter.co.uk/news/council-in-talks-over-privatising-borders-public-toilets-1-4832185 and www.bbc.co.uk/news/uk-scotland-south-scotland-46234883.

31. Where the operation of water and sanitation services is delegated to a private actor by the State, it is commonly achieved through a contract that may or may not include provision for water and sanitation in public spaces. Since few contracts include this provision, private providers are at liberty to refuse to facilitate such services. Even when private providers are obliged to provide services in public spaces, the standards with which they must comply may also be unclear, because the terms of their contracts may not always be publicly disclosed.¹⁹ Equally, the fragmentation of responsibility through privatization generates significant concerns, as human rights provisions do not directly bind them and they are often under no direct legal duty to abide by them, unless they are required to do so under the regulatory framework of the State in question.

32. Secondly, in order to comply with the principle of accountability, water and sanitation providers must be answerable to the beneficiaries of their services and be required to provide explanations and reasoned justifications for their actions, inactions and decisions to the people affected by them, as well as the public at large (A/73/162, para. 34). This dimension of accountability is commonly hindered by a failure of those in control of public spaces to provide mechanisms to allow people to complain about breaches of their human rights to water or sanitation, or when they only do so in exclusionary and inaccessible ways. In Sacramento, United States of America, no dedicated mechanisms were available to allow homeless people to challenge the decision taken by the city authorities to shut public toilets so as to force them to leave the city, with the issue instead having to be raised by the previous Special Rapporteur and local NGOs.²⁰ In New York City, although a procedure is in place to allow people to raise complaints about damaged or dirty automatic public toilets or to request the placement of a new public toilet, it is only accessible online, which is likely to exclude people experiencing extreme poverty and homelessness from the accountability process.

33. In other instances, independent regulators and ombudspersons covering water and sanitation services rarely have their mandates extended to cover public space provision, thus placing these services in a grey area in terms of answerability. Even where complaints have been raised with ombudspersons in this matter, the lack of specific national standards leaves these claims to be addressed through breaches of other standards, such as those governing equality, rather than those based upon the normative content of the human rights to water and sanitation. In the United Kingdom of Great Britain and Northern Ireland, a complaint was raised with the Local Government and Social Care Ombudsman regarding a city council charging fees for the use of public toilets, but not for urinals, meaning women had to pay, while men did not. The matter was decided in favour of the complainant; however, the decision was based on the practice in question breaching national gender discrimination legislation, rather than on specific standards for water and sanitation in public spaces.

34. Thirdly, States must have the ability to ensure compliance with standards through enforceability, a notion which comprises the establishment of bodies capable of overseeing compliance, as well as the provision of forums in which people may bring challenges regarding the decisions or inactions of the actor concerned and which are capable of satisfying claimants' right to an effective remedy (A/73/162, para. 59). Without the establishment of an adequate accountability framework, claims to ensure rights are respected, protected and fulfilled in this context become significantly harder, if not impossible, to make effectively. Consequently, the rights to water and sanitation in public spaces may be breached with impunity and those rights will go unfulfilled. Well-functioning systems of accountability must explicitly recognize that the rights to water and sanitation apply in public spaces and include implementation mechanisms to assist people to claim those rights and make complaints when they are breached.

¹⁹ See submission from Mozambique.

²⁰ See National Law Center on Homelessness and Poverty, "Human rights to human reality. A 10-step guide to strategic human rights advocacy" (2014).

IV. Complying with the human rights to water and sanitation in public spaces

35. In order for States to realize their human rights obligations to ensure water and sanitation in public spaces, they must provide such services in line with the normative content of the rights. Although the human rights to water and sanitation do not prescribe fixed standards, understanding that the enjoyment of those rights is fundamentally contextual, they provide a framework that can support States and the international agencies in establishing more prescriptive levels of service. Similarly to the definition in the WHO/UNICEF joint monitoring programme for access to water, sanitation and hygiene at the household level, in schools and in health facilities, the normative content of the rights to water and sanitation, developed in the following sections, may provide a reference for the definition of different levels of service in public spaces, including the level supposed to comply with the expectations set out in the Sustainable Development Goals. The further development of those standards can be a platform for monitoring access to facilities in public spaces and guide States, and in particular local governments, to implement services that meet human rights requirements, after identifying the territories in the specific city or town where those services are needed.

