

THE NEED TO DEFINE THE RIGHT TO SANITATION IN ORDER TO PROMOTE ITS IMPLEMENTATION

Gérard Payen and Thomas Van Waeyenberge,
AquaFed

Summary

Private water operators are practitioners that deliver water and sanitation services under the direction of responsible public authorities. They contribute to the right to sanitation.

In 2007, further to the AquaFed's submission on the lack of content of the right to sanitation, the High Commissioner on Human Rights concluded its report to the Human Rights Council on the Right to Water by highlighting the need to clarify the content of the right to sanitation. In this contribution, we highlight the key questions to be answered to get an unambiguous internationally agreed definition of the right to sanitation (RTS).

The general context is not very supportive since:

- the meaning of the word “sanitation” is ambiguous in many international documents. There is a need to think of sanitation in an integrated way not forgetting that sanitation is about human waste, wastewater and rainwater. Solid waste disposal is also a component of sanitation but is not commented in the present document.
- the different types of sanitation services are often described with imprecise words such as satisfactory, appropriate, etc

The lack of defined content of the RTS makes it impossible for a public authority to know what to do in terms of obligations to implement this right. In some cases it may be a pretext for them not to make the necessary efforts.

A lot of practical questions are detailed in this document and remain to be answered by the international community.

To ensure progress on the definition and the scope of the RTS a two-step process might be useful:

Firstly, the aim of the RTS could be debated and identified. Several options are detailed. A promising one is “*the right to be protected against potential contamination by oneself or by the neighbourhood*”. There are others. General agreement on this aim would help knowing which components of sanitation are concerned: human waste, domestic wastewater collection, rainwater collection, waste water treatment, etc.

Secondly, at national level, the respective rights and obligations of public authorities and individual parties should be identified and allocated.

1. The main issue: lack of defined content for the right to sanitation

The members of our Federation¹ are supplying sanitation services to hundreds of millions of people daily, both in developing and in developed countries. As practitioners they know that an individual right to water and sanitation can only be implemented if the respective rights and obligations of both the individuals and the community are clearly identified and allocated. These rights and obligations do not need to be defined through international decisions. They may result from national regulations.

Private water operators sustain an advocacy work on the rights to drinking water and sanitation since UN-CSD13 held in 2005 where they recognised explicitly these rights with the business community. They continuously stress the need for people that their individual right is implemented by public authorities and not only proclaimed. This requests that rights and obligations of both public authorities and individuals are defined and that appropriate operators are given the mission by the public authority to provide the necessary services².

It appears to practitioners that far more thought has been given to the right to drinking water than to the right to sanitation, which still lacks clarity. Today, while most official documents at the international level about the right to water include sanitation and use the expression “water and sanitation” repeatedly, very few of them provide clear operational guidance to assist public authorities in charge of sanitation services or users to understand their precise obligations. This does not prevent national regulations from including provisions that concur effectively with the RTS.

In 2007, AquaFed contributed to the enquiry of the High Commissioner on Human Rights through two written submissions³ and verbal complements.

These contributions relate to the right to water at large [RTWS], i.e. the right to drinking water [RTDW] and the right to sanitation [RTS]. Regarding the RTS, AquaFed alerted the Office of the High Commissioner on Human Rights and by extension the world community on the lack of operational guidance at the global level for authorities to help them understand their obligations under the RTS. The General Comment 15 (GC15) to the International Covenant on Economic, Social and Cultural rights recognises the right to sanitation in its articles 29 and 37. However, it is too vague on this issue. It defines attributes of the RTS but does not define its content which makes it unworkable by responsible public authorities (and their operators, public or private).

¹ AquaFed, the International Federation of Private Water Operators, www.aquafed.org. This text is based on a submission by AquaFed to the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation (April 2009).

² Press release of 19 March 2006: http://www.aquafed.org/pdf/Operators_Right-to-Water_PR_Pc_2006-03-19.pdf.

