

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

Questionnaire

Gender equality (2015) [\(A/HRC/33/49\)](#)

Gender inequalities are pervasive at every stage of women's life: from infancy, through puberty, adulthood, parenthood, and late adulthood. When it comes to lack of access to water and sanitation, women and girls are disproportionately impacted as they are primarily responsible for water and hygiene at the household level and bear the greatest burden for collecting water. Although women may suffer disproportionate disadvantages and discrimination, they cannot be seen as a homogenous group. Different women are situated differently and face different challenges and barriers in relation to water, sanitation and hygiene. Intersectionality exacerbates gender-based inequalities, when they are coupled with other grounds for discrimination and disadvantages. Examples include situations when women and girls lack adequate access to water and sanitation and at the same time suffer from poverty, live with a disability, suffer from incontinence, live in remote areas, lack security of tenure, are imprisoned or are homeless. In these cases, they will be more likely to lack access to adequate facilities, to face exclusion or to experience vulnerability and additional health risks. Furthermore, other challenges include access to toilets for lesbian, gay, bisexual, transgender, intersex and gender non-conforming people as well as increased risk of gender-based violence.

Question(s):

2. During the last decade (2010-2020), what measures (ranging from legal, policy, regulatory, budgetary to training) have been implemented to redress gender inequalities in water and sanitation provision by addressing gender discrimination? Alternatively, what measures have been central in redressing gender discrimination by addressing inequalities in water and sanitation provisions? What are the concrete steps taken and the observed impacts?

Gender inequality in access to water, sanitation and hygiene (WASH) services has remained mostly invisible in public discourses including in the SDG6 indicators despite evidence that the lack of gender-responsive public services¹ impacts women and girls disproportionately, including their rights to education, freedom of movement and freedom from violence. Sanitation needs of women and girls also vary significantly from that of men and boys including needs for privacy and the specific needs of pregnant and menstruating women. Menstrual health management is increasingly being acknowledged as a crucial part of sanitation programs after decades of taboos surrounding menstruation. In 2016 UN Women noted that for "the design of sanitation systems to be woman- and girl-friendly it should explicitly incorporate the biological and social needs of women"². Beyond the issue of access to toilets (in both public and private spaces), there are larger issues of water supply and household toilet maintenance. This includes increased care load related to water and sanitation since fetching water and maintaining cleanliness are usually responsibilities of the women in the household. In India, where the practice of manual scavenging (i.e. the process

¹Gender Responsive Public Services can be defined as public services which are publicly funded, publicly delivered and universal, gender equitable and inclusive, and focussed on quality in line with human rights frameworks.

²'Towards Gender Equality through Sanitation Process', UN Women Discussion Paper, March 2016

of manually emptying dry/single-pit latrines – primarily in rural areas) still exists, an overwhelming 95% of the rural workforce are Dalit women³.

In order for us to respond to the question of what measures have been implemented to redress gender inequalities in WASH by addressing gender discrimination, we take a closer look at the Swachh Bharat Mission (SBM), an initiative launched in 2014 by the Government of India. UNICEF-WHO Joint Monitoring Programme (JMP) estimates that only 41% of rural households and 67% of urban households used improved sanitation facilities in 2013. As a result of SBM, more than 100 million toilets were constructed within a span of five years. In August 2019, 89% of Indian cities were certified to be Open Defecation Free (ODF). However, the mission objectives of SBM-Urban do not have any explicit mention of redressing gender inequality or gender discrimination. Women are mentioned only in the context of 'special focus groups' and state governments are advised to pursue focus on '*vulnerable sections such as pensioners, girl children, pregnant and lactating mothers*' for access to toilets⁴. However, there is an advisory (2018) by the Ministry of Housing and Urban Affairs on public and community toilets which explicitly mentions gender as a focus area⁵.