A. Availability

36. In order for the provision of water and sanitation in public spaces to meet the requirement that services must be available, States are obliged to provide a supply of water to such places that is both continuous and sufficient for personal needs, such as for personal sanitation and drinking. In situations where public spaces are utilized as dwellings, for instance by people who are homeless, States are also obliged to ensure a level of access that is adequate to fulfil domestic needs, including for cleaning property and clothes and preparing food.²¹

37. A lack of continuous access to safe water for drinking and personal hygiene in public spaces generates many impacts, such as the risk of dehydration, and exacerbates the effects of exposure faced by people who live and work in those places.²² As was noted in the Special Rapporteur's communication related to Cork, Ireland, the lack of availability of services in public spaces, such as drinking fountains or personal hygiene stations, forced people who were homeless to rely on requesting access to those basic services from private citizens or businesses. However, they were often refused access, which proved demeaning for them (see A/HRC/31/79, IRL 2/2015).

38. Where toilets are not available in public spaces, people who live and work there commonly have to make a choice between waiting for long periods without urinating or defecating, or resort to open defecation or urination to satisfy their vital needs. In Ecuador, a lack of public toilet facilities available for street vendors, who often suffered from diarrhoea owing to the unsanitary conditions on the street or in their own households, led them to avoid using the toilet for many hours. This caused them eventually to suffer from long-term gastric conditions.²³

39. In Dhaka, the authorities have been working towards improving the city's existing public toilets, while continuing to increase availability. As of 2011, Dhaka only had 47

²¹ See Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water, para. 12 (a).

²² Christine DeMyers, Chloe Warpinski, and Amber Wutich, "Urban water insecurity: a case study of homelessness in Phoenix, Arizona", *Environmental Justice*, vol. 10, No. 3 (2017); Bigboy Ngwenya and others, "Heat stress and adaptation strategies of outdoors workers in the City of Bulawayo, Zimbabwe", *Journal of Community Medicine and Public Healthcare*, vol. 5, No. 1 (2018).

²³ Sergio Ferragut and Georgina M. Gómez, "From the street to the store: the formalization of street vendors in Quito, Ecuador" in *Securing Livelihoods: Informal Economy Practices and Institutions*, Isabelle Hillenkamp, Frédéric Lapeyre and Andreia Lemaître, eds. (Oxford, Oxford University Press, 2013).

public toilets, despite the population of the city being around 7 million, around 5.5 m of whom stay outdoors for between 5 and 8 hours a day, and many of the 47 public toilets were wholly unusable.²⁴ In partnership with NGOs and corporate sponsors, the city committed to renovating 37 of the existing toilets and building 100 additional facilities. The new toilets are provided with safe drinking water, have separate male and female areas, hand-washing facilities, showers and reliable electricity connections, and are stocked with sanitary products for women.²⁵ In designing the project, attention was paid to the needs of people on very low incomes who are frequent users of water and sanitation facilities in public spaces.

