



Independent Expert on the issue of human rights obligations related to
safe drinking water and sanitation, Ms Catarina de Albuquerque

Human Rights Council, 12th session

Statement

16 September 2009

Excellencies, distinguished delegates, ladies and gentlemen, I am pleased to be here today to present the activities undertaken in accordance with my mandate, including reports I have submitted to this Council.

Starting with the country missions, since I was last here, I have undertaken two of them, to Costa Rica and to Egypt. The full report on Costa Rica has been submitted to this Council, and a preliminary note on the mission to Egypt has also been submitted.

La misión a **Costa Rica** tuvo lugar del 19 al 27 de marzo de 2009. Quisiera expresar mi gratitud a las autoridades costarricenses por la invitación y por la colaboración prestada antes y durante mi visita.

Costa Rica ha desarrollado un amplio marco de disposiciones jurídicas y de políticas para la protección y promoción del acceso al agua potable y el saneamiento. La Ley de aguas N° 276 de 1942 constituye el principal marco normativo en la materia y es complementada por un amplio número de leyes, reglamentos e instituciones involucradas en su aplicación. Por su parte, la política nacional reconoce el acceso al agua potable como un derecho humano inalienable y prioriza el uso de agua para consumo personal. En materia de resultados, quisiera señalar que en los últimos años Costa Rica ha logrado avances considerables en el aumento del acceso al agua y al saneamiento mejorado, ubicándose entre los países más avanzados de la región de América Latina y el Caribe. Quisiera igualmente felicitar al Gobierno de Costa Rica por las importantes inversiones recientes en materia de saneamiento y de tratamiento de aguas residuales.

A pesar de los progresos señalados, existe una serie de dificultades que requieren atención. El marco normativo creado por la ley N° 276 ya no se corresponde con la

CHECK AGAINST DELIVERY

actual situación socio-económica del país y requiere ser reformado y actualizado urgentemente. Asimismo, la multiplicidad de normas y regulaciones existentes, sumada a la compleja trama institucional, genera superposiciones y falta de claridad respecto del rol, las responsabilidades y la coordinación de las instituciones involucradas. La aplicación efectiva de normas y políticas también se ve obstaculizada por la insuficiencia de recursos humanos y financieros.

Por otro lado, he notado con preocupación que solo el 3,5% de las aguas residuales son sometidas a depuración antes de su descarga en el medio ambiente natural. Asimismo, son inquietantes las profundas diferencias en el acceso al agua potable y el saneamiento entre zonas urbanas y rurales. De igual modo, las personas pertenecientes a grupos marginados y vulnerables, incluyendo pueblos indígenas, personas que viven en la pobreza, personas de descendencia africana y trabajadores migrantes, poseen un acceso muy limitado a agua potable y saneamiento. Finalmente, quisiera subrayar las dificultades causadas por el desarrollo turístico e inmobiliario, tales como la escasez de agua y los emergentes conflictos sociales entre la demanda de las comunidades locales de agua para el consumo humano y los intereses económicos de los inversores y los constructores.

Agradezco a las autoridades su cooperación, el interés demostrado y la detallada información ofrecida. Quisiera agradecer también al Gobierno de Costa Rica el interés con que ha recibido este informe y los comentarios generales que me transmitió en fecha 23 de julio de 2009. Por último, quisiera señalar que el informe de misión ofrece recomendaciones para abordar los desafíos encontrados en Costa Rica. Espero que esta sesión permita profundizar el diálogo y la colaboración con el Gobierno para dar respuesta a los retos pendientes.

I also undertook a visit to **Egypt** from 21-28 June 2009. I wish to express my gratitude to the Egyptian authorities for the invitation and their commitment to ensuring the success of the mission. I am impressed by the dedication of Egypt to ensuring access to water for everyone and commend them for their efforts in this sector. In my Preliminary Note to this Council, I also noted some challenges the country still faces with regard to quality of drinking water, extending access to sanitation, some issues related to affordability, the reality of water scarcity in the country, and disparities in access to drinking water and sanitation between rural and urban areas, and between formal and informal habitations, particularly based on tenure status. My full report to the Council on this mission will be presented next year, and I look forward to continuing my dialogue with the Government of Egypt and other relevant stakeholders on these issues.