Despite the advisory from the Ministry, specific sanitation needs of women and girls, particularly young women are not reflected on ground. Investments in toilet infrastructure tend to ignore the concerns that the toilets built are not safe, sanitary, or accessible, especially for women and girls. ActionAid⁶ conducted a study in six cities in India as part of its Young Urban Women Program⁷ that offers insights into the gendered realities of SBM urban implementation. The study aimed at assessing and measuring the status of access to public and community toilets for low income young women (15-29 years). Here are some of the main findings of the study:

1. Community Toilets: In the absence of household toilets in informal settlements, many young women relied on community toilets. However, community toilets were inadequate and queuing times were up to more than 30 minutes causing delays in reporting to work and school. Some slum sanitation studies have shown that there are often fewer functioning latrines for women than for men. In addition, the rural-urban divide in budgetary allocations for SBM does not adequately consider urban sanitation and community sanitation blocks. The financial support provided by the central government to SBM-Urban is one seventh that of SBM-Rural⁸. This fails to account for 'the complexities of urban congestion and poverty that lead to higher health and environmental risk in urban areas'⁹. The rapid spread of COVID 19 in urban informal settlements, especially Mumbai has now tragically underscored this.

2. Access to toilets at work and in public spaces: 91% of working young women reported having toilets within their workplaces. However, only 67% accessed them due to lack of privacy (as they are not separated from men's washrooms) and inadequate infrastructure and facilities such as dustbins and hand washing facilities. Young women reported a lack of gender responsive public toilets in transportation hubs, government offices, health clinics and markets. Most public toilets remained closed in the evening, and hence were available only for limited hours.

³ [International Dalit Solidarity Network](#)

⁴ http://swachhbharaturban.gov.in/writereaddata/SBM_Guideline.pdf?id=sv3rcn648065fuyc

⁵ Advisory on Public and Community Toilets, Ministry of Housing and Urban Affairs, November 2018. Available at: <http://164.100.228.143:8080/sbm/content/writereaddata/Advisory%20on%20Public%20and%20Community%20Toilet.pdf>

⁶ ActionAid is a global movement of people fighting for women's rights, social justice and an end to poverty.

⁷ The Young Urban Women Program works with close to 12,000 young urban women (15-29 years) in 19 urban informal settlements across India, Ghana, Kenya and South Africa and addresses their economic security, bodily integrity and access to gender responsive public services.

⁸ Swachh Bharat Mission (Urban): Need vs Planning: Sama Khan, Centre for Policy Research, June 2018

Available at: <https://www.cprindia.org/research/reports/swachh-bharat-mission-urban-need-vs-planning>

⁹ Ibid

3. Affordability of Public/Community Toilets: 42% of respondents mentioned that they paid between Rs 5- Rs 10 a day per person (approximately 4 USD a month) to use community toilets. Low wages combined with gender wage gaps in India¹⁰ make pay-per-use toilets - a common feature in public private partnership models - inaccessible to many women.

4. Safety: 86% of women and girls mentioned that they had to be escorted by a family member or spouse to access community toilets due to prior experience of and fear of sexual harassment or violence. Poor infrastructure such as lack of lighting, doors without working latches and broken toilet doors contribute to an unsafe environment. Empirical evidence indicates that after controlling for economic prosperity and other covariates, lack of toilet facilities in the household is positively related to non-family violence against urban women in India¹¹. However, SBM Urban has no explicit mission focus that links regular maintenance and upkeep of community toilets with safety for women.

5. Impact on sexual and reproductive health and rights: Sanitation has a massive impact on sexual and reproductive health of young urban women and adolescent girls. 64.4% of young women surveyed reported controlling their bladder and reducing their water intake daily to avoid using unclean community toilets. 58% said that they changed sanitary napkins only when they returned home from work, school, or public places. A common reason cited was inadequate disposal facilities in community toilets, schools, and workplaces. 41% of the respondents reported toilets were non-functional in their schools. The lack of separate toilets for girls in schools coupled with lack of running water, sanitary napkins, hand washing, and disposal facilities means that girls changed sanitary napkins infrequently and were forced to carry back used napkins for disposal at home. This is despite the national government advisory on public and community toilets recommending the installation of sanitary napkin vending machines and bins for garbage disposal¹². Available evidence shows that the government neither allocates money separately for menstrual health management nor assesses the impact of the many drives it runs¹³.

6. Operation and maintenance of public/community toilets: Respondents highlighted that cleanliness of toilets remained a critical challenge while raising concerns about the operation and maintenance of public/community toilets. While only 49% reported that community toilets get cleaned, 43% mentioned that the frequency of cleaning varied from once a week to once a month and in some cases, toilets had never been cleaned. A key reason for unsanitary conditions in community and public toilets was the lack of running water as reported by 50% of respondents. A recent UNICEF India SAB evaluation report also highlights the need for running water to ensure sustainable toilet usage¹⁴.

