



## Short Communication

## Challenging exclusion: bringing the human rights to water and sanitation to Europe

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## ABSTRACT

Research and advocacy on water and sanitation in low-income countries often consider the human rights to water and sanitation as the basis for improving access to these essential services. But how often is the spotlight turned on high-income countries? Do the predominantly global North researchers, advocates, donors and development partners who explore failures to meet the human rights in Accra or Jakarta ever ask if the same rights are realized at home in Berlin, London or Paris? Exclusion and marginalization similar to that faced by various populations in low-income countries are present in the lived experiences of individuals and groups in Europe, including Roma communities, refugees and people facing homelessness or incarceration. Yet, the same human rights that are invoked in low-income countries are all too often ignored in Europe. Meanwhile, high-income countries cannot point to insufficient financial resources to justify failures in human rights realization. Against this background, we outline some of the inequalities in access to water and sanitation that exist and persist in high-income countries through the lens of human rights, and propose that invoking these human rights can support the ideals of equity and justice contributing to re-imagining universal access to services across Europe.

**Key words:** accountability, equality and non-discrimination, Europe, human rights to water and sanitation, justice, participation

## HIGHLIGHTS

- A significant minority of people living in Europe remains without access to safely managed water and sanitation.
- The human rights to water and sanitation are seldom invoked within Europe, despite Spain and Germany shaping the global agenda on these rights.
- Lessons can be learned from countries around the world that have adopted the language and law of human rights in their constitutions, legislation and policy.

## INTRODUCTION

In Ouistreham, France, over 200 Sudanese refugees have been living for a few years in a makeshift camp without access to water or sanitation.<sup>1</sup> Following a 2023 court order citing the human rights to water and sanitation for the local authority to provide adequate services or face a daily fine, the people finally now have access to a tap and two toilets, even though this remains insufficient for the number of refugees.<sup>2</sup>

In Bonn, Germany, the unhoused population is increasing year on year, with refugees particularly at risk. While there are some public toilets in the city, these are frequently inaccessible, require payment or are not hygienic (Anthonj *et al.* 2024b). Women have additional difficulty to find a safe and hygienic place to take care of their bodies during menstruation (Anthonj *et al.* 2024a).

<sup>1</sup> <https://www.lefigaro.fr/actualite-france/a-ouistreham-l-interminable-bras-de-fer-entre-l-etat-et-des-associations-pro-migrants-20240326> and <https://www.infomigrants.net/en/post/50187/french-court-rules-that-authorities-need-to-provide-a-migrant-camp-access-to-water>, accessed 27 May 2024.

<sup>2</sup> <https://france3-regions.francetvinfo.fr/normandie/calvados/ouistreham/ouistreham-bataille-de-l-eau-pour-les-exiles-2923767.html>, accessed 27 May 2024.

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In Sweden, local authorities carried out more than 80 evictions in Roma settlements between 2013 and 2016, citing their lack of sanitation and ensuing environmental damage as the reason for the evictions (Davis & Ryan 2017). Thus, rather than providing the missing services, the authorities blame people living there for substandard conditions.

These three vignettes are among the documented cases, but similar patterns of exclusion and marginalization persist across Europe as demonstrated elsewhere in this issue.

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## THE HUMAN RIGHTS TO WATER AND SANITATION IN EUROPE? – NORMS AND PRACTICE

The human rights to water and sanitation are often perceived as relevant for countries of the global South, where significant proportions of the population face a lack of access to water and sanitation. Interestingly, Germany and Spain played an instrumental role in the UN initiative on the human rights to water and sanitation and they continue to lead resolutions at the UN General Assembly and the UN Human Rights Council on the topic. This is however not from the perspective of realizing the rights in their own countries, but due to their engagement in low- and middle-income countries in seeking to improve access to water and sanitation through development cooperation. Similarly, a 2022 EU Parliament resolution on the human rights to water and sanitation focuses on external obligations to countries outside the European Union (European Parliament 2022). The human rights to water and sanitation are predominantly seen as something that the EU should promote externally, relevant only to the work that European countries engage with in the rest of the world.

In Europe itself, there is no explicit recognition of water and sanitation as human rights in European human rights instruments, either within the European Convention on Human Rights, the Revised Social Charter or the EU Fundamental Rights Charter. At the constitutional level, most constitutions that recognize the human rights to water and sanitation are outside Europe. While some constitutions and human rights treaties within Europe have been amended or interpreted to include these rights,<sup>3</sup> the overall lack of visibility means that these rights are marginalized in human rights discourse within Europe.

