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Delegations will find attached EU Human Rights Guidelines on Safe Drinking Water and Sanitation adopted by the Council at its 3700. meeting held on 17 June 2019.

EU Human Rights Guidelines on Safe Drinking Water and Sanitation

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I. Introduction

Reason for action

Water is a precondition for life, and therefore for the enjoyment of all human rights. However, access to safe drinking water and sanitation is still a major challenge in many parts of the world. 2.1 billion people lack access to safely managed drinking water services and 4.5 billion people lack safely managed sanitation services globally¹. Unsafe hygiene practices are widespread, and more than 361 000 children under five die annually from diarrhoeal diseases due to poor sanitation, poor hygiene, or unsafe drinking water². Climate change, moreover, will increasingly affect water availability and access.

Across the globe, tensions and conflicts related to access to and use of water continue to rise as the availability and quality of resources deteriorate and the threat of water scarcity spreads. The growing imbalance in global water supply and demands leads to tensions and conflicts, and could potentially evolve into a widespread threat to international peace and security³. Water related risks, including those arising from dirty and unsafe water, can have grave human and economic costs. Economic and demographic trends and rapid urbanisation also play a role, where municipalities and local authorities in water-stressed cities and regions can become overwhelmed and unable to meet the needs of their inhabitants for basic services including water and sanitation. Furthermore, limitations on access to water can be compounded in times of crisis, depending on the severity of the humanitarian crisis on the ground.

¹ Progress on drinking water, sanitation and hygiene: 2017 update and SDG baselines. Geneva: World Health Organisation (WHO) and United Nations Children's Fund (UNICEF), 2017. Licence CCBY-NC-SA3.0.IGO

² www.who.int/water_sanitation_health/diseases-risks/en/

³ A Matter of Survival, Report of the Global High-Level Panel on Water and Peace

In line with the Action Plan on Human Rights and Democracy (2015-2019)⁴, the EU is committed to increasing the focus on economic, social and cultural rights in its external policy, including by emphasising the clear recognition of the human rights dimension in areas such as water.

Furthermore, the EU Gender Action Plan (2016-2020)⁵ sets out the objective of equal access and control over clean water for girls and women, as well as equitable engagement in water management.

In November 2018 the Foreign Affairs Council adopted Council Conclusions on Water Diplomacy⁶, which highlight the importance of water in EU external action. They identify water cooperation as a key objective of EU external action and address issues such as the human rights to safe drinking water and sanitation. It follows from the Conclusions that:

The EU is committed to the human rights to safe drinking water and sanitation, as components of the right to an adequate standard of living. (...) As part of this commitment, the EU will continue to support and protect human rights defenders addressing environmental issues.

Building on agreed language from resolutions in the United Nations General Assembly and the Human Rights Council, the Council Conclusions are a strong confirmation of the commitment of the EU and the Member States to the human rights to safe drinking water and sanitation, and to the human rights defenders fighting for these rights to be realised in practice. The adoption of these guidelines is one of many steps that the EU is taking to realise this commitment and to ensure the progressive realisation of the human rights to safe drinking water and sanitation for all.

⁴ EU Action Plan on Human Rights and Democracy (2015-2019), Action 17a

⁵ EU Gender Action Plan (2016-2020), Objective 16

⁶ Council Conclusions on Water Diplomacy, 13991/18

Purpose and scope

It should be underlined that the scope of the present guidelines on safe drinking water and sanitation are held within the human rights discourse on water and sanitation. Building on existing human rights norms, these guidelines give instructions and guidance on how to use the available EU foreign policy tools, including development cooperation, to promote and protect the human rights to safe drinking water and sanitation. The main target groups of the guidelines are officials and staff members of the EU Institutions, EU Member States and delegations across the world.

The guidance is meant for political and operational work in and towards third countries and in multilateral fora, as well as in exchanges with other stakeholders, including civil society. In addition, the guidelines can be a reference for further policy development in the field of human rights to safe drinking water and sanitation.

In the recognition of the interdependent nature of Water, Sanitation and Hygiene for improved development and health outcomes, **WASH** (Water, Sanitation and Hygiene) has become a rapidly growing sector in the field of development cooperation and action as well as in humanitarian assistance and action. Though these guidelines complement existing and evolving tools under the WASH sector, they should not be perceived as guidelines for the broader WASH sector⁷.

Finally, while water is essential for a number of other uses such as agricultural and food production, energy, and industry, these guidelines focus on the aspects related to safe drinking water and sanitation.

⁷ For WASH Guidelines, see for instance “Thematic Policy document no.2 of DG ECHO on Water, Sanitation and Hygiene” on https://ec.europa.eu/echo/files/policies/sectoral/WASH_policy_doc_en.pdf

Structure of these guidelines

These guidelines will present the core concepts related to human rights to safe drinking water and sanitation (chapter II), the principles for EU engagement (chapter III), how to operationalise the rights through EU tools (chapter IV), including a text box on humanitarian assistance and finally a chapter on follow-up and evaluation of the guidelines (chapter V).

II. Core concepts

Introduction to the rights

These guidelines build upon established human rights law, starting from the International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 11, which entitles everyone to an adequate standard of living. 'Safe and clean drinking water and sanitation' is recognised as a human right by the UN General Assembly⁸, as an aspect of the right to an adequate standard of living in ICESCR Article 11. In 2015, the General Assembly resolution recognised the distinct nature of the right to sanitation in relation to the right to safe drinking water, while keeping the rights together⁹.

