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**Statement by Catarina de Albuquerque
INDEPENDENT EXPERT ON THE ISSUE OF HUMAN
RIGHTS OBLIGATIONS RELATED TO ACCESS TO
SAFE DRINKING WATER AND SANITATION**

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Excellencies, distinguished delegates, ladies and gentlemen,

I am pleased to be here today to present this mandate's first report to the General Assembly.

Recognition of water and sanitation as a human right

On 28 July 2010, the General Assembly's Plenary recognized that water and sanitation are a human right¹. Two months later, on 30 September 2010, the Human Rights Council² affirmed this decision and explained that the right to water and sanitation is derived from the right to an adequate standard of living and indispensable for the realization of other human rights. These steps demonstrate the political will of the international community to address the global water and sanitation crisis. They also confirm that the human right to water and sanitation is part of international human rights law and crucial to any debate and deliberation regarding water and sanitation. I therefore take this opportunity to congratulate the General Assembly for the important resolution adopted and Bolivia for its leadership role, as well as the important role played by Germany and Spain in following this issue at the Human Rights Council.

The recognition of the right to water and sanitation is a breakthrough, but it is only a first step. The real challenge is to implement this right and turn it into reality for the billions of people who still lack access to water and sanitation. The report that I will present today analyses how this right

¹ General Assembly resolution 64/292, of 28 July 2010.

² HRC resolution 15/9, of 30 September 2010.

impacts the design and implementation of strategies to achieve the Millennium Development Goals, especially Goal 7(c).

The MDGs and human rights

The MDGs bring a strengthened political commitment to a number of essential development priorities, which overlap with numerous human rights. In this regard, the MDGs can contribute to the progressive realization of human rights, including the right to water and sanitation. The MDG Summit Outcome Document makes several references to human rights and generally recognizes that human rights are essential for achieving the MDGs. Still, the MDGs and human rights are not the same thing. There is considerable scope for improving the integration of human rights into the MDG project. Placing human rights at the core of MDG policy and implementation will help to ensure real, sustainable and equitable progress for all. Without human rights, the MDGs risk masking continuing inequalities, inadequate access, and exclusion. This has become even clearer to me through my field missions and discussions with different stakeholders, and especially in witnessing the way the MDGs work, or do not work, in the places I have visited.

I fully acknowledge that, in the area covered by my mandate, MDG targets on water and sanitation have provided important impetus for improving access levels around the world. However, the current MDGs alone are not enough.

Permit me to begin with a story. There is a man who lives in a semi urban area near the capital city of a country I recently visited. He showed me the water coming out of his kitchen tap: it was black and obviously unfit for

human consumption. He explained that people in his community boiled and filtered the water, or they bought bottled water, in order to have access to safe drinking water. That tap in his kitchen, with the black water, is being counted towards the MDGs, because the MDGs only measure whether there is an improved water source (such as a tap, a protected well or a standpipe). The MDGs do not measure quality, which is equally important from a human rights perspective. This simple example gives us a clear picture of how actions to achieve the MDGs must be differently designed if they are to meet human rights standards.

Universal access and progressive realisation

MDG 7, Target C commits the international community to “halve, by 2015, the proportion of people without sustainable access to safe drinking water and sanitation”. We know, however, that international human rights obligations do not stop at 50 per cent reduction or any other arbitrary benchmark. Whatever time period may prove realistic, international human rights law requires States to ultimately aim for **universal coverage**. Undoubtedly, the global MDG targets would represent a great success for many countries; but it is important to keep in mind that this would still leave a huge number of people without access to water and sanitation.

Human rights require States to progressively realize the right to water and sanitation to the maximum of their available resources. States are required to move towards the goal of full realization as expeditiously and effectively as possible, within available resources and within the framework of international cooperation and assistance, where needed.

This means that the MDG targets should be tailored and contextualized to reflect diverse national conditions. Human rights require undertaking national target-setting based on an objective assessment of available resources. Many countries could and should set targets beyond the 50 % reduction. Reaching the Millennium Development Goal target must not be used as a justification for falling short of achieving universal access. In some of my missions I have witnessed the unintended, but perverse, effect that MDGs can have, making governments feel (justly) proud about their achievements regarding the MDGs, while unfortunately forgetting about the poor, migrants, refugees, slum dwellers and ethnic minorities who still lack access.