At a practical level, it is assumed that all residents of Europe have adequate access to services. Statistics are often cited as near-universal access. However, almost universal is not universal. It means that some share of the population – usually people at the margins of society – lack access. Even where according to the data collected in the context of the SDGs, 100% of the population have access to safely managed piped (sewered) water and sanitation – as indicated for urban populations in Germany – we know that some people fall through the cracks. For instance, there is no recognition of the struggles that people experiencing homelessness have in accessing their water and sanitation needs,<sup>4</sup> and the conditions that incarcerated people face do not factor into the global figures either. In countries where a small share of the populations is shown to only have access to basic (rather than safely managed) services such as in Romania, we lack disaggregated data to understand what causes these disparities (Eurostat 2023). According to Eurostat estimates, a significant proportion of people in Europe still lack access to services with around 1.5% of the population lacking access to basic sanitary facilities<sup>5</sup> in the home, and 19% of wastewater from households within the EU not being adequately treated (Eurostat 2023). These data are likely an underestimate – we do not know the full scale of the challenges in Europe (Anthonj *et al.* 2024b).

The vignettes provided above point to the fact that many individuals and groups in Europe do not have adequate access. These individuals and groups are not found among the entire population, but share experiences of marginalization and exclusion. The work of researchers and advocacy organizations highlights these patterns of exclusion and discrimination (Dhesi *et al.* 2018; Anthonj *et al.* 2020; Knapp 2020). Human rights bodies have routinely raised concerns about unsanitary conditions of detention. The work of the Europe Roma Rights Centre (Rorke 2023) shows that European countries are, in fact, looking for excuses to evict families rather than provide better housing and associated services. In Europe, the failure to ensure access to adequate services cannot be attributed to a lack of resources, but is the result of deliberate neglect and systematic exclusion (Brown *et al.* 2023). This makes a human rights lens all the more relevant.

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## HUMAN RIGHTS PRINCIPLES AS POLICY GUIDANCE

European countries need to pay more attention to fulfilling their human rights obligations, particularly to understand why inequalities in access arise and remain and how they can be resolved. The human rights framework entails key principles,

<sup>3</sup> The Constitutions of Slovenia, 2021. Available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL\(2000\)059-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL(2000)059-e), accessed 30 May 2024.

<sup>4</sup> <https://washdata.org/data/household#!/table?geo0=region&geo1=sdg&geo2=Europe%20and%20Northern%20America>, accessed 27 May 2024.

<sup>5</sup> According to Eurostat (2023), 'basic sanitary facilities' refers to facilities 'such as bath, shower, and indoor flushing toilet'.

including non-discrimination and substantive equality; accountability; participation; access to information and transparency. The principle of non-discrimination and equality requires that everyone, regardless of status and identity, has access to water and sanitation for domestic and personal use. While low-income countries with a significant share of their population lacking access to services may be able to point to resource constraints and justify realizing the human rights to water and sanitation only progressively, this argument does not hold in Europe. European countries must acknowledge that any gaps in service provision are the result of inequalities, marginalization and stigmatization of specific population groups.

For some families living in poverty or in precarious situations, particularly populations living on social welfare payments, water and sewerage bills are often not affordable – and yet people are being disconnected from this essential service for not being able to pay bills. In the UK, legislation prevents disconnection due to an inability to pay, but the payments for water used must still be made.<sup>6</sup> Other European countries have adopted a range of different legal requirements before a disconnection may be made, and many countries do not allow disconnection for non-payment, while others will restrict flow to limit use. A recent court case in the Netherlands contested the disconnection from the water supply in a household with children, citing the human right to water, but the litigation was unsuccessful – to much outcry.<sup>7</sup>

Such court cases illustrate the second critical human rights principle: accountability, which provides for people to hold their governments to account. Another case that attracted significant attention was *Hudorovic et al. v. Slovenia* before the European Court of Human Rights.<sup>8</sup> The case concerned access to water for unconnected Roma households in Slovenia. The Court found no violation in this case, but indicated that Article 8 of the European Convention on Human Rights may impose positive obligations on States to provide access to water, leaving the door open for other litigation (Mishra 2021; Keller & Hefti 2022). However, litigation is only a last resort for ensuring accountability, which also entails social accountability, better data and various monitoring efforts. For instance, the UNECE Protocol on Water and Health uses human rights language to strengthen access to water and sanitation across Europe with a Committee monitoring progress towards these goals (UNECE 2019).

Additional human rights principles that European countries must pay attention to are participation and access to information. Information on water quality must be available to all residents, with adequate warning if the quality is substandard. Where changes to the modes of service provision are considered, the concerned populations must have the opportunity to participate in decision-making. In 2011, following general dissatisfaction with high tariffs, but predominantly due to concern over the lack of transparency in the private sector contracts of the Berliner Wasserbetriebe (Berlin Water Company), a referendum on the ownership and management of the utility demanded that the contracts be published. Following an overwhelming majority voting for the motion,<sup>9</sup> the utility was returned to State ownership and management ending 14 years of part-privatization.

## THE WAY FORWARD

The human rights to water and sanitation have been promoted and championed by two European countries, Germany and Spain, for over 20 years, and yet they remain peripheral to discussions, policies and legislation relating to water and sanitation within the European Union. This is despite continuing discrimination and inequalities in access to those services as discussed above.

Still, we do see slow movement towards considering human rights principles as policy guidance. The European Pillar of Social Rights affirms the right to access essential services including water and sanitation.<sup>10</sup> The European Economic and Social Committee adopted an opinion in 2023 on 'Access to water: tackling water poverty and its implications for social

<sup>6</sup> <https://www.citizensadvice.org.uk/consumer/water/problems-with-paying-your-water-bill/if-you-don-t-pay-your-water-bill/>, accessed 27 May 2024.

<sup>7</sup> <https://www.waternewseurope.com/un-expert-slams-dutch-court-decision-to-disconnect-children-of-water/> and <https://www.housingrightswatch.org/content/water-disconnections-households-should-be-banned-across-europe>, accessed 27 May 2024. <https://www.eureau.org/resources/position-papers/137-access-to-water-and-measures-in-case-of-non-payment-august2016>, accessed 27 May 2024.

<sup>8</sup> <https://strasbourgobservers.com/2020/04/09/the-courts-first-ruling-on-romas-access-to-safe-water-and-sanitation-in-hudorovic-et-al-v-slovenia-reasons-for-hope-and-worry/>, accessed 27 May 2024.

<sup>9</sup> <https://www.berlin.de/wahlen/historie/volksbegehren-und-volksentscheide/berliner-wasserbetriebe-2010-und-2011/artikel.770384.php>, accessed 27 May 2024.

<sup>10</sup> <https://ec.europa.eu/social/main.jsp?catId=1606&langId=en>, accessed 27 May 2024.

policy'<sup>11</sup> with reference to water as a human right, but this has yet to be converted into legislation to protect vulnerable and marginalized individuals and groups living in Europe. Commitments made under the SDG Water Action Agenda specifically cite the need to realize the right to water<sup>12</sup> within the European borders, as well as committing to mobilize and ensure sustainable financing for water and sanitation within Europe.<sup>13</sup> The city of Berlin has declared itself to be a 'Blue Community' committing itself to recognize water and sanitation as human rights.<sup>14</sup>

Further, the human right to water (and less frequently the human right to sanitation) have been subjects of limited civil society mobilization. The organization Solidarités International which has traditionally provided humanitarian assistance exclusively abroad arguing that 'it is not [their] vocation and nor are [they] equipped'<sup>15</sup> to address challenges in France has recently shifted its stance. Due to their experience of deprivation within particular settlements within France, it has developed an active programme delivering water and sanitation to marginalized populations combined with advocacy on the right to water at the Ministry of Health.<sup>16</sup> Another movement is the anti-privatization movement, which launched the first EU Citizens' Initiative, the Right2Water Initiative, which required that water and sanitation services be removed from the EU Commission's Concession Directive (van den Berge *et al.* 2022). The resulting Drinking Water Directive confirms member States' (limited) commitment to the right to water and arguably reflects human rights principles and standards.<sup>17</sup>

In the case of Ouistreham in France, in July 2023, the local authority was ordered to deliver water and sanitation to the refugee camp citing the human right to water. However, there are still rumblings, as the town supplied insufficient facilities for the number of individuals living in the camp, and in December 2023 was then ordered to pay a daily fine until the court order was met. This case is emblematic in that it points to deep-seated resistance to moving from 'near-universal' access to ensuring the rights to water and sanitation for all people, including the most marginalized.

Therefore, one of the most critical actions must be advocacy and awareness-raising, challenging the narrative that within Europe, people lack access to essential services only because of choices they have made. The human rights to water and sanitation require that everyone has access regardless of their legal or other status, and this cannot be argued away through a claim that the people are living on land 'illegally', or that they are not welcome, or that they live in 'unsanitary' conditions.

In this regard, rather than promoting the rights to water and sanitation exclusively in other parts of the world, Europe can learn a lot from actions elsewhere. Communities in global majority countries have relied on the rights to water and sanitation through protest, through complaints procedures and through local, national and regional courts. Governments have recognized the human rights to water and sanitation in their constitutions and have modelled their policies on human rights frameworks and designed strategies programmes to implement these. Europe can follow their lead to eliminate persistent inequalities in