40. When seeking to ensure the availability of water and sanitation in public spaces, the precise quantitative features of provision will depend upon the circumstances on the ground, including the type of space being considered and its size, the usage of that space, in terms of the numbers of people present, the demographics of users and the reasons for their attendance, as well as the length of time people typically remain within a particular space (A/HRC/12/24, paras. 70–71). Having considered these and other pertinent factors, it is essential that States ensure the construction and maintenance of water and sanitation facilities in those spaces in line with the needs of all users and in sufficient quantities to ensure ease of access. Particularly in relation to the availability of sanitation, States must ensure the provision of toilets and related services, such as hand-washing and menstrual hygiene amenities, in sufficient numbers to guarantee that people are not required to wait for unreasonably long periods to gain access to them, or to rely on favours from local residents or commerce (ibid.). A key issue is the number of facilities required in each space, which is often dependent on how women differ from men in their use of facilities (A/HRC/33/49, para. 47). Numerous studies have highlighted the fact that women must spend around twice as much time accessing public toilets as men and must also access sanitation facilities more frequently.²⁶

41. In the United States, considerable efforts have been made at a legislative level towards preventing discrimination against women in access to water and sanitation in public spaces. For example, in Texas the building code of 1993 notes that the relevant ratio for new buildings must be “not less than 2:1 women’s to men’s restrooms in facilities where the public congregates”.²⁷ Equally, in Wisconsin parity laws require the owners of a facility where the public congregate “to ensure that women have a speed of access to toilets ... that equals the speed of access that men have to toilets and urinals ... when the facility ... is used to its maximum capacity.”²⁸

B. Accessibility

42. States should take concerted measures to ensure and maintain physical accessibility to public water and sanitation facilities. Ensuring that water and sanitation facilities in public spaces are physically accessible requires that facilities in those places be available for use by all people at all times and that the facilities are suitably located within the public

²⁴ See WaterAid, “Female-friendly public and community toilets: a guide for planners and decision makers” (2011); and Tariq Bin Yousuf and Khairul Islam, “Improvement of public toilet situation in Dhaka City”, Australian Water Association and World Toilet Organisation, World Toilet Summit 2017, available from www.awa.asn.au/documents/World_Toilet_Summit_Abstracts.pdf.

²⁵ See WaterAid, “Female-friendly public and community toilets: a guide for planners and decision makers”.

²⁶ See Sheila Jeffreys, “The politics of the toilet: a feminist response to the campaign to ‘degender’ a women’s space”, *Women’s Studies International Forum*, vol. 45 (July–August 2014); Kathryn H. Anthony and Meghan Dufresne, “Potty parity in perspective: gender and family issues in planning and designing public restrooms”, *Journal of Planning Literature*, vol. 21, No. 3 (February 2007); and Margaret L. Schmitt and others, “Making the case for a female-friendly toilet”, *Water*, vol. 10, No. 9 (September 2018).

²⁷ Texas Health and Safety Code, Health & Safety § 341.068. Restroom availability where the public congregates.

²⁸ Wisconsin State Legislature, Regulation of Industry, Buildings and Safety, ch. 101 at 101.128.

space and designed so they can be accessed safely and securely.²⁹ That includes consideration of the period when facilities are open, since many public toilets close at night, which is problematic for people who rely exclusively on them.

43. A particularly salient consideration that must be borne in mind when determining how to guarantee accessibility is the promotion of access to groups that are usually marginalized and who live in vulnerable situations, including persons with disabilities, the elderly, children and members of the lesbian, gay, bisexual, transgender and intersex communities. In order to be deemed physically accessible, water and sanitation facilities in public spaces must meet the needs of all of those groups on an equal footing with everyone else.

44. Accessibility concerns are, for instance, highly prevalent for members of the transgender community. Studies on the experiences of people who are transgender show that they are commonly denied access to public toilets which match their gender identity, forcing them to use those that match the gender they were assigned at birth. That denial of access can have a negative effect on their mental health and may put them at risk of attack and abuse.³⁰ To combat that risk, a number of States have sought to ensure greater accessibility for marginalized people seeking access to public toilets. In Canada, an act to amend the Canadian Human Rights Act and the Criminal Code, passed in 2017, facilitates the prohibition of discrimination based on “gender identity or expression” thereby enabling transgender people to utilize public toilets that match their gender identity.³¹ In Nepal, third-gender public toilets have been introduced to provide facilities for transgender and non-binary people, and are preferred to gender-neutral toilets because the complete exclusion of men in third-gender toilets helps to promote the safety of transgender and non-binary users.³² Studies in relation to the Nepali experience note that users of third-gender public toilets in Kathmandu are broadly satisfied by the facilities, particularly when they are placed in public locations, such as near bus stops, as it is felt that decreases the risk of discrimination and attacks.³³