Recommendations:

Our findings show that existing public and community toilets in urban informal settlements are largely non-gender responsive, inaccessible, unaffordable, barely functional and of very low-

¹⁰ ILO Report for India estimates a 39% wage gap between women and men causal urban workers, where most of the young urban women are concentrated. Source: India Wage Report, 2018, published by the International Labour Organisation. Available at: https://www.ilo.org/wcmsp5/groups/public/--asia/--ro-bangkok/--sro_new_delhi/documents/publication/wcms_638305.pdf

¹¹ [Lack of Toilets and Violence Against Indian Women: Empirical Evidence and Policy Implications, Raji Srinivasan, University of Texas, 2015.](#)

¹² Advisory on Public and Community Toilets, Ministry of Housing and Urban Affairs, November 2018. Available at: <http://164.100.228.143:8080/sbm/content/writereaddata/Advisory%20on%20Public%20and%20Community%20Toilet.pdf>

¹³ [Swachh Bharat Mission: Five Years Later, Menstruation Hygiene Remains on Back-Burner](#), Youth Ki Awaz, 2019

¹⁴ National Economic Impact Evaluation of the Swachh Bharat Mission, Final Report, UNICEF, 2020 available at: https://www.unicef.org/evaldatabase/files/20.01.29_National_Economic_Impact_Evaluation_of_SBM_.pdf

quality. This has significant impacts on women's and girls' health, education and paid and unpaid labour. Therefore, States must ensure that:

- WASH services are gender-responsive, affirming, and human rights- based in design, management and financing. They must be gender inclusive and equitable (free from discrimination and sexism), and safe, accessible, available, adaptable and acceptable for all users
- Underrepresented and excluded women and girls, LGBTIQ+ people and their organizations and movements are equal participants in decision making at all levels of WASH project planning, design, and monitoring. Their rights and specific needs must remain central, including in decisions around financing and partnerships.
- WASH policies and programmes must respond to their interlinkages with economic security (including all aspects of women paid and unpaid labour) and bodily integrity (including sexual and reproductive health and freedom from violence). WASH services should be designed to address the unfair social organization of care – by reducing and redistributing the care and domestic work burden or improving the environment in which care work occurs.

Affordability (2016)

Affordability, as a human rights criterion, requires that the use of water, sanitation and hygiene facilities and services is accessible at a price that is affordable to all people. Therefore, the starting point for State decision-making on public financing and policy for water and sanitation service provision is that water and sanitation must be affordable to all. It is impossible to set a generally applicable affordability standard at the global level. Any such standard would be arbitrary and cannot reflect the challenges people face in practice and the context in which they live, including how much they need to spend on housing, food and the realization of other human rights. The affordability of water and sanitation services is highly contextual, and States should therefore determine affordability standards at the national and/or local level. Human rights framework stipulates an important set of parameters for the process of setting affordability standards, in particular in terms of participation. As a concrete way to ensure affordability for all and a sustainable system, States must develop appropriate pricing, tariff and subsidy structures. Mechanisms to ensure affordability in practice include public finance, targeted measures, social protection floors, tariff schemes and subsidies, among others.

Question(s):

4. During the last decade (2010-2020), what targeted measures and instruments (e.g., financing mechanisms, tariff schemes, subsidies) have been implemented in order to ensure that the most disadvantaged access water, sanitation and hygiene services in an affordable way? Who are the target groups of these measures and instruments? What format do those measures and instruments exist (e.g., national legislation, policy, regulation of service provision, affordability standards)?

During the last decade, despite the right to water being enshrined in international human rights treaties, many governments have removed subsidies and raised tariffs by opting to privatise water supply. This has made water unaffordable for the most excluded as corroborated by the United Nations Special Rapporteur on Poverty and Human Rights¹⁵. Cost recovery of privatized water supply entails ending state subsidies; these are replaced by user fees paid by water consumers to cover water system costs. The global average spending on water by governments is \$19 per person, which represents less than one third of overall spending on

¹⁵ Report of the United Nations Special Rapporteur on Poverty and Human Rights. 2018. <https://undocs.org/A/73/396>

water – meaning households bear the brunt of the costs¹⁶. International Monitoring Fund (IMF) loan conditions generally include requirements for restructuring the water sector, arguing that many governments, particularly in Africa, are too poor to provide subsidies for water and sanitation services, hence cost recovery from water consumers is necessary.