Aligning targets and indicators with human rights standards

The human right to water and sanitation requires that water and sanitation are available, safe, acceptable, accessible and affordable. The MDG targets should be aligned with these standards in order to complement and not undermine human rights obligations undertaken by States.

As I mentioned, efforts to assess progress towards the achievement of the MDGs measure the number of people without access to an improved water source – estimated at 884 million. Regarding sanitation, the MDG framework measures the number of people without access to improved sanitation – estimated at 2.6 billion. The term “improved” refers to water sources or delivery points that, by nature of their construction and design, are likely to protect the water from outside contamination; and sanitation facilities that hygienically separate human excreta from human contact.

These indicators do not measure several important aspects which would require attention from a human rights perspective. For instance, evidence has shown that the poorest people pay the most for water and sanitation. Or, people may have access to an improved water source in theory, but in reality, because of economic constraints, their access is limited. I have met people who struggle every day to afford water - because they are obliged to buy it from private vendors rather than having a household or local connection. Others simply cannot afford their water bills from the formal provider, or they cannot afford to pay for other things they have a right to enjoy (food, education, health) because the proportion of the household income devoted to water is so high. The MDG indicators fail to incorporate a measure of affordability to reflect this reality.

Similarly, pit latrines meet the MDG requirements for “improved” sanitation, but many people cannot afford to have the pits emptied correctly. This results in abandonment of use of the latrine and a return to open defecation, or hiring cheaper alternatives for cleaning the latrine pit, disposing of the contents into the nearest river or canal and jeopardizing the larger environment, as well as the water quality. Human rights provide a framework for understanding affordability or sustainability of sanitation in a more holistic fashion. Simply giving people a toilet is not the same as ensuring that they use it and maintain it. In fact, ‘latrinization’ is not the same as sanitation.

Human rights standards help to ensure that access is factually guaranteed. The existence of toilets is not sufficient when women cannot use them because they are not sex-separated or do not guarantee privacy. In many instances, water from “improved” water sources is in fact unsafe, as I have already indicated. Pilot studies by the UNICEF/WHO Joint Monitoring

Programme show that water sources that are categorized as “improved” often do not meet water quality standards. The MDGs as they are being pursued in practice are blind to whether the water people are drinking is safe. Incorporating human rights into MDG policies and programmes would require greater attention to ensuring that is fit for human consumption and does not endanger human health.

I welcome the Summit Outcome Document’s call for “improving the tracking and monitoring of water quality” and think that this needs to be done systematically in line with human rights standards, specifically the criteria of availability, safety, acceptability, accessibility (including reliability) and affordability must be taken into account.

Non-discrimination

Another one of the contributions human rights bring to development is its attention to the most marginalized populations. The focus of the MDGs on averages gives States an incentive to concentrate on those relatively easy to reach. This has the potential to exacerbate underlying inequalities. In fact, it would be possible for a country to be in full compliance with the Goals without having extended access to any person belonging to the lowest wealth quintile.

I have visited a country where everyone had access to safe drinking water and sanitation. Everyone except some elements of a small ethnic minority – some few thousands. In terms of the MDGs, that country is easily meeting the target of reducing those without access by 50 percent. However, it is unacceptable that this specific population is left behind, reflecting a broader pattern of discrimination against that group. Frequently, people living in

slums, or informal settlements, are not reflected in the official statistics, since they are “illegal”. Human rights however require a special attention to these people. Achieving the MDGs cannot be cause for complacency in this regard.

Disaggregated data provides the basis to design targeted interventions – to reach those most in need. I welcome the fact that the MDG Summit Outcome Document underlines the call for adequate, timely, reliable and disaggregated data. I also welcome UNICEF’s focus on equity, its recent report on ‘Progress for Children: Achieving the MDGs with Equity’ and its study “Narrowing the Gaps to Meet the Goals”.