45. Equally, persons with disabilities often struggle to find water and sanitation facilities that are appropriate to meet their needs, which greatly limits their ability to utilize public spaces and engage in social activities and is particularly worrying for homeless persons with disabilities.³⁴ In relation to increasing the accessibility of public toilets for persons with disabilities, authorities in both the United Kingdom and Australia have introduced “changing places” toilets in public spaces, which are specifically designed and built for people requiring a high level of assistance when using the toilet and contain all the equipment needed to ensure persons with severe disabilities can use toilets safely and with dignity.³⁵ In 2006 in the United Kingdom, Nottingham Council installed a “changing places” toilet in the city centre. It is noted that this toilet allows persons with significant disabilities to make use of the city’s amenities, without the barrier of being unable to access public toilet facilities that meet their needs.³⁶

²⁹ See Committee on Economic, Social and Cultural Rights, general comment No. 15, para. 12 (c) (i).

³⁰ See Sandy E. James and others, *The Report of the 2015 US Transgender Survey* (December 2016). See also submission from the International Commission of Jurists.

³¹ See an Act to amend the Canadian Human Rights Act and the Criminal Code (S.C. 2017, c. 13), s. 3 (1).

³² See C. Benjamin and A. Hueso, “LGBTI and sanitation: what we know and what the gaps are” 40th Water Engineering and Development Centre international conference, Loughborough, United Kingdom (2017).

³³ Paul Boyce and others, “Transgender-inclusive sanitation: insights from South Asia”, *Waterlines*, vol. 37, No. 2 (April 2018).

³⁴ See Rob Kitchin and Robin Law, “The socio-spatial construction of (in)accessible public toilets”, *Urban Studies*, vol. 38, No. 2 (February 2001); Jo-Anne Bichard, Julianne Hanson, “Cognitive aspects of public toilet design”, conference paper (2005); and Yasemin Afacan and Meltem O Gurel, “Public toilets: an exploratory study on the demands, needs and expectations in Turkey” *Environment and Planning B: Urban Analytics and City Science*, vol. 42, No. 2 (January 2015).

³⁵ Astor Bannerman, “How to achieve an accessible changing places compliant room layout” (2017).

³⁶ See www.changing-places.org/install_a_toilet/case_studies/nottingham_city_council.aspx.

C. Affordability

46. The provision of water and sanitation services in public spaces should be affordable for users. In many States, it is typical for fees to be charged to users in order to allow them access to public toilets and water points, with these fees often being utilized to offset the costs of operating and maintaining the facilities. Some public spaces are poorly provided with water mains or sewerage, making the provision of such facilities more costly than it would be in residential areas or business districts. There is room for creativity in the choice of technology involved to keep costs under control. One example is the use of ventilated improved pit latrines by the United States National Parks Service in Yosemite National Park, which were originally developed for low-income groups in Zimbabwe.³⁷ While human rights law does not preclude States from charging for access, it obliges them to ensure that any fees which are charged are economically viable for all users and do not compromise users' ability to realize other human rights.³⁸

47. It is clear that many people who rely on public spaces for their access to water and sanitation simply do not have the necessary means to pay for access fees. Considering their financial vulnerability and the difficulties in implementing individual subsidies for access, the requirement to ensure affordability should encourage States either to significantly reduce the cost of access fees to levels that are affordable for all or, ideally, remove access fees for those users altogether and find alternative methods of ensuring the sustainability of provision.