⁸ Resolution adopted by the General Assembly on 28 July 2010, A/RES/64/292, Article 1: "Recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights"

⁹ The human rights to safe drinking water and sanitation, Resolution adopted by the General Assembly on 17 December 2015, A/RES/70/169, Article 1: 'Affirms that the human rights to safe drinking water and sanitation as components of the right to an adequate standard of living are essential for the full enjoyment of the right to life and all human rights'

The detailed content of the rights to safe drinking water and sanitation have since been elaborated in resolutions from the UN General Assembly¹⁰ and the UN Human Rights Council¹¹. General Comments and recommendations from the UN Committee on Economic, Social and Cultural Rights¹² and the Special Rapporteur on human rights to safe drinking water and sanitation¹³ are key resources in providing useful input to understanding the rights. Furthermore, practical guidance on equitable access to water and sanitation has been published under the work of the Protocol on Water and Health¹⁴.

As all human rights, the rights to water and sanitation impose three types of obligations on States: the obligations to respect, to protect and to fulfil¹⁵.

The obligation to respect requires States to refrain from interfering with the enjoyment of the rights to water and sanitation, for example by denying or limiting equal access to adequate water, by unlawfully polluting water or by destroying water services and infrastructure as a punitive measure, for example during armed conflicts.

¹⁰ Most recent: The human rights to safe drinking water and sanitation, Resolution adopted by the General Assembly on 19 December 2017, A/RES/72/178

¹¹ Most Recent: The human rights to safe drinking water and sanitation, Resolution adopted by the Human Rights Council on 27 September 2018, A/HRC/RES/39/8

¹² In particular UN Committee on Economic, Social and Cultural Rights General Comment no. 15

¹³ See for example the Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque, A/HRC/12/24, 1 July 2009

¹⁴ No one left behind. Good Practices to ensure equitable access to water and sanitation in the pan-European region:

https://www.unece.org/fileadmin/DAM/env/water/publications/PWH_No_one_left_behind/No_one_left_behind_E.pdf

- The Equitable Access Score-card supporting policy processes to achieve the human rights to water and sanitation:

http://www.unece.org/fileadmin/DAM/env/water/publications/PWH_equitable_access/13244_56_ECE_MP_WP_8_Web_Interactive_ENG.pdf

¹⁵ UN Committee on Economic, Social and Cultural Rights General Comment no. 15, paragraphs 20-29

The obligation to protect requires States to prevent third parties from interfering in any way with the enjoyment of the rights to water and sanitation. It includes the adoption of the necessary legislative and other measures in order to restrain third parties such as corporations from interfering with the rights to water and sanitation, especially when water services are operated or controlled by third parties.

The obligation to fulfil requires States to adopt the necessary measures directed towards the full realization of the rights to water and sanitation. It entails the obligations to facilitate, promote and provide. The obligation to facilitate requires the States to take positive measures to assist individuals and communities to enjoy the rights. The obligation to promote obliges the States to take steps to ensure that there is appropriate education concerning the hygienic use of water, protection of water sources and methods to minimize water wastage. States are also obliged to provide water when individuals are unable to realize the rights to water and sanitation through their own efforts.

In line with the EU Council Conclusions on Water Diplomacy, these guidelines use the following definitions:

- **The human right to safe drinking water** entitles everyone, without discrimination, to have equitable access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.
- **The human right to sanitation** entitles everyone, without discrimination, to have physical, equitable and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity.

Furthermore, the core elements of the rights to water and sanitation are as follows¹⁶:

Availability: Water supply for each person must be continuous and sufficient water for personal and domestic uses, including drinking water, personal sanitation, washing of clothes, food preparation, personal and household hygiene, including menstrual hygiene. Likewise, a sufficient number of sanitation facilities must be available. This principle underlines that the supply of drinking water and sanitation should be prioritized over other water uses, whenever there is a competition over water resources.

Accessibility: Water and sanitation services should be accessible to everyone within, or in the immediate vicinity of, households, health and educational institutions, public institutions, public places and workplaces¹⁷ without discrimination. This includes women and girls, persons with disabilities and all persons belonging to the most vulnerable or marginalised sections of the population. Physical security must not be threatened when accessing facilities.

Quality: Water should be safe for direct human consumption (such as for drinking water) and other personal or domestic uses, with no threat to human health. Sanitation facilities must ensure privacy and be hygienically and technically safe to use. To ensure hygiene, including menstrual hygiene, water points should be positioned to enable use for cleansing and handwashing.

Affordability: While human rights laws do not require services to be provided free of charge, the price of sanitation and water services must be affordable for all. If a fee is charged, it must be such that it does not compromise the recipient's ability to pay for other essential necessities guaranteed in human rights law, such as food, housing, healthcare and education.

Acceptability: Services, in particular sanitation facilities, have to be culturally acceptable. This may require gender-specific facilities, constructed in a way that ensures privacy, safety and dignity.

¹⁶ These criteria are also often referred to as AAAQ-criteria or simply the 4A-criteria

¹⁷ Note that ILO Recommendation No. 164 of 1981 sets out that in pursuance of coherent national policy on occupational safety, occupational health and working environment, measures should be taken in the field of sanitary installations, washing facilities and supply of drinking water in line with Article 4 of ILO Convention No. 155 of 1981

The realisation of the human rights to safe drinking water and sanitation are closely linked with other human rights, including the rights to life, dignity, food, health and education. For example, lack of access to water and sanitation services, including for menstrual hygiene management in schools, can contribute to reinforced stigma associated with menstruation and negatively affect women's and girls' enjoyment of the right to education¹⁸. The EU remains committed to the promotion, protection and fulfilment of all human rights and to the full and effective implementation of the Beijing Platform for Action and the Programme of Action of the International Conference on Population and Development (ICPD) and the outcomes of their review conferences and remains committed to sexual and reproductive health and rights (SRHR), in this context. Having that in mind, the EU reaffirms its commitment to the promotion, protection and fulfilment of the right of every individual to have full control over, and decide freely and responsibly on matters related to their sexuality and sexual and reproductive health, free from discrimination, coercion and violence. The EU further stresses the need for universal access to quality and affordable comprehensive sexual and reproductive health information, education, including comprehensive sexuality education, and health-care services.