There are no well-established internationally recognised benchmarks on spending relating to WASH. WHO estimates that people need an average of 50 litres of water per day for health, hygiene, and domestic uses but the cost of getting this varies dramatically. WaterAid¹⁷ have estimated that 50 litres of piped water in the UK costs consumers just £0.07 – but the same amount will cost £0.45 from a water tanker in Accra, Ghana and £1.84 in Papua New Guinea. There is a mounting crisis in financing with 80% of countries reporting that they lack the public financing needed to meet SDG WASH targets and 50% of countries saying that household tariffs are not enough to cover operation and maintenance costs.

ActionAid's Young Urban Women Programme in Ghana includes a specific focus on access to gender-responsive water services. Ghana has a National Water Policy framed in 2007 which identifies 'achieving equity in access to water supply for peri-urban and urban poor to meet their basic needs at affordable cost'¹⁸ as one of the main challenges of improving access to water in the urban sector. However, the policy also mentions 'gradually increasing tariffs to recover costs fully while paying attention to affordability, particularly of the poor' as a strategy for financing urban water supply.

Our experience of working with young women in urban informal settlements in the Greater Accra, Tamale and Upper East regions has shown that while water tariffs have increased gradually this has greatly impacted affordability and accessibility for the poorest groups. In 2018, we conducted a qualitative research¹⁹ in Ga West Municipality to understand how international financial institutions such as the IMF influence water privatization leading to higher costs.

Ghana's attempt at full water privatization took place in 2006 when the government leased the Ghana Water Company Ltd (GWCL) to the multinational water company Aqua Vitens Rand Ltd. (AVRL), providing a major urban water service. However, after five years of managing Ghana's urban water services, Aqua Vitens Rand Ltd, a Dutch-South African water corporation, failed to renew its contract with the GWCL. In its own report in 2011, the company noted that while water tariffs increased by 80%, there was no specific target concerning access of the poor to water and that outreach to poor areas did not make any significant progress under the contract.

Though since then there has not been any further privatization of the water sector, various IMF policy documents have consistently claimed that water tariffs in Ghana are too low to recover service costs and have often prevailed on the government to remove all forms of subsidy and implement a price deregulation policy. The idea is now to ensure full cost recovery from users and full implementation of the automatic price adjustment. In adherence to this conditionality, the government through the regulator, Public Utilities Regulatory Commission (PURC) approved a 67.2% increase in urban water tariffs in 2015; tariffs were increased from GHS1.78/ m³ (USD0.45/m³) to GHS3.01/m³ (USD0.76/ m³). Simultaneously,

¹⁶ UN Water and WHO. GLAAS 2017 Report – UN Water Global Analysis and Assessment of Sanitation and Drinking-Water, 2017.

¹⁷ WaterAid. What at What Cost? The State of the World's Water, 2016 available at: <https://washmatters.wateraid.org/publications/water-at-what-cost-the-state-of-the-of-the-worlds-water-2016>

¹⁸ https://www.gwcl.com.gh/national_water_policy.pdf

¹⁹ Gender Responsive Public Services and Macro-Economic Policy in Ghana: A briefing paper, ActionAid 2019. Available at: https://actionaid.org/sites/default/files/publications/actionaid%20briefing%20paper%20final%20draft_march%204.pdf

GWCL had requested a 400% tariff increase to cover costs. Since then water tariffs have been adjusted periodically and government subsidies has been removed. While the privatization of GWCL has been reversed and access to 'improved water sources' is over 80% (rural) and 90% (urban), households still bear a high cost for drinking water, including time to fetch water from community points.