48. In Paris, self-cleaning toilets in public spaces such as roads, parks and squares have been free to use since 2006 when the authorities renegotiated contracts with operators of the facilities in order to reduce costs and therefore promote sustainability.³⁹ In India, the NGO Sanitation and Health Rights in India has sought to mitigate the prevalence of open defecation in the country through the construction of public toilets, particularly in rural areas that have been neglected by government initiatives. These toilets with 16 cubicles and a biogas digester cost US\$ 30,000 to construct but no user fees are charged, in order to encourage use, with construction and maintenance instead being inventively funded by the human waste generated by them. The waste produces energy to power a generator, which in turn runs a water filtration pump. Sanitation and Health Rights in India sells around 100,000 litres of filtered water per month, which generates enough income to guarantee the maintenance and upkeep of the toilets, as well as the construction of other facilities.⁴⁰

D. Quality and safety

49. States must provide and maintain water and sanitation facilities in public spaces to proper standards of cleanliness and technical safety. Sanitation amenities must be hygienic, properly cleaned and maintained, and safe for users. Efforts must also be taken to keep humans, animals and insects away from the human excreta produced in public toilets, so as to prevent the spread of disease. Water provided in public spaces must be safe and free from pathogens and harmful impurities that might affect users' health.⁴¹

50. In public spaces, failure to provide access to water and sanitation that is safe and of sufficient quality can have a highly detrimental impact on health and hygiene outcomes. These negative effects are, for instance, noticeable in places that are utilized by traders for the sale of food to the public, where the absence of good-quality water and safe sanitation can be hazardous to both vendors and their customers alike. In Ghana, market traders sometimes only have access to poor quality and unhygienic water and toilets in the vicinity

³⁷ Sandy Cairncross and Richard Feachem, *Environmental Health Engineering in the Tropics* (Chichester, United Kingdom, John Wiley and Sons, 1983).

³⁸ See Committee on Economic, Social and Cultural Rights, general comment No. 15, para. 12 (c) (ii).

³⁹ See, for example, <http://news.bbc.co.uk/1/hi/world/europe/4654694.stm>.

⁴⁰ See www.pri.org/stories/2016-07-05/doctoral-student-building-public-toilets-india-also-provide-clean-drinking-water and www.bbc.co.uk/news/business-41680867.

⁴¹ See Committee on Economic, Social and Cultural Rights, general comment No. 15, para. 12 (b).

of their stalls. One study found that, as a result, all the traders interviewed suffered from nearly constant diarrhoea.⁴² Equally, a lack of safe, potable water means that traders must often either resort to using unsafe water to clean utensils and foodstuffs, or simply not use water at all, both of which practices have the potential to contaminate food with dangerous pathogens, thus increasing the likelihood of the vendors and their customers falling ill.⁴³ In Taiwan, food traders in night markets are often not provided with potable water for cleaning, meaning they are forced to use only paper towels to clean themselves and their equipment, which has been identified as potentially increasing the risk of food-borne illnesses being spread to customers.⁴⁴

E. Acceptability, privacy and dignity

51. In the context of access to water and sanitation in public spaces, the provision of facilities that meet the requirements of acceptability, privacy and dignity means that they must be designed, constructed and maintained in ways that conform to the personal and cultural needs of users. Many communities and cultures have particular and important norms regarding sanitation practices and these can vary between and within cultures. Accordingly, determining how to provide culturally acceptable water and sanitation facilities in public spaces may require States to engage in meaningful consultations with target populations regarding their requirements. Privacy and dignity should always be ensured, in particular by considering the needs of vulnerable and marginalized users, including women and people who are transgender, when determining the design of water and sanitation facilities in public spaces.