³ “Practitioners’ Views on the Right to Water, AquaFed’s submission to the OHCHR study on human rights obligations related to equitable access to safe drinking water and sanitation”, April 2007, www2.ohchr.org/english/issues/water/contributions/PrivateSector/AquaFedSubmission20070412.pdf ; www2.ohchr.org/english/issues/water/contributions/PrivateSector/AquaFedadditionalcontribution20070531.pdf.

The High Commissioner's 2007 Report to the Human Rights Council captured this alert on the RTS and noted that '*Human rights instruments offer little guidance as to the scope and content of the term "sanitation"*'. As a result, this report concluded that '*detailed practical advice is required on the following issues:...the normative content of human rights obligations in relation to access to sanitation;...*'. Later, through its resolution 7/22, the Human Rights Council awarded the mission to clarify this issue to an Independent Expert.

2. Imprecise language around sanitation

There is an obvious ambiguity in the understanding that members of the international community have of the meaning and scope of the 'sanitation' concept and of the contents of the different types of sanitation. The language they use about sanitation is often unclear and imprecise.

2.1 *Misunderstandings about 'sanitation' and its components*

Sanitation is more than 'just toilets.'

It is far from certain that all state officials share the same understanding of the word "sanitation".

An interesting definition of "sanitation" is the one used in article 2 of the Water & Health Protocol to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes 1992⁴ that says:

'Sanitation' means the collection, transport, treatment and disposal or reuse of human excreta or domestic wastewater, whether through collective systems or by installations serving a single household or undertaking.

However, even this definition is incomplete since it leaves out the drainage of storm water which is necessary to avoid that dense habitat is flooded during heavy rains.

In the vast field of sanitation one Millennium Development Goal (MDG) was adopted by the world community in 2002. It aims at improving access to "basic sanitation" which is mainly "access to toilets". This MDG focus on toilets tends to hide the other components of sanitation that are essential to populations. In order to clarify this situation, AquaFed published in August 2007 a simple document that explains the various components of sanitation⁵. It builds on the technical definition provided by the *UN Millennium Project 2005 Task Force on Water and Sanitation*⁶. This document describes the 4 main water-related components of sanitation⁷. They are defined either by their technical component or by their policy goal as described in Table below.

⁴ Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1992), www.unece.org/env/water/text/text_protocol.htm.

⁵ www.aquafed.org/pdf/SanitationComponents_IYS2008_AquaFed_Pd_2007-08-13.pdf

⁶ Health, Dignity, and Development: What will it take? Page 30, Box 3.1.

⁷ The management of solid waste is another component of sanitation but is not discussed here, as it is not directly water-related.

Following this definition, sanitation encompasses management of human excreta, domestic wastewater and storm water through both private and public facilities.

The inclusion of both sanitary facilities and wastewater management in sanitation was confirmed by various works during the 2008 International Year on Sanitation. The 6th objective of the related UN action plan⁸ was:

'Develop and strengthen institutional and human capacity via recognition at all levels that progress in sanitation toward the MDGs involves interlinked programmes in hygiene, household and school facilities (such as toilets and washing facilities), and the collection, treatment and safe reuse or disposal of wastewater and human excreta.'

All the regional intergovernmental conferences on sanitation like LatinoSan, AfricaSan or EASan in 2007 and 2008 addressed simultaneously the needs for hygiene, sanitary facilities and waste water management.

The components of sanitation (AquaFed 2007)

<i>Technical definition</i>	<i>Policy goals</i>
<i>Safe collection, storage, treatment, and disposal, reuse, or recycling of human excreta (faeces and urine).</i>	<i>Provide access to toilets that permit defecation in dignified and salubrious conditions that protect public health and environment.</i>
<i>Drainage and disposal, reuse, or recycling of household wastewater (often referred to as sullage or grey water).</i>	<i>Remove used water, faecal matter and related waste from within households in safe and sustainable manner.</i>
<i>Drainage of storm water.</i>	<i>Collect and transport used water, related wastes and storm water away from habitations and settlements in a safe and sustainable manner.</i>
<i>Treatment and disposal, reuse, or recycling of sewage effluents.</i>	<i>Reclaim used and dirty water by removing pollution to protect ecosystems and subsequent uses.</i>