Going back to thematic tasks: as you know, my mandate asks me to focus on three main subjects: collection of good practices in the area of access to water and sanitation, recommendations for the realization of the MDGs, in particular of MDG 7 and the analysis of the human rights obligations related to water and sanitation.

I will now briefly summarise the main steps I have been taking in the three areas.

1. Concerning the first activity, the **collection of good practices**, before I set out to collect examples, I want to have a framework in place for assessing such practices from a human rights perspective. I am organizing an expert meeting in Lisbon in early

CHECK AGAINST DELIVERY

October to help me develop these criteria. Based on the framework that emerges from that meeting, I intend to begin collecting good practices, by sending out questionnaires, as well as by holding stakeholder meetings with relevant actors. The stakeholder meetings will take place over next year and possibly the beginning of 2011 and will provide an occasion to consider certain practices in more detail. These meetings and the collection of good practices will all contribute towards the compilation of good practices I am mandated to prepare. I will continue to update the Council on developments in this area.

2. Concerning the second topic, the **Millennium Development Goals**, I will be in New York next week to discuss this task with key actors working in this area. In these discussions, I intend to consult on how my recommendations can best contribute to ongoing MDG work, and avoid unnecessary duplication. The MDGs are a very important political commitment, and have gathered unparalleled momentum to generate much needed attention towards some of the most serious problems facing the world today – including lack of access to water and to sanitation. I look forward to offering recommendations on implementing the MDGs from a human rights perspective, as I am convinced that the MDGs will only meet their full potential if understood in the context of the realization of human rights.

3. Finally, on the study of the **content of human rights obligations**, when I was before you in March 2009, I presented a preliminary report on sanitation and explained my intention to focus the first year of my thematic work on this issue. After devoting considerable time to the subject, I am convinced now more than ever, that sanitation is a matter of human rights. When I spoke to you in March, I presented information about the disastrous consequences of poor sanitation or no sanitation on peoples' health, livelihoods, education, and overall development. The numbers are staggering - with 2.5 billion people still lacking access to improved sanitation, and 1.2 billion still practicing open defecation. We are in the midst of a sanitation crisis.

From 27 to 28 April, I organized an expert consultation on the human rights obligations related to access to sanitation. On 29 April, a public consultation allowed the participation of numerous States and members of civil society, amongst others. I benefitted greatly from the contributions of the experts, States and members of civil society in the research for the preparation of the report you now have before you.

My report reviews the impact of this sanitation crisis on the enjoyment of a wide range of human rights. It highlights how sanitation has been recognized as linked to these various human rights including in treaties, political declarations, national constitutions and legislation, international and domestic case law, and expert work. It is clear that sanitation is indispensable for the enjoyment of numerous human rights - and not only economic, social and cultural rights such as the rights to housing, health or education, but also civil and political rights such as the prohibition of cruel and inhuman treatment, the right to physical security and the right to life. Examining sanitation from a human rights perspective also particularly sheds light on inequalities based on sex, as well as other forms of discrimination prohibited under human rights law. The inter-relatedness and indivisibility of human rights is abundantly evident when one considers sanitation as a human rights question.

CHECK AGAINST DELIVERY

One of the biggest obstacles we face in tackling the sanitation crisis is the taboo surrounding the issue. Defecation and faeces are generally not considered appropriate topics for public gatherings, conferences and debates. The popular or slang equivalents of these words in some languages are considered curse words, making it even more difficult to find appropriate language to talk about this serious issue. We must break the taboo - too many children are dying, too many people are seriously ill, 40% of the world's population is suffering, and we cannot allow this to continue simply because it makes us uncomfortable to talk about such an intimate and private matter.

Sanitation is undoubtedly a matter of human rights and human dignity. While discharging my mandate, I met one elderly lady living in a small village. She lived with her family in a one room hut, which had a tap for water but no toilet. She needed to go to her neighbour's house every time that nature called -- every time that she needed to defecate or urinate, she needed to ask "permission" to enter her neighbour's house. Was she comfortable enough to knock on this neighbour's door in the middle of the night? When she had diarrhoea, was she comfortable returning to that door every ten minutes? Some might say she was lucky to have such a kind neighbour, and I agree. But the integral link between sanitation and dignity means that access to sanitation for one person should not be determined by someone else's good will. It should be guaranteed to all. It should be recognized as a right.