52. Failure to provide public facilities which meet the cultural needs of users and which ensure that they are provided with privacy and dignity can minimize usage by groups who feel unsafe as a result. This was seen in the Indian state of Telangana, where despite the city authorities in Warangal increasing the number of public toilets and bathing facilities available to women, actual use was considerably lower than expected. As a result, the authorities interviewed 197 local women, including 21 from diverse backgrounds, regarding their opinions of the facilities, their specific needs and their preferences. Many of the women found the facilities to be inappropriately located, had men in or around the entrances, causing distress, or had male caretakers. The interviews determined that women wanted features such as women-only blocks, access from main thoroughfares and a choice between squat and seat toilets. These conclusions were used to design and construct new facilities that were specific to the needs of the women in the area.⁴⁵

V. Interlinkages with other human rights

53. The well-acknowledged indivisibility, interdependence and interrelatedness of human rights are strongly demonstrated in the context of access to water and sanitation in public spaces. Where the rights to water and sanitation are not adequately respected, protected and fulfilled within public spaces, significant negative impacts on the enjoyment of other rights can be seen.⁴⁶

⁴² See Laura Alfors, “Occupational health and safety for market and street traders in Accra and Takoradi, Ghana” (December 2009).

⁴³ See Sally Roeber, “Informal economy monitoring study sector report: street vendors” (April 2014); and Sohel Ahmed and others, “Cooking up a storm: community-led mapping and advocacy with food vendors in Nairobi’s informal settlements”.

⁴⁴ Yi-Mei Sun, Shu-Tai Wang and Kuo-Wei Huang, “Hygiene knowledge and practices of night market food vendors in Tainan City, Taiwan”, *Food Control*, vol. 23, No. 1 (January 2012).

⁴⁵ See WaterAid, “Female-friendly public and community toilets: a guide for planners and decision makers”.

⁴⁶ See Priscila Neves-Silva, Giselle Isabelle Martins and Léo Heller, “Human rights’ interdependence and indivisibility: a glance over the human rights to water and sanitation”, *BMC International Health and Human Rights*, vol. 19 (2019).

54. It is widely recognized that water and sanitation are key determinants of health and that the human rights to water, sanitation and adequate health are intrinsically linked. Without appropriate facilities for the enjoyment of their rights to water and sanitation, people living and working in public spaces may be at greater risk of experiencing significant negative health outcomes.⁴⁷ Poor accessibility of water and sanitation in public spaces can exacerbate pre-existing health problems, for instance where the poor design of facilities leads to persons with disabilities being physically injured when trying to use them. Where people lack access to water and sanitation in public spaces, they may also develop mental health problems, as an inability to ensure personal hygiene can lead to negative self-image and people, particularly those who are homeless and lack alternative sanitation options, regarding themselves as intrinsically dirty.⁴⁸ Furthermore, a lack of adequate water and sanitation in public spaces has been shown to potentially affect the ability of those who live and work in public spaces to access health care. For example, a study in Brazil has documented cases where people who are homeless have been refused access to hospitals owing to their appearance, because they have been unable to access sanitation facilities in public spaces.⁴⁹

55. The inadequate provision of water and sanitation in public spaces can equally impact the enjoyment of the right to work. The right to work applies to all people across every employment sector, including those working informally, and guarantees the rights, inter alia, not to be excluded from work opportunities and to just and favourable conditions of work, in particular to safe working conditions.⁵⁰ The link between the right to work and the rights to water and sanitation is reflected in the obligations placed on States pursuant to their duty to ensure that everyone experiences just and favourable working conditions, which obviously also applies to people who work in public spaces. In satisfying those obligations, States are required to introduce policies which enable healthy working environments, including by ensuring that workers have access to safe drinking water and adequate sanitation facilities that also meet women's specific hygiene needs.⁵¹

56. The link between a lack of water and sanitation in public spaces and the enjoyment of the right to work can also arise from the negative impact inadequate water and sanitation pose to the health of workers in public spaces, often meaning they have to take time off to recover. In the context of informal and self-employment, being unable to work inevitably leads to a complete loss of earnings over the period of convalescence.⁵² Furthermore, a lack of adequate water and sanitation in public spaces may be to the detriment of the right to not be excluded from opportunities by decreasing the prospects of obtaining employment. For people who are homeless, in particular, a lack of places in which to maintain personal hygiene may degrade their appearance, which has been shown to make it more challenging to obtain employment.⁵³