Human rights defenders

The high priority given by the EU to support human rights defenders in the EU's external human rights policy and their relevance in regard to promoting the rights to safe drinking water and sanitation merits some discussion under this chapter on core concepts. The EU Guidelines on Human Rights Defenders¹⁹ confirms that human rights defenders are natural and indispensable partners in the promotion of human rights and democratisation in their respective countries as well as in international/ global cooperation.

¹⁸ A/RES/72/178

¹⁹ EU Guidelines on Human Rights Defenders (2008)

Environmental human rights defenders are those that address environment protection and sustainable development. As such they are also covered by the existing Guidelines on Human Rights Defenders, but are not explicitly mentioned. Environmental human rights defenders working to promote safe drinking water and sanitation work on or can focus on any or all steps of the water and sanitation management and supply chain as well as on their related policies, including in protecting natural resources from exploitation or damage. They include persons who work on international and regional levels but also persons living in remote villages, forests or mountains, or indigenous leaders or community members who defend their traditional lands against the harms of large-scale projects such as mining and dams²⁰.

Sustainable development – Leave no one behind

In the 2030 Agenda for Sustainable Development, UN Member States reaffirmed their commitments regarding the human rights to safe drinking water and sanitation²¹, and it is clear that the realisation of the human rights to water and sanitation are inseparable from the 2030 Agenda’s guiding principle “Leave no one behind” and the achievement of the 17 Sustainable Development Goals (SDGs) and its 169 targets. The SDGs and their targets seek to realize the human rights of all and to achieve gender equality and the empowerment of all women and girls. They are integrated and indivisible and balance the economic, social and environmental dimensions of sustainable development.

²⁰ Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst, A/71/281

²¹ Transforming our world: the 2030 Agenda for Sustainable Development, resolution / adopted by the General Assembly A/RES/70/1

Goal 6: "Ensure availability and sustainable management of water and sanitation for all", and together with its related targets and indicators focus specifically on ensuring availability and sustainable management of water and sanitation. Apart from the implicit objective of realising the human rights to safe drinking water and sanitation, its targets and indicators, like with those of other SDGs, reflect the human rights- based means for the achievement of this Goal. For instance, by placing the emphasis on support and strengthening of public participation in decision-making in target 6.b and its indicator 6.b.1 as well as by the overall attention to ensure non-discrimination.

SDG 6 "Ensure availability and sustainable management of water and sanitation for all"		
	Target	Indicator
Water	Target 6.1: By 2030, achieve universal and equitable access to safe and affordable drinking water for all.	Indicator 6.1.1: Proportion of population using safely managed drinking water services
Sanitation	Target 6.2: By 2030, achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations.	Indicator 6.2.1: Proportion of population using safely managed sanitation services, including a hand-washing facility with soap and water
Water and Sanitation	Target 6.b: Support and strengthen the participation of local communities in improving water and sanitation management	Indicator 6.b.1: Proportion of local administrative units with established and operational policies and procedures for participation of local communities in water and sanitation management

While SDG 6 on safe water and sanitation is indivisible from other goals of the 2030 Agenda, there are some SDGs to which it has more direct links. These linkages also have strong gender dimensions. For example, safe drinking water and sanitation is essential for progress on several health-related targets (SDG 3), including reducing child and maternal mortality and deaths from unsafe water, unsafe sanitation and lack of hygiene-related diseases. Provision of water, sanitation and hygiene in healthcare and childbirth settings is critical for maternal and neo-natal health and survival. Reducing the time spent on water collection and improving school sanitation, including for menstrual hygiene, is also important for achieving quality and inclusive education and effective learning outcomes among girls (SDG 4). Furthermore, it also contributes to achieving gender equality and to the empowerment of all women and girls (SDG 5).

Vital is also the SDG 1 on ending poverty and target 1.4: “By 2030, ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance” and its indicator 1.4.1 “Proportion of population living in households with access to basic services.”

Significant is also SDG 12, which aims at sustainable consumption and production patterns, with targets, such as sustainable management and use of natural resources and sound management of chemicals to avoid pollution of air, water and soil, as it is crucial for the ability to attain SDG 6.

Finally, SDG 13, which aims at taking urgent action to combat climate change and its impacts, is closely linked to water. Climate change is projected to impact water resources all around the world. At the same time, effective water management is crucial for climate change resilience.

In the 2018 Council Conclusions on Water Diplomacy, the EU reaffirms its strong commitment to the implementation of the UN 2030 Agenda and highlights that progress on Goal 6 (Ensure availability and sustainable management of water and sanitation for all) is essential for the achievement of other Sustainable Development Goals (SDGs). The 2018 UN Synthesis Report on Water and Sanitation²² showed that SDG Goal 6 will not be achieved by 2030 at current rates of financing capacity and political commitment. In order to promote accelerated efforts towards meeting water-related goals and targets, including those of the SDGs, the United Nations General Assembly declared 2018-2028 as the International Decade for Action on Water for Sustainable Development²³.

In the context of the commitments to the Sustainable Development Goals, many EU Member States are Parties to the Protocol on Water and Health²⁴, to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes serviced by the United Nations Economic Commission for Europe (UNECE) and the World Health Organization Regional Office for Europe (WHO/Europe). The Protocol aims to protect human health by better water management, reducing water related diseases, improving equitable access to water and sanitation to all in the pan-European region, thus providing a sound framework for the translation of the human rights to safe drinking water and sanitation into practice and also contributing to the aims of Water Diplomacy. It is also relevant to mention that the EU supports the UNESCO's World Water Assessment Programme (WWAP)²⁵ founded in 2000, which issues annual assessment reports on the status, use and management of fresh water resources.