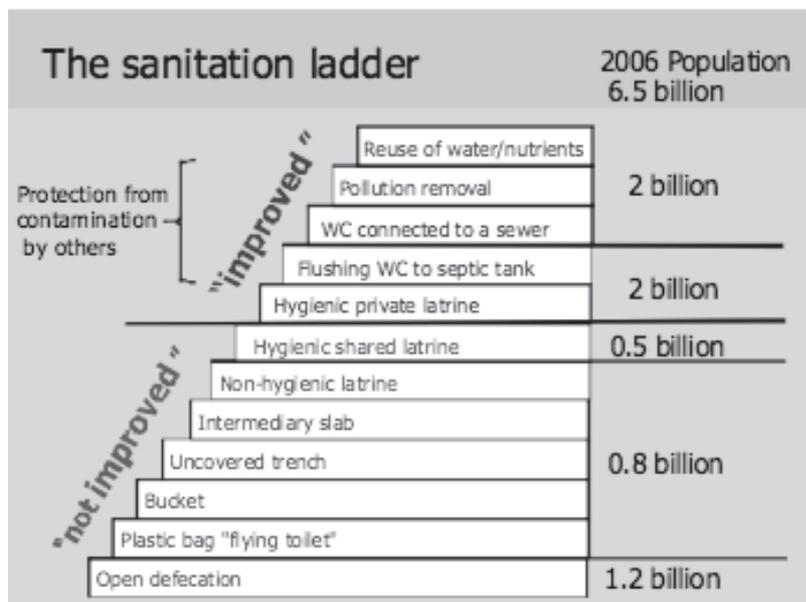
During this 2008, year the concept of Integrated Sanitation Management was developed to shape public policies that should take care of all sanitation components in a sustainable way. This was promoted in particular by the business community in the UN Commission on Sustainable Development in May 2008 (CSD16).

⁸ <http://esa.un.org/iys/ap.shtml>.

‘People do not only need toilets. They also need their solid and liquid waste to be removed from their homes; they also need to be protected from contamination by neighbours. Their waste waters need to be collected. In many parts of the world, pollution needs to be removed from these wastewaters to protect the environment and the people living downstream. These challenges are not well monitored by the world community. More ambitious goals are necessary to master all sanitation needs. Integrated Sanitation Management (ISM) is necessary to manage all these challenges.’

Consequence for the RTS

By consequence, unless it is voluntarily restricted to one part of the sanitation field, the RTS is only effective when individuals know what they can expect from the community as far as human excreta, domestic waste water and storm water are concerned.



⁹ 16th session of the UN-CSD, Plenary Meeting, Statement by major group “Business and Industry”, New York, 12 May 2008, www.aquafed.org/pdf/CSD16_Water%20&%20Sanitation%20PLENARY_MajorGroup_B&I_Speech_Payen_2008-05-12.pdf. See also www.un.org/esa/sustdev/csd/csd16/statements/business_15may_mg.pdf.

2.2 *Ambiguities about the various goals of ‘sanitation’ public policies*

The language about the various qualities of sanitation services offered by the community is not standardised. This is illustrated by the Guidelines for implementation that were proposed by the Sub-Commission on the Protection and the Promotion of Human Rights¹⁰. These guidelines use the following 5 expressions: *adequate, basic, safe, acceptable, and appropriate sanitation* without explaining what they each mean nor the differences between them. This is not surprising since these various concepts are not clearly defined and differentiated in official international documents.