57. As shown throughout the present report, the failure of States to ensure the adequate provision of water and sanitation in public spaces has a particularly negative and often disproportionate impact on women and their enjoyment of a great number of their human rights. Accordingly, a lack of adequate water and sanitation in public spaces may infringe women's right to non-discrimination. In order to meet their obligations under the Convention on the Elimination of All Forms of Discrimination against Women, States must take a number of steps, including ensuring that they and others do not engage in acts that

⁴⁷ Ibid.

⁴⁸ See Christine DeMyers, Chloe Warpinski and Amber Wutich, "Urban water insecurity: a case study of homelessness in Phoenix, Arizona".

⁴⁹ See Priscila Neves-Silva, Giselle Isabele Martins and Léo Heller, "'We only have access as a favor, don't we?' The perception of homeless population on the human rights to water and sanitation", *Reports in Public Health*, vol. 34, No. 3 (2018).

⁵⁰ See Committee on Economic, Social and Cultural Rights, general comment No. 23 (2016) on the right to just and favourable conditions of work.

⁵¹ Ibid., para. 30.

⁵² Divya Rajaraman, Sandra M. Travasso and S. Jody Heymann, "A qualitative study of access to sanitation amongst low-income working women in Bangalore, India", *Journal of Water, Sanitation and Hygiene for Development*, vol. 3, No. 3 (September 2013).

⁵³ Inner City Law, "No place to go. An audit of the public toilet crisis in Skid Row" (June 2017).

would disadvantage women or cause them to have rights outcomes that are inferior to those of men.

58. Without access to adequate water and sanitation facilities in public areas, those who require use of them must seek alternatives, which might include open defecation or washing in, or drinking from, public fountains. However, those who undertake such practices can find, and often have found, themselves criminalized as a result.⁵⁴ Accordingly, in the absence of appropriate water, sanitation and hygiene facilities, homeless people and people who utilize and work in public spaces are left with little choice but to break legal prohibitions in that regard (A/HRC/21/42, paras. 41–42). Numerous instances of laws that subject people to criminal sanctions for fulfilling their water and sanitation needs, even in the absence of alternative options, are evident around the world⁵⁵ and the effects of these laws are evident.⁵⁶ A survey conducted in San Francisco, United States, in 2016 found that the police had contacted 74 per cent of homeless respondents in the previous year for a so-called quality of life offence, which includes public urination and bathing.⁵⁷

59. There is a recognition that such laws breach the human rights of those people who are forced into breaking them because of the lack of proper water and sanitation facilities. In the case of *Pottinger v. City of Miami*, it was held in relation to the arrest of homeless people engaging in “life-sustaining activities”, such as public urination and bathing, in the absence of public facilities, that “the City’s practice of arresting homeless individuals for the involuntary, harmless acts they are forced to perform in public is unconstitutional because such arrests are cruel and unusual in violation of the eighth Amendment [and] reach innocent and inoffensive conduct, in violation of the due process clause of the fourteenth Amendment”.⁵⁸

60. The effects caused by a lack of adequately available water and sanitation facilities in public spaces may also have a corollary effect on the enjoyment of many participatory rights, such as freedom of assembly, freedom of movement, the right to take part in cultural life and the right to manifest one’s religion, which are often exercised in public spaces through gatherings, protests and processions. People have a right to utilize public spaces for these purposes; however, ensuring their ability to do so requires that they be able to have their rights to water and sanitation fulfilled during the course of their activities.