²² Sustainable Development Goal 6 - Synthesis Report on Water and Sanitation, UN Water, Geneva, 2018

https://sustainabledevelopment.un.org/content/documents/19901SDG6_SR2018_web_3.pdf

²³ International Decade for Action, "Water for Sustainable Development", 2018-2028: resolution adopted by the General Assembly A/RES/71/222

²⁴ <http://www.euro.who.int/en/health-topics/environment-and-health/water-and-sanitation/protocol-on-water-and-health>

²⁵ UNESCO's WWAP is part of the UN Water network.

The New European Consensus on development “Our World, Our Dignity, Our Future’ adopted in June 2017 has the objective of strengthening policy coherence for development to achieve the SDGs, including on the right to water. Through the New European Consensus the EU and its Member States are committed to engaging in the capacity building of developing countries to implement the 2030 Agenda, including through the mobilisation and effective use of domestic public finance.

Data, monitoring and accountability

With a view to helping the measurement of progress on achieving the Sustainable Development Goals and targets and to ensure that no one is left behind, the 2030 Agenda commits "to enhance capacity-building support to developing countries, including for least developed countries and small island developing States, to increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts"²⁶. In this regard, the EU remains committed to systematically using gender analysis, gender mainstreaming, sex-disaggregated data and gender-sensitive indicators in identification, planning, implementation, monitoring and evaluation processes throughout all EU external action²⁷.

²⁶ Transforming our world: the 2030 Agenda for Sustainable Development, para 17.18. Note also that in the new European Consensus for Development the EU and its Member States commit (paragraph 121) to "boost the statistical capacity of developing countries, including through strengthened capacity for the production and analysis of data, to inform policy and decision-making. This data should be disaggregated where possible by income, gender, age and other factors, and provide information on marginalised, vulnerable and hard to-reach groups, inclusive governance and other issues, consistent with the EU's rights-based approach".

²⁷ 2018 Council Conclusions on the EU Gender Action Plan II (GAP II).

III. Principles for EU engagement – A human rights based approach

Human rights are at the heart of EU's external action, which means that EU engagement should build on international human rights law and principles. In 2014, the EU adopted a toolbox "A Rights-Based Approach, encompassing all human rights, for EU development cooperation"²⁸. The Rights-Based Approach (RBA) is a working methodology aimed at promoting and protecting human rights in practice.

The toolbox focuses on integrating human rights norms, standards and principles into project and programmes in development cooperation. While the scope of these guidelines also extends to other tools and measures beyond projects and programmes, such as policy dialogue and engagement in multilateral fora, the same principles should be applied in all activities to promote and protect the human rights to safe drinking water and sanitation. In other words promoting and protecting the human rights to safe drinking water and sanitation, like all human rights, are cross-cutting priorities.

The five working principles of the RBA are:

- applying all rights - legality, universality and indivisibility of human rights
- participation and access to the decision making process
- non-discrimination and equal access
- accountability and rule of law
- transparency and access to information

In addition to these five principles, the principle of *sustainability* has particular relevance for the human rights to safe drinking water and sanitation.

This chapter will outline how these fundamental principles apply to safe drinking water and sanitation.

²⁸ A Rights-Based Approach to EU Development Cooperation- encompassing all human rights is further discussed in chapter IV

Applying all rights - legality, universality and indivisibility of human rights

EU action in the field of water and sanitation should build upon legally binding international human rights law, bearing in mind that all human rights are universal, indivisible and interlinked. The human rights to safe drinking water and sanitation are components of the right to an adequate standard of living embedded in article 11 of the International Covenant on Economic, Social and Cultural Rights. The content of the rights to water and sanitation is introduced above in chapter II.

Further detailed commentary about the rights is available in resolutions by the UN General Assembly and the Human Rights Council, as well as General Comments by the UN Committee on Economic, Social and Cultural Rights and reports by the Special Rapporteur on the human rights to safe drinking water and sanitation. Human rights conventions are 'living instruments' and the interpretation of the rights may evolve over time.

Participation and access to the decision-making process

EU promotes participation of all stakeholders in a spirit of balanced partnership, both in relation to civil society and the EU, and civil society and the partner country. The EU and its Member States promote civil society space and seek to build the capacity of CSOs and human rights defenders to strengthen their voice in the decision-making process on water and sanitation-related issues.

Participation by representatives of all concerned including women and girls, persons with disabilities, those affected by caste-based discrimination, persons belonging to minorities, and indigenous peoples is key to ensuring that water and sanitation solutions answer the actual needs of communities.²⁹ Women and girls and persons belonging to marginalised groups are often excluded from decision-making related to water and sanitation, which is an additional barrier undermining their access to and control over safe drinking water and sanitation.³⁰ To be able to participate, concerned individuals and communities must also be informed and have access to information about water and sanitation policies. (See more under 'transparency and access to information' below.)

²⁹ A/HRC/12/24

³⁰ Fact Sheet No. 35, The Right to Water, Geneva 2018

Non-discrimination and equal access

EU interventions in the field of water and sanitation should have an inclusive approach and emphasise the principle of non-discrimination. Special priority could be given to persons in vulnerable situations including but not limited to children, women, older persons, persons with disabilities, and persons who are most vulnerable to poverty and human rights violations. These include, inter alia, persons belonging to minorities, and indigenous peoples, persons in displacement such as internally displaced persons (IDPs), migrants and refugees. Water and sanitation facilities and services must be accessible to all without discrimination on any grounds.

Gender equality is mainstreamed in all EU interventions, and in realising the human rights to safe drinking water and sanitation, particular attention must be given to the needs of women and girls. In some places, women and girls face the risk of being physically threatened or assaulted, including subjected to sexual violence, when collecting household water and when accessing sanitation facilities outside of their home or practising open defecation. In many cases girls are not able to go to school because of the time spent in collecting water, or because the school does not have adequate water and sanitation services.³¹

EU interventions in the field of water and sanitation needs to acknowledge the contributions of women and girls and account for the opportunity costs, including in employment opportunities and economic empowerment, associated with the time women and girls spend on water collection, treatment and disposal as well as in caring for family. Therefore, it is important that EU interventions are based on a robust understanding of gender-specific needs and of the barriers that women and girls face when striving to realise their rights to safe water and sanitation, including for menstrual hygiene management which is important for avoiding reinforcing the stigma associated with menstruation.

³¹ RES A/72 /178

Furthermore, particular attention should be paid to individuals facing difficulties with physical access to water and sanitation, such as older persons, persons with disabilities, victims of natural disasters, persons living in disaster-prone areas, refugees, asylum-seekers, migrants, internally displaced persons and returnees.³² In this regard the 2019 UN World Water Development Report entitled “Leaving no one behind” provides an extensive overview and status of the challenges of achieving the realisation of the human rights to water and sanitation in particular for women and girls and other persons and groups in marginalised situations.

Accountability and rule of law

EU action should promote accountability to ensure that those who have been denied their rights to safe drinking water or sanitation have access to effective judicial or other appropriate remedies. It is essential that accessible, transparent, and effective mechanisms of accountability, such as in the form of grievance mechanisms, exist both at central and local levels of government.

There should also be established monitoring and other mechanisms for supervising the different actors responsible for ensuring access to water and sanitation services. In this regard the availability of disaggregated data and gender-sensitive indicators are indispensable for monitoring progress on human rights to safe drinking water and sanitation, as well as for achieving SDG 6 and related SDGs (See also chapter II under the Sustainable Development Goals).

Transparency and access to information

Everyone should have access to the relevant information regarding decision-making processes that may affect the exercise of the rights to water and sanitation, including EU interventions in this field, for example in the form of development projects or programmes. Furthermore, transparency in the decision-making processes is paramount for ensuring the application of the other principles – without transparency it is not possible to achieve accountability and participation will not be meaningful.

³² General Comment no 15 of the Committee on Economic, Social and Cultural Rights.

Sustainability

EU interventions should be sustainable in the sense that services must be available for present and for future generations, and the provision of services today should not compromise the ability of future generations to realise their human rights to safe drinking water and sanitation. Furthermore, water and sanitation must be provided in a way that respects the environment and in this perspective, EU interventions should be conscious of the vulnerability of the water sector to climate change and of its potential in terms of human resilience.

Furthermore, ensuring sustainable outcomes based on the balancing of the economic, social and environmental dimensions of Sustainable development, calls for long-term engagement in working for the universal enjoyment of the human rights to safe drinking water and sanitation. In this regard, the national 2030 Agenda implementation strategies can play an important role.

IV. Operational guidelines

This chapter explores ways and means to work effectively towards the promotion and protection of the rights to safe drinking water and sanitation in partner countries and the steps that the EU can take, using all the available external action tools and instruments to their greatest advantage, building on the human rights norms, standards and principles described above.

The EU tools and instruments discussed in this chapter are:

- bilateral dialogue
- programs and projects in development cooperation
- work in multilateral fora and with international organisations
- trade
- UN Guiding Principles on Business and Human Rights

- Human Rights and Democracy Country Strategies
- public diplomacy and communication
- support to individual human rights defenders

Bilateral dialogue

Political dialogues offer an opportunity to discuss bilateral, regional and international issues of mutual concern with partner countries in a formal setting and on a regular basis. Sectoral dialogues address cooperation in sectors of common interest. In addition, dedicated human rights dialogues enable the EU to share its concerns on human rights violations with partner countries, to gather information and to seek to improve the human rights situation in the partner country concerned.

Political dialogues can relate to various issues of common concern, including peace, security and stability. In many places of the world, water is at the heart of major political and stability issues. EU water diplomacy must aim at the prevention, containment and resolution of conflicts, contributing to the equitable, sustainable and integrated management of water resources. In this context, the human rights to safe drinking water and sanitation are key elements of EU diplomatic engagement.

Sectoral dialogues can be linked to the use of water resources (e.g. in industry, energy or agriculture) or to other issues (e.g. economic development) to which access to water is an important prerequisite and the human rights to safe drinking water and sanitation are a central element.

Human rights dialogues are the foremost opportunities to raise issues related to the rights to safe drinking water and sanitation, as well as the situation for civil society and human rights defenders working on water and sanitation issues. Before and after human rights dialogues, consultations and debriefings should be organised with civil society.³³

³³ Such consultations can be funded under the European Instrument for Democracy and Human Rights (EIDHR) for 2018 to 2020 (Action: Supporting Human Rights Dialogues and their follow-up).

Concerning national legislation and policies, the EU can use the political dialogues to discuss national legislation and policy in the field of water and sanitation. To maintain the symmetrical relation in the dialogues, the EU must be equipped with knowledge on relevant EU level legislation and policies. The dialogues with partner countries could include encouragement to:

- accede, ratify and adhere to and/or implement and enforce the relevant international or regional human rights instruments and norms and review national legislation and related administrative guidance to ensure its compatibility with relevant international norms and principles;
- assess the situation of equitable access to water and sanitation services, particularly focusing on the most prevalent challenges faced (geographical disparities, affordability concerns and specific barriers faced by vulnerable and marginalized groups in access to water and sanitation) in order to identify priorities and develop tailored action plans to ensure equitable access³⁴;
- exchange on best practices and the development of measures to ensure adequate oversight of state-driven efforts to realise the rights to water and sanitation and to oversee the activities of other actors, such as the private sector, which may have an impact on the realisation of the rights and strengthen institutions at national level, including National Human Rights institutions and their role;

³⁴ For guidance see also “The Equitable Access Score-card: Supporting Policy Processes to Achieve the Human Right to Water and Sanitation” of the UNECE:
<http://www.unece.org/index.php?id=34032>

- improve the situation for human rights defenders and civil society working to promote and protect the rights to water and sanitation, and encourage the partner country to work closely with civil society organisations and local communities; including human rights NGOs, faith-based groups, academic institutions and professional associations, trade unions, business associations and environmental organisations when developing water and irrigation policies, laws and regulations at national and local levels;
- develop gender-sensitive and rights-based national strategies on water and sanitation where local civil society, including indigenous peoples³⁵ and local communities, relevant UN agencies and other relevant multilateral actors are consulted in the design and implementation of such strategies and/or action plans. Political dialogues can also include discussions on national plans for the implementation of the SDGs, including SDG 6 as well as national arrangements for SDG monitoring and reporting.

Programs and projects in development cooperation

The EU uses its bilateral and multilateral cooperation to promote and protect the rights to water and sanitation through the complementary use of the EU's financial instruments, in collaboration with national authorities, the UN, civil society and other partners. In the 2018 Council Conclusions on Water Diplomacy, the Council

(...) encourages the High Representative, the Commission and Member States to give the necessary consideration to the importance of water and sanitation in the programming of future financial and technical cooperation with partner countries, including under the next Multiannual Financial Framework, and encouraging private sector investment and partnerships in water infrastructure and capacity-building, in order to fill the investment gaps which cannot be covered by public finance alone.

³⁵ Reference should be made to the EU Council Conclusions on Indigenous Peoples of 17 May 2017 which state that ‘the Council underscores the crucial importance of further enhancing dialogue and consultation with indigenous peoples at all levels of EU-cooperation, including in EU funded programmes and projects under all aid modalities to secure their full participation and their free, prior and informed consent in a meaningful and systematic way’.

The EU and its Member States also have a firm political commitment to integrate human rights principles into all EU operational activities for development, confirmed by the new European Consensus on Development. The Rights-Based Approach to EU development cooperation as described in chapter III integrates the norms, standards and principles of international human rights law into the plans, policies and processes of development programmes and projects and applies to all sectors, all modalities, and each step of the project cycle – identification, formulation, implementation, monitoring and evaluation.

The implementation of the RBA is guided by two objectives 1) do no harm and 2) do maximum good:

- **Do no harm:** a development project in a recipient country could have unintended negative impact in terms of human rights, for example disadvantaging certain groups. Other risks are unaffordable water services, toxic waste and pollution, evictions and displacements.³⁶ Programmes and projects must safeguard the rights of affected individuals and communities. For example grievance mechanisms could be established in the context of programmes and projects in order to give those whose rights have been or are being affected negatively the opportunity to bring forward complaints³⁷. In case of harm, necessary remedy measures must be in place.
- **Do maximum good:** development cooperation should have a positive impact in terms of human rights, such as strengthening capacity to implement development strategies, fostering participation, tackling corruption, etc. The essential elements of the rights as defined by the UN Committee on Economic, Social and Cultural Rights in its General Comment No. 15 can provide useful contributions to water and sanitation projects and programmes.

³⁶ See for example: UN Basic Principles and Guidelines on Development-based Displacement and Evictions; the IFC Performance Standard No. 5 & Guidance Note No. 5; as well as IFC Performance Standard 2012 No. 7 & Guidance Note 7 for reference to the principle of free, prior and informed consent in development cooperation measures that affect the rights of indigenous peoples.

³⁷ See also the reference to grievance mechanisms in chapter III under Accountability and Rule of Law.

Applying the rights-based approach in line with the UN human rights framework for water and sanitation, using the criteria of availability, accessibility, quality, affordability and acceptability, the EU should support partner countries' efforts to:

- ensure access to sanitation and the essential amount of water for all, that is sufficient and safe for personal and domestic uses to prevent disease;
- ensure adequate planning for sustainable access to water and water services of good quality, in light of climate change and the possible disruptions it can lead to;
- ensure that access to water and sanitation facilities and services on a non-discriminatory basis;
- ensure physical access to water and sanitation facilities or services;
- ensure personal security is not threatened when having to physically access water and sanitation;
- where there is severe scarcity, prioritise water for personal use and consumption over water for productive use and irrigation;
- ensure the acceptability of services by taking users' distinct characteristics, habits, preferences, needs and beliefs into account during project design and implementation
- prevent the pollution of drinking water resources;
- ensure a safe and enabling environment for civil society and environmental human rights defenders.

In line with the rights-based approach, the EU should work closely with civil society organisations, including of indigenous peoples and local communities both in order to better understand the main issues and to determine the best solutions in the local context. Such collaboration with civil society should also serve to promote a more enabling environment for civil society actors. The EU should also empower water user groups and associations of rights holders to articulate their rights.

Work in multilateral fora and with international organisations

The EU has a leading role in the universal promotion and protection of human rights at multilateral level, working in particular through the United Nations Human Rights Council (HRC) and the Third Committee of the United Nations General Assembly (UNGA). Every other year, a resolution on the human rights on water and sanitation is presented in UNGA and HRC,³⁸ and these resolutions play a key role in developing the awareness and understanding of the rights to water and sanitation, and in developing normative approaches.

The EU and its Member States through their active involvement and participation contribute to the agendas, strategies and work of the UN's agencies and programmes (e.g. UNICEF, UN Women), specialised agencies such as the ILO (International Labour Organisation), FAO (Food and Agriculture Organisation), IFAD (International Fund for Agricultural Development) as well as the International Financing Institutions (the World Bank, the regional development banks etc.). Several of these already have conducted work related to water and sanitation, whereas for some these topics and rights are still in emergence. Given their role as executing or financing agencies and institutions including in the field of development cooperation, it would be important for the EU and its Member states to work for enhancing the attention that these international/multilateral entities give to the promotion and the protection of the human rights to safe drinking water and sanitation.

The EU and its Member States also engage in regional dialogues and cooperation on human rights, whether it is with/within the UNECE (UN Economic Commission for Europe) or regional organisations such as the African Union, Organisation of American States or ASEAN³⁹. Within the UNECE there is already substantial on-going work to support assessment and achievement of equitable access to water and sanitation under the previously mentioned UNECE/WHO EURO Protocol on Water and Health⁴⁰. The existing dialogues and cooperation on human rights with other regional organisations provide an opportune platform to further expand on the awareness and engagement on the human rights to safe drinking water and sanitation.

³⁸ The resolution is presented by EU MS Germany and Spain, and supported by all EU MS.

³⁹ The Association of South East Asian Nations

⁴⁰ See for instance: A healthy link: The Protocol on Water and Health and the Sustainable Development Goals

The UN High-level Political Forum on Sustainable Development could also be relevant, given its central role in the follow-up and review of the 2030 Agenda and the SDGs at global level.

The EU should engage with and use the multilateral organisations, agencies and institutions to promote the rights to safe drinking water and sanitation by:

- complementing and strengthening the ongoing EU efforts in multilateral fora and giving the rights to water and sanitation more weight on the international agenda with a view to advancing their realisation and to preventing violations of the rights worldwide;
- cooperating with and support the work of relevant international and regional actors in the area of the human rights to safe drinking water and sanitation, in particular the Special Rapporteur on human rights to safe drinking water and sanitation, the Special Rapporteur on human rights defenders and the UN Committee on Economic, Social and Cultural Rights;
- making use of the human rights system and using its products (reports, concluding observations, recommendations, etc. including from regional human rights mechanisms) to inform activities such as development programmes and projects, political or human rights dialogues, trade agreements, strategies and statements and demarches;
- when engaging with third countries in interactive dialogues, the Universal Periodic Review or other intergovernmental mechanisms, encourage partner countries to comply with recommendations of international and regional human rights bodies, and to review, put in place or adapt published good practices in particular those of the UN Committee on Economic, Social and Cultural Rights; the Special Rapporteur on human rights to safe drinking water and sanitation, the Special Rapporteur on human rights defenders and the guidelines of the Protocol on Water and Health;
- engage with NGOs in the reporting processes related to the implementation of national strategies or action plans and with regard to reporting to the UN Committee on Economic, Social and Cultural Rights.

Trade

EU trade policies can support the advancement of and respect for human rights and core labour rights in trade partner countries. These involve various policy instruments, including the EU's Aid for Trade agenda, its unilateral Generalised Scheme of Preferences (GSP), which *inter alia* includes 'GSP+' and "Everything but Arms (EBA)" arrangements, as well as provisions in association with bilateral and regional trade agreements, including Trade and Sustainable Development (TSD) chapters.

Connecting human rights and trade provides an opportunity to push for human rights advancements in trade partner countries. The GSP+ arrangement established under the EU's GSP is one important instrument in promoting compliance with core international norms in the areas of human rights, including the International Covenant on Economic, Social and Cultural Rights.

Once a country is granted GSP+ status, the EU monitors the beneficiary country's compliance with its commitments, namely to maintain ratification of the international conventions covered by GSP+, including through continuous dialogue with the authorities of the countries in question. Where relevant, rights to water and sanitation can be discussed in these dialogues as a part of the follow up to the International Covenant on Economic, Social and Cultural Rights.

The increased integration of a human rights-based approach in Aid for Trade programming, should serve to identify possible positive and negative effects from bilateral or regional trade agreements on local water resources in partner countries and the access to safe drinking water and sanitation. Such analyses would provide the basis for initiating measures to circumvent possible negative effects.

UN Guiding Principles on Business and Human Rights

Production of goods or services may affect local water resources, and the human rights to safe drinking water and sanitation. The EU is committed to the global implementation of the three pillars of the UN Guiding Principles on Business and Human Rights⁴¹ 'Protect, Respect and Remedy' including in the field of water and sanitation.

The EU also works to promote a framework for integrated water resources management and provides substantial funding to water and sanitation programmes in developing countries. This can include work with the private sector, including through blending public and private resources. The European External Investment Plan, for example, encourages private investors to contribute to sustainable development in countries outside of Europe through the European Fund for Sustainable Development (EFSD). When working with the private sector as implementation partners in programmes or projects, the EU has to make sure that contracting companies and their sub-contractors have adequate due diligence mechanisms in place to detect, prevent and remedy possible violations to human rights. Human rights due diligence is especially important wherever water is scarce or of low quality, and where private sector activity affects the water supply of vulnerable or marginalized communities.

To support and encourage states and businesses to uphold their obligations regarding the human rights to safe drinking water, and to ensure that there is accountability for violations, the EU should:

- raise awareness about human rights risks facing private actors in the water and sanitation sector;
- encourage businesses in the water and sanitation sector to implement the UN Guiding Principles;

⁴¹ Report of the Special Representative of the Secretary- General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, A/HRC/17/32, 27 May 2011

- organise multi-stakeholder meetings and other events at local level with businesses, civil society, including indigenous peoples and local communities, to discuss their commitment to the human rights to drinking water and sanitation as well as possible risks of business conduct, and to exchange best practices with other businesses.
- address possible abuses of human rights linked to companies' operations, products or services within the political and human rights dialogues.
- encourage business in the water and sanitation sector as well as partner countries to establish grievance mechanisms in order to enable affected individuals to bring forward complaints about human rights violations and abuses.
- increasingly call on businesses to be transparent and accountable for their impacts in relation to water.

Human Rights and Democracy Country Strategies

The Human Rights and Democracy Country Strategies are the framework for EU human rights engagement in third countries. The strategies are prepared at local level by EU Delegations and Member States' embassies, after close consultation with relevant interlocutors, including civil society.

The strategies give the opportunity for an analysis of the situation of human rights to safe drinking water and sanitation in a given country, and to identify potential gaps and the necessary actions and mechanisms needed to ensure the protection of these rights.

A number of countries have identified economic, social and cultural rights as priorities in the strategies, but rights to water and sanitation have so far not been a focus area in many countries. Building on these guidelines, countries in which the rights to water and sanitation is a challenge should consider including the rights to water and sanitation and/or protection of human rights defenders addressing environmental issues as priorities in the strategies. The strategies should define long- and short-term key objectives, and set out concrete actions to achieve these objectives in a specific country. In the annual reporting on the implementation of the strategies, delegations can identify developments or concerns emerging on this topic

Public diplomacy and communication

The EU should also use public diplomacy tools to promote the human rights to safe drinking water and sanitation and to promote the work of human rights defenders, to help counter smear campaigns and publicly scrutinise and condemn violations of the rights of human rights defenders and raise the visibility of their legitimate role in defending land and environmental rights.

Example of use of public diplomacy and communication:

- **Campaigns:** Large- or small-scale communication campaigns, for example using social media, can contribute to raising awareness about human rights to safe drinking water and sanitation and to the important work of human rights defenders, including on examples of best practices' projects.
- **Public events:** Awareness-raising events for rights to water and sanitation can include panel-debates and multi-stakeholder meetings, for example to mark World Water Day (22 March) or World Toilet Day (19 November).
- **Statements and declarations** are key tools for raising awareness of the human rights to safe drinking water and sanitation and their implementation. The EU should in particular deliver statements on strategic issues on World Water Day and World Toilet Day and in the thematic side events in the margins of the Human Rights Council and the UNGA 3rd Committee with the Special Rapporteur on the human rights to safe drinking water and sanitation.

Support to individual human rights defenders

In some cases, human rights defenders can be at risk in a way that calls for concrete action in individual cases.⁴² In addition to the multilateral, bilateral and public diplomacy tools above, it may be necessary to engage with individuals to ensure their security.

To support individual human rights defenders and in line with the EU Guidelines on Human Rights Defenders, the EU should:

- assist defenders and communities affected by water and sanitation disputes to defend themselves through courts, advocate for better access by them to courts and for trials to follow international norms, push for violations to be promptly investigated and for those responsible to be promptly brought to trial; fight against impunity in this area;
- ensure that the financial and other support for HRDs at risk is also extended to individuals, affected communities and organisations working on projects that aim at resolving issues or addressing violations in the context of safe drinking water and sanitation;
- provide, as and where appropriate, visible recognition to human rights defenders, through the use of appropriate publicity, visits or invitations;
- attend and observe, where appropriate, trials of environmental human rights defenders

⁴² ProtectDefenders.eu is the European Union Human Rights Defenders mechanism, established to protect defenders at high risk and facing the most difficult situations worldwide.

Textbox: Water and Sanitation in Humanitarian Crisis

Access to water and sanitation is not only a right; it is a basic need for survival for an ever-increasing population affected by natural disasters, such as droughts and floods as well as conflicts and displacement worldwide. Population growth and rapidly growing urban areas are increasing pressure on local water resources. Consequently, needs are increasing more rapidly than the available resources.

While EU humanitarian assistance is needs-based and founded on the core-humanitarian principles of humanity, impartiality, neutrality and independence, it contributes nonetheless to the fulfilment of the human right to water and sanitation, though indirectly, within the possibilities and scope of its humanitarian mandate. At the same time evidence suggests that rights-based pre-emptive action reduces the risk of water and sanitation becoming humanitarian needs in the first place. Therefore not only humanitarian actors, but also development and peace actors need to work in a collaborative and coherent manner according to their respective mandate to effectively tackle the issue of water and sanitation. Humanitarian actors address urgent needs while development actors – in particular in fragile situations – must intervene earlier to address root causes and prevent the onset of humanitarian water and sanitation needs.

It should also be underlined that the specific strengths and vulnerabilities of women and children in regard to access to water and sanitation require special consideration also in humanitarian assistance. If gender issues are not taken into consideration, emergency interventions can put women at risk. For example, the use of communal water and sanitation facilities in refugee or displaced camps can increase women's and girls' vulnerability to sexual and other forms of gender-based violence.

V. Follow-up and review of the guidelines

The Council Working Party on Human Rights (COHOM) will support the implementation of the guidelines while involving, when appropriate, relevant Council working groups, such as the Council Working Party on International Environment Issues, geographical Council working groups and the Council Working Party on Development Cooperation (CODEV).

Regular exchanges of views will be held with the relevant committees, sub-committees and working groups of the European Parliament on the implementation of these guidelines.

The promotion and protection of the human rights to water and sanitation will be integrated into relevant EU policies and actions, including in relation to the EU's role in international fora.

These guidelines and their implementation will be reviewed as appropriate.

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