The term “*adequate sanitation*” is defined in principle but without precise details in the Water & Health Protocol to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes. In article 4 this says: ‘*(b) Adequate sanitation of a standard which sufficiently protects human health and the environment. This shall in particular be done through the establishment, improvement and maintenance of collective systems.*’

The wording used in the 2002 Johannesburg Plan of Implementation (MDG) is “*basic sanitation*”, but its meaning and content is unclear to many and has not been clarified by Governments. It probably includes both safe toilets and wastewater removal from the household. However, progress towards its implementation is measured through another concept, that of “*improved sanitation*”. “*Improved sanitation*” is well-defined in WHO-UNICEF publications¹¹. Without going into technical details, it can be described as access to private and healthy toilets.

A consequence of the Johannesburg Plan of Implementation, which is a cornerstone of global policies, is that more and more government officials tend to use the word “*sanitation*” when they should say “*basic sanitation*”. This adds ambiguity to the official declarations and leads them to forget components of sanitation that are essential to mankind even if they are not “*basic*”.

In March 2009, in the Istanbul World Water Forum, the governments decided in their Ministerial declaration to improve action in the wastewater field:

‘We will strengthen the prevention of pollution from all sectors in surface and groundwater, appropriately applying the polluter pays principle, while further developing and implementing wastewater collection, treatment and reuse.’¹²

This shows their current intent to go further than basic sanitation and address all water-related sanitation challenges.

¹⁰ Guidelines on the Realization of the Right to Water prepared by El Hadji Guissé and adopted in 2006 by the Sub-Commission on the Protection and the Promotion of Human Rights.

¹¹ WHO-UNICEF Joint Monitoring Programme.

¹² Istanbul Ministerial Statement, 22 March 2009, paragraph 6.

Consequence for the RTS

As the common language of the international community is ambiguous about the goals of public policies regarding sanitation, it is not surprising that the RTS has not yet any defined goal and internationally agreed content.

3. Practical uncertainties resulting from the lack of an agreed content of the right to sanitation

In the context of this unclear language, the content of the RTS needs to be clarified to avoid misunderstandings and give clear guidance for implementation by responsible authorities and their operators..

The General Comment 15 which provides detailed normative content for the right to drinking water in chapter III does not provide any content for the right to sanitation.

This has been highlighted by Mr Guissé in his 2004 final report to the Sub-Commission on the Protection and the Promotion of Human Rights¹³ :

‘§ 44 ... The more difficult question remains the scope of the content of this right. Sanitation has both an individual and a collective dimension. The individual aspect would entail affordable access of each person to sanitation services, facilities and installations that are adequate for the promotion and protection of human dignity and the health of individuals. However, it is also important to recognize that the full protection of the health of the individual requires protection of the environment from human waste and this can only be done if everyone has, and utilizes, adequate sanitation.’

The international community is therefore in an ambiguous and unsatisfactory situation. While it supports the RTS, in the absence of a defined operational content, responsible governments and authorities have no practical guidance about their obligations.

A government that wants to implement the RTS is faced with a number of unanswered questions and options including:

- Should it finance and build public latrines? This might meet the obligation. However shared sanitation facilities are “not improved sanitation facilities” and therefore do not seem to comply with the Johannesburg Plan of Implementation (MDG target).
- How to carry out the daily cleaning of public facilities (everybody knows that unclean toilets very quickly fall into disuse)?

¹³ Relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation. Final report of the Special Rapporteur to the Sub-Commission, El Hadji Guissé (2004).

- How does it differentiate the public service obligations from the individual obligations?
- Should it subsidise private toilets, i.e. toilets inside the households? If yes, that would mean that most people in developed countries have already been denied their RTS!
- Should it forbid private latrines that are not isolated from the ground to prevent contamination of soil and water tables? Should it organise a public sludge removal service?
- Should it subsidise domestic pipes to collect domestic wastewater and convey it out of the household or should it make such investment compulsory to the inhabitants, as it is usually the case in most developed countries?
- Should it build sewers to collect wastewater and drains to collect rainwater in order to protect the health of the inhabitants and prevent flooding of their habitat? This is the case in urban areas in many developed countries. However this may not be the only technical solution to wastewater challenges. Individual wastewater treatment facilities are another one when they are well maintained. They are particularly relevant in rural areas.
- Should it remove pollution from domestic wastewater and the other waste waters (waste water treatment) in order to protect the environment and water resources and the right to water of the people who live downstream? The current guidelines ¹⁴ could be said to justify this since they mention the right to *'safe sanitation that is conducive to the protection of public health and the environment'*.
- What is the basis on which it should recover the costs of providing sanitation facilities and sanitation services?