VI. Conclusions and recommendations

61. **Access to water and sanitation in many spheres of life beyond the household is an essential element of the enjoyment of the human rights to water and sanitation. However, there is often an evident neglect of the provision and promotion of these vital services in such places. Domestic legislation and policy regarding water and sanitation are, more often than not, focused only on improving access at the household level, while spheres beyond the household are rarely on the radar of national or local governments, service providers or the regulators whose role is to ensure that the provision of those basic services complies with human rights standards.**

62. **As a result of that neglect, potential violations of international human rights occur all too frequently and disproportionately impact members of vulnerable and marginalized groups, such as homeless people, informal workers in public spaces and**

⁵⁴ Robert Hartmann McNamara, Charles Crawford and Ronald Burns, “Policing the homeless: policy, practice, and perceptions”, *Policing: An International Journal of Police Strategies & Management*, vol. 36, No. 2 (2013).

⁵⁵ See, for example, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23375>.

⁵⁶ See P. Scott, M. Sohail and S. Cavill, “Urination needs and practices away from home: where do women go?”, 40th Water Engineering and Development Centre international conference, Loughborough, United Kingdom (2017).

⁵⁷ Coalition on Homelessness, San Francisco, “Punishing the poorest. How the criminalization of homelessness perpetuates poverty in San Francisco” (2015).

⁵⁸ See <https://law.justia.com/cases/federal/district-courts/FSupp/810/1551/1500109/>.

persons deprived of their liberty. The lived realities of these groups mean they often have a far greater need for access to water and sanitation in spheres of life beyond the household and, consequently, when access is unavailable or otherwise inadequate, the effects felt by them can be severe. Inadequate access to water and sanitation in places outside formal households can have a negative impact on a multifarious range of economic, social, cultural and political outcomes, affecting health, educational and employment prospects, and access to social and communal opportunities. Each of those is, in and of itself, a potential breach of human rights arising out of the breach of the human rights to water and sanitation.

63. The failure of States to include spheres of life beyond the household within their water and sanitation policy and planning is inconsistent with the commitments they have made to the Sustainable Development Goals, which reach towards the fundamental objective of creating equitable and poverty-free communities by 2030, ensuring that “no one is left behind”. As noted, if they are to be achieved, many of the Goals and related targets clearly require action to facilitate access to water and sanitation services in public spaces and the 2030 Agenda for Sustainable Development represents unambiguous recognition that it is insufficient for States to implement actions that do not reach the full spectrum of people and spaces within their jurisdictions. That includes those who may live, work in or otherwise utilize spheres of life beyond the household.

64. In particular, in the present report the Special Rapporteur has highlighted the vital relevance of public spaces, such as parks, plazas, streets, markets and transport hubs, in enabling people to access their human rights to water and sanitation. Such spaces, as zones accessible to all, are lifelines for numerous people and, accordingly, must be given due recognition in the water and sanitation policies of States. That requires concerted action from national and local governments, service providers and regulators in breaking down barriers to access and clearly identifying the roles and responsibilities of all actors involved in provision.

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

(a) States include water and sanitation in spheres of life beyond the household, and particularly in public spaces, in their policies, plans and implementation strategies, with a view to ensuring access which complies with the normative content of the human rights to water and sanitation and the principles of human rights;

(b) States deliver recommendations to local governments setting out how to determine which public spaces require the provision of water and sanitation services and what level and type of provision is required. Those determinations should be made in consultation with the users of such spaces, take into account the nature of the usage of a particular space and specify how implementation should comply with the human rights to water and sanitation;

(c) International monitoring bodies associated with the Sustainable Development Goals include a broader range of spheres of life beyond the household in their assessments and establish methodologies to define levels of services in those spaces compatible with the 2030 Agenda for Sustainable Development and the human rights framework. In particular, special care must be taken to ensure that the data includes all relevant groups;

(d) International human rights treaty mechanisms and bodies, including but not limited to treaty monitoring bodies and the universal periodic review, must include public spaces and other relevant spheres of life beyond the household in their assessments and monitoring of the enjoyment of human rights, both in specific States and globally.