Our research findings showed that young urban women respondents from Ga West Municipality were directly involved in arranging water for their respective households. Nearby private water vending points were the primary source. The private water vending shops have dug boreholes and the water is pumped to overhead tanks for onward sales. A participant in the study puts it this way: *"Until they are ready or comfortable to sell water, they will not open up the place for us. So, it is not like you need water and you just go and fetch it...at times when you go it is closed till maybe evening. Sometimes they do not even open it at all. In that case, you have to go farther to access water."*

Another respondent reported that although there is a source closer to her house, the cost per bucket could get her four times the quantity if she went a distance farther away from her house. A bucket often cost ₵0.50 (0.086 USD), and so if she fetched 10 buckets every day, she paid ₵5.00 (0.86 USD). Many of these girls also buy sachet water which could cost ₵3.50 (0.60 USD) per pack on average for drinking and sometimes for cooking if the pipe borne water becomes scarce or inaccessible. When asked what their preferred sources of water would have been, all participants agreed that the pipe borne water would be their preferred source of water, even if it was not in their respective homes. *"The pipeline from Accra passes through the community... so we know there are pipelines around, but the problem is that we don't have the state tap in the community and we don't know who to ask."*

Young women in informal settlements continue to spend a lot of time and money on accessing water daily. Water supply is the responsibility of the government, but this critical role of the state has been taken over by private individuals and businesses whose primary motive is profit maximization. The result is increase in the price of the commodity without reference to any regulatory body. In 2018, price of water went up between 50% to 100%, depending on the source. One of the young women interviewed noted that *"...the smaller bucket was 10 Ghana pesewas (0.017 USD) but now it is 20 Ghana pesewas (0.034 USD) because of electricity charges for using the pump....government has a lot to do in terms of providing water for the communities because with the privatization aspects going on, people are spending a lot of money to get water and demand is also very high...so they should factor that in their budgeting."*

Recommendations:

Privatised provision of WASH services continues to widen gender inequalities, particularly as gaps in public provision are filled by women and girls in poor households. Therefore, governments must:

- Invest in publicly funded, publicly delivered, universal, quality, gender-responsive and affirming WASH services
- End austerity and reject privatization and any other constraints to public spending on public services and public sector workers, including public sector wage bill containment
- Set ambitious targets to raise revenue to finance WASH and other public services by increasing tax to GDP ratios in a progressive and gender-responsive way.
- In the context of COVID 19, immediately suspend debt payments to finance domestic responses (including through WASH programmes) and renegotiate debt servicing for the future.

Principle of accountability (2018) ([A/73/162](#))

The complexity of actors in the water and sanitation sector and its specificities imply that the traditional State-centred human rights framework leaves gaps in the existing accountability mechanisms to hold actors other than States accountable. When the rights to water and sanitation are affected, it is not always clear to whom related action may be attributed, why such action was taken, how sanctions may be enforced against those who caused harm or how to remedy the situation. Further, globalization and the neoliberal wave have weakened the role of the State in the provision and regulation of water and sanitation services, and the imbalance of power has at times affected the exercise of the human rights to water and sanitation. This raises questions as to the effective regulation of private service providers and, in turn, poses challenges to accountability mechanisms, especially considering that those services are provided through a system of natural monopoly, with usually only one provider for a given territory. Another unique feature of the water and sanitation sector is the widespread presence of informal service providers that are not regulated and operate without a licence and that, as a result, may not be held accountable. Against this backdrop, the Special Rapporteur addresses the concept of accountability through three dimensions, namely, the roles and responsibility of actors, answerability and enforceability.

Question(s):

9. In the last decade (2010-2020), what accountability measures exist when responsibilities for service provision are transferred from State to actors other than States (private entities, public companies and communities)? Please provide information on the three dimensions of accountability: clear roles and responsibility of actors; the guarantee of individuals to hold actors accountable by requesting explanations and information (“answerability”); and remedial or corrective actions for lack of compliance with performance standards (“enforceability”).

Kenya has a rapidly growing urban population, estimated to reach 31.7 million (56%) by 2027²⁰. This rapid urbanisation has left Kenyan cities with huge unmet need for critical infrastructure and basic services, adversely affecting quality of life for poor urban residents. Joint Monitoring Program data shows that only 50% of the urban population have access to safely managed water services and only 35% of the urban population have access to basic sanitation services²¹. This is despite rules, laws, and regulations aimed at addressing governance and accountability of water resources and sanitation. The Kenyan Constitution under Article 43 acknowledges access to clean and safe water as a basic human right and assigns the responsibility for water supply and sanitation service provision to 47 newly established counties.

The Water Act 2016 of Kenya is the main national legal framework which recognizes that water related functions are a shared responsibility between the national government and the county government. It provides for water access for every person, which is also stipulated under the Constitution. The Ministry of Water (Sanitation) and Irrigation is mandated to create institutions that manage water resources and provide water and sewerage services, among others. The Water Resources Authority established in Section 11(1) of the Water Act 2016 that regulates the management and use of water resources with clear cut function including enforcing regulations. The Act also stipulates that Water Resource Users Associations in Section 29(1) should be a community-based association that supports the management of water resources

²⁰ UN Habitat estimates

²¹ <https://washdata.org/data/household#!/ken> WHO UNICEF Joint Monitoring Program 2017

and resolutions of conflicts concerning the use of water resources. The law mandates that after every 5 years, the Cabinet should formulate a Water Services Strategy after public participation that provides the right to water for every Kenyan. This strategy should be domesticated all the way to the basin level supporting the establishment of Water Resources Users Associations.

The Water Act 2016 has also established the Water Tribunal to deal with disputes that occur and in particular to hear and determine appeals at the instance of any person or institution directly affected by the decision or order of the Cabinet Secretary, the Authority and Regulatory Board or of any person acting under the authority of the Cabinet Secretary, the Authority, and Regulatory Board. In addition, the Tribunal has the power to hear and determine any dispute concerning water resources or water services where there is a business contract, unless the parties have otherwise agreed to an alternative dispute resolution mechanism. A person aggrieved by a decision of the Tribunal may appeal to the Land and Environmental Court.

However, ActionAid's experiences from working with young urban women in Kenya, particularly in the informal settlements of Nairobi and Mombasa show that community awareness and usage of these accountability mechanisms is very low. Post the Water Act 2016, Kenya has made remarkable strides legally but the reality at the community level is contradictory. In 2018, the Ministry of Water, Sanitation, and Irrigation Strategic Plan 2018-2019 was developed, which at present is yet to be operationalized on ground hence leading to no concrete gains on accountability. The functions are yet to be rolled out, and where they exist, they remain political. In addition, there has been a continuous change in the ministry in charge over the years.

ActionAid Kenya works with young urban women in the informal settlements of Nairobi and Mombasa to ensure delivery of gender responsive public services including WASH services. As the key intervention strategy, young women's groups have created their own advocacy committees to hold their County Assembly members accountable by requesting for explanations and information ("answerability"); and have successfully demanded remedial or corrective actions for lack of compliance with performance standards ("enforceability"). There are 10-member advocacy committees in six settlements in Nairobi and Mombasa. The members were trained on their right to gender responsive public services as per the provisions of the Kenyan constitution. They use 'community score cards' to conduct audits of WASH services and then engage with Members of County Assembly (MCAs) and Ward Administrator Offices (WAOs) to discuss and agree on gender-responsive water supply strategies in their communities. In Mombasa, where the water supply is largely salty, advocacy has seen increased access to freshwater for residents of Bangladesh, Tudor. In this area fresh water is now supplied thrice a week in water trucks. In Tudor, the area MCA and Mombasa Water and Sewerage Company have also dug shallow wells that are serving the community in Majengo.

Similar efforts by young urban women in Ghana have helped to improve accountability of the local duty-bearers. Members of the Young Urban Women's Movement conducted audits of available water sources in Ga West Municipality following which they engaged with the District Assembly members to share the findings and pressed for improvements in water quality and accessibility. As result, Ga West Assembly members have agreed to budget for water provisioning for the first time in their history.

Recommendations:

Citizen participation in WASH measures must move beyond policy rhetoric to actual implementation. Capturing voices of end users of public services, including those from the

most marginalised groups that lack WASH access, must be made a prominent feature of measuring WASH performance of local governments. Therefore, governments must:

- Ensure public oversight through clear accountability measures and grievance redressal mechanisms that are accessible to excluded groups. Officials and elected representatives must be mandated with responding to inquiries and complaints within a specific period.
- Ensure that information related to WASH accountability measures, including budget allocations and expenditures, is in the public domain in a manner and language that is accessible to excluded and marginalized groups.