While the MDG indicators on water and sanitation do call for disaggregation according to rural/ urban areas, human rights standards would also call for assessments of discrimination on grounds of sex, race (including social, national and ethnic origin), disability and political and religious belief, among others. Disaggregation according to wealth quintiles of the population should be prioritized at the global level. The same applies to gender in view of the particular challenges, vulnerabilities and discrimination faced by women and girls. In addition, a contextualized approach to disaggregation is required. States must identify groups that face discrimination and specifically monitor progress towards ensuring their access in order to target systematic exclusion.

Such disaggregated data helps to ensure that development strategies do not inadvertently benefit the better-served populations for whom household data are more readily available. Official Development Assistance also must be better targeted to reach those most in need.

Participation and Empowerment

The lack of adequate participation has been a troubling feature of many development processes. Human rights have the potential to empower people, to challenge existing inequities and to transform power relations to bring about real and sustainable changes. Human rights standards compel the participatory formulation of public policies and development plans and the institutionalization of democratic processes. Everyone has the right to participate in decision-making processes that may affect their rights, and the right to have full and equal access to information concerning water and sanitation. In order to give full meaning and practical expression to “participation”, it is vital for States to transcend ad-hoc and project-level participatory processes, not to limit themselves to a reductionist and technocratic understanding of participation and to go beyond the mere involvement of user groups in delivery of water and sanitation. States must overcome barriers to participation including low literacy levels, language constraints, cultural barriers and physical obstacles.

Accountability

Finally, I want to turn to the question of accountability, which is central to the human rights framework. The Millennium Development Goals help to promote accountability at national and global levels through monitoring and reporting. They rely on human development data and quantitative assessment methods to provide an overview of countries’ progress — in absolute as well as comparative terms.

However, human rights mechanisms can and should complement that picture. Human rights monitoring institutions and expert bodies add

important additional accountability dimensions to monitoring and reporting processes. They include courts, national human rights institutions and informal justice systems, as well as international mechanisms including the UN treaty bodies and special procedures. They go beyond MDG monitoring by assessing compliance with specific legal obligations for the realization of human rights. And they enable the identification of human rights violations, including with respect to discrimination, exclusion and unjustifiable retrogression

Conclusion

Excellencies,

The MDGs have served a valuable function in galvanizing international support around a number of targets including with respect to water and sanitation. The work I undertook over the past 12 months on the MDGs and on the right to water and sanitation has showed that both have to be seen as consistent and mutually reinforcing. I tried to demonstrate this today.

The truth however is that the potential for constructive synergy has not materialized to the extent we would all wish - has in fact generally not been realized.

In my view, the recent recognition of the right to water and sanitation, and the political momentum it has brought to the sector is a critical step for progress on this issue. States have recognized that they are under a legal obligation to ensure, in a progressive manner and within available resources, that everyone has access to water and sanitation that meets the

relevant human rights criteria. It also means that this crucial legal obligation has to be reflected in other deliberations by this same Assembly.

In fact, the States that recognized the right to water and sanitation are the same that negotiated the MDG Outcome Document. They are also the same that will develop and negotiate a new post 2015 framework. Therefore human rights – and their attendant obligations - must be fully integrated in the implementation of the current MDG framework. By using human rights to underpin development interventions, we ensure that the access which is achieved is real - meaning affordable access, meaning safe access. The international community must incorporate these additional aspects into MDG-based monitoring efforts. By using human rights as the basis for development interventions, we reach those who need it most. Applying the MDGs through a human rights based approach will result in concrete and sustainable improvements in the lives of all those who still do not effectively enjoy these most basic human rights.

It is true that once human rights criteria are factored in, a bleaker picture of progress emerges. Progress will prove not to be as advanced as we thought. While the extent of the gap is unknown, far more people than indicated by the figures measuring access to “improved” water sources and sanitation facilities do not have access to sufficient water and sanitation services that are safe, acceptable, accessible and affordable. Greater disappointment should, by no means, be a reason for ignoring this reality. On the contrary, human rights demand the courage to recognise the existing challenges and political vision to overcome them.

Excellencies,

I look forward to continuing the work under my mandate and to reporting again to the General Assembly at its 66th session on the main challenges to the implementation of the right to water and sanitation. Thank you.