Therefore I propose in my report that access to sanitation should be considered not only a human rights imperative but a distinct human right in itself. I do not come to this conclusion lightly, but only after a thorough review of existing obligations and commitments related to sanitation. Lack of access to sanitation is an affront to human dignity, and shrouding it within other human rights does not sufficiently capture that dimension of the issue.

For this reason, I argue that we should understand sanitation as an implicit component of the right to an adequate standard of living as guaranteed in Article 25 of the Universal Declaration of Human Rights or Article 11 of the International Covenant on Economic, Social and Cultural Rights. International political declarations and the work of various human rights mechanisms support this interpretation. While the discussion on this issue is ongoing, I have noted a trend towards recognition of sanitation as a distinct right, and I call on the Council to support that trend.

I recognize nonetheless that opinions may differ on whether sanitation should be considered a distinct human right. However, regardless of one's position on that legal matter, there are clear human rights obligations related to access to sanitation. In my report, I define sanitation as a system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene. Human rights standards clearly require States to ensure without discrimination that everyone has physical and economic access to sanitation, in all spheres of life, which is safe, secure, socially and culturally acceptable, provides privacy and ensures dignity.

The report then goes on to outline specific human rights obligations of States in this regard. States must refrain from interfering with existing access to sanitation. They must further ensure that the actions of third parties do not result in human rights violations. In terms of economic, social and cultural rights related to access to

CHECK AGAINST DELIVERY

sanitation, States must take deliberate and targeted steps towards the full realization of these rights. States must also provide effective remedies when human rights violations related to sanitation have been suffered. Furthermore, States must ensure enjoyment of human rights related to access to sanitation in a non-discriminatory manner, there must be access to information concerning sanitation, and people must have an opportunity for meaningful and active participation in processes and projects related to sanitation that affect them.

The report also explains what is not required when considering sanitation in human rights terms. There are many misconceptions surrounding the human rights discourse as it relates to sanitation, and these misunderstandings create unnecessary obstacles to the full enjoyment of human rights related to sanitation. I take this occasion to note that I prepared a leaflet aimed at addressing some of the misunderstandings and misconceptions which I have confronted more frequently related to both water and sanitation.

In terms of the normative content of human rights obligations related to sanitation, I outline it according to availability, quality, physical accessibility, affordability, and acceptability of sanitation.

Among my recommendations, I emphasize that States, and other actors such as development agencies and UN institutions, should prioritize sanitation by, inter alia, adopting a national action plan on sanitation, assigning clear institutional responsibilities for sanitation, collecting accurate and detailed information about sanitation coverage, allocating financial resources to increase access to safe sanitation, and undertaking public awareness campaigns to promote behaviour change and good hygiene. States must also put in place effective policies and measures to combat discrimination, and to ensure gender equality. States should also establish effective monitoring and evaluation mechanisms to assess impact of interventions, and to provide transparent information about sanitation to everyone. I also strongly encourage States and other actors to support the trend towards recognizing sanitation as a distinct human right in order to build consensus around this issue.

We are in the midst of a sanitation crisis, and I am convinced that proper understanding of the human rights obligations related to access to sanitation, and mobilization of the political will necessary to abide by these obligations, is essential to tackling this crisis. I consider this report as one contribution to an ongoing dialogue, and I intend to stay actively engaged in that dialogue.

Excellencies, Distinguished Delegates, Ladies and Gentlemen,

It has been nearly one year since I was appointed as Independent Expert. When the Council created this mandate, it recognized that lack of access to safe drinking water and sanitation is a matter of human rights, and that we must address the obstacles to meeting these human rights obligations. In the past year, I have seen impressive commitment and dedication by all stakeholders to overcome these obstacles. I have also witnessed huge support to the mandate by various stakeholders: from States to NGO's, UN agencies, regional organisations, private companies, universities, research institutes, national human rights institutions and "simple" individuals. I feel very honoured and also encouraged by this immense interest and support to the mandate. I

CHECK AGAINST DELIVERY

would particularly like to thank Germany and Spain for their unfailing support as co-sponsors of the mandate. I would also like to express my gratitude to OHCHR, and staff, for their committed support to my mandate.

I very much look forward to continuing to work with all relevant actors to address these challenging issues.

Thank you for your attention.