This list is certainly incomplete. As far as we know, existing international documents do not provide options or answers to these questions.

Consequence for the RTS

The content of the RTS has no generally agreed international definition, neither in terms of facilities nor in terms of goals to achieve. By consequence, governments have no rights-based international guideline to design or elaborate their sanitation policies. As long as these practical questions remain unanswered, the RTS will continue to be a concept without real content.

¹⁴ Guidelines on the Realization of the Right to Water prepared by El Hadji Guissé and adopted in 2006 by the Sub-Commission on the Protection and the Promotion of Human Rights.

The sanitation ladder

4. Dissimilarities between the RTS and the RTDW

In 2007, AquaFed alerted the international community to the current imbalance between the two components of the Right to Water (RTWS), i.e. the Right to Drinking Water [RTDW] and the Right to Sanitation [RTS]. Balancing all official documents by systematically using the term “water & sanitation” is unsatisfactory because it does not give coherent meaning to the content of the sanitation component.

Even worse, it gives the illusion that both rights are of similar nature when, in practice, they exhibit several essential differences. For example:

- a) It is far easier for an individual to damage unintentionally the RTS of others than their RTDW since his necessary continuous discharge of pollution may harm the neighbourhood. For this reason, the RTS should probably contain more individual obligations than the RTDW.
- b) Sanitation and sanitation services are fundamentally different from water supply in that they are a ‘downstream’ problem. That is to say the service flows away from the user, it is not received by the user.
- c) Individual privacy and decency are essential in the RTS even in the case of public toilets, whereas public authorities can ensure the Right to Water through providing shared public standpipes in the open.
- d) The quantitative notion of a minimal volume is essential for the RTDW. It has no meaning for sanitation.
- e) Ensuring the RTDW immediately increases the need for sanitation since the additional water has to be evacuated after use in order to avoid degrading sanitary conditions.
- f) Individuals have a clear perception of the benefit of a drinking water service and accept to pay for it. In contrast they have a less clear understanding of the content and the value of public sanitation services.
- g) In many urban areas the costs of both installing and operating sanitation systems are greater than those for water supply systems.
- h) Due to technical constraints, implementing the RTS in practice is far more dependent on conditions and density of habitation than implementing the RTDW.

Consequence for the RTS

For all these reasons we believe that far more thinking is necessary to give clear meaning to the RTS and to permit the practical realisation of this right. The RTS cannot be imagined as an easy duplication of the RTDW.

Whilst we stressed the need to look at sanitation as a separate problem, we also believe that it is essential to consider its role within the complete water cycle. There are aspects of sanitation that have a direct impact on the water quality in the environment and therefore the accessibility of water resources necessary to meet the RTDW. For this reason a total separation between the RTS and the RTDW is not advisable. However the real differences need to be identified and taken account of in the Right and any accompanying guidelines.

5. Potential aims of the right to sanitation

The RTS cannot be implemented as a right as long as public authorities and individuals do not know their respective rights and obligations under this right.

Identifying these rights and obligations is far more complex than for the RTDW since:

- There are several components in sanitation services. Rights and obligations must be defined for human waste, wastewater and rainwater simultaneously.
- There are several technological solutions.
- Some solutions are individual when others are collective. The limit between individual and collective equipments is often an economical and technical choice made on a case-by-case basis and not the result of a law.
- Sanitation starts inside the private habitat, a place that is usually out of the scope of governments but that is essential to the efficiency of the other sanitation components.
- With inadequate sanitation facilities individuals may unintentionally harm a whole population which request more obligations to them than water supply and this is often politically sensitive.
- Although safe water is the same in urban and rural areas, the necessary sanitation facilities depend a lot on the density of the settlement.

To guide the work that is necessary to identify the respective rights and obligations of both individuals and governments with respect to the RTS it may be useful to clarify why these obligations are created. In other terms, it may be useful to identify the aim of the RTS.

To date, no such aim has been clearly worded or set out by the international community. Several types of aim can be contemplated but no discussion has yet taken place in the international community to select one of them.

As practitioners, we can imagine that the RTS could be designed to achieve one of the following aims:

- a) To practice hygienic defecation by using facilities that respect privacy and dignity.

This would mean building and operating hygienic toilets either inside the household or outside as shared public toilets. In developed countries,

governments' obligations in this matter are limited to public buildings and facilities (schools, hospitals, etc). Should governments have a temporary duty to organise public toilets where and when private facilities are not available?

- b) To be protected against potential contamination by one's family (i.e. safely evacuating all domestic waste including human waste and waste water from the household)
- c) To be protected against potential contamination by one's neighbours. This would mean that the government:
 - collects wastewater and rainwater in the vicinity to avoid water stagnation and water flooding.
 - makes sure that no infiltration in the ground potentially pollutes aquifers and water resources that are used by the population for water supply or agriculture.

This implies controlling all sanitary facilities making sure that individual facilities are properly operated (for example: septic tanks to be safely emptied on a regular basis).

- d) To be protected against potential contamination by human activities.

This would mean the same as option c above plus a protection against human pollution created by people living upstream including industrial activities. In the reverse way, it would mean the obligation for any population not to pollute excessively the rivers in which they discharge water after use (waste water).

- e) To be protected against potential flooding of the living parts of the household. This is a part of the above-mentioned option c).
- f) To live and discharge human waste and waste water without harming others and the environment. This seems far too ambitious since this does not really exist today, even in developed countries.

Different other aims could be coined. This illustrates the vagueness of the current situation.

Consequence for the RTS

Different aims could be selected to guide the precise definition of the RTS. Building on "*the right to be protected against potential contamination by oneself or by the neighbourhood*" seems promising. Such ultimate aim should be further explored before discussing the respective rights and obligations of individuals and the community.

6. Contribution of private water operators to the right to sanitation

In many locations private water operators have been requested by public authorities to improve the access of their populations to water and sanitation services. In the sanitation field this may be:

- By taking charge of a component of the sanitation chain such as sludge removal, waste water treatment, wastewater collection
- By creating new facilities (public toilets):
- By connecting households to wastewater networks

Examples

- In Buenos Aires, Argentina, more than 1 million people have been connected to waste water networks by Aguas Argentinas between 1993 and 2004.
- Amanz’ Abantu in South Africa creates and manages new toilets facilities on a regular basis.
- In Manila (Philippines), Manila Water has greatly increased desludging of private latrines and septic tanks thereby preventing much potential contamination.
- In Chile private water operators have contributed to the national policy to improve wastewater treatment. In a decade from 1998 to 2008 the proportion of urban wastewater that is treated rocketed from 16% to more than 84%.

All these achievements contributed to improving access of individuals to sanitation and should be viewed as contributions to their Right to Sanitation.

7. Synthesis: key fundamental questions

In order to allow progress in the development of the Right to Sanitation, its content and the content of the related public services should be identified and agreed upon by the international community. A number of key questions need clear answers. These key questions include:

- a) What is the aim of the RTS?
An option could be “*the right to be protected against potential contamination by oneself or by the neighbourhood*”. However, there are other options.
- b) To which component of sanitation is the RTS linked?
Should the rights bearers expect a service from the community for human excreta or for domestic wastewater or for storm water or for all these components?
- c) What is the limit between individual action and action of public authorities in the implementation of the RTS?
- d) What are the respective rights and obligations of public authorities and individual parties under the RTS?
- e) How is a satisfactory execution of the RTS recognised?

This list is almost certainly incomplete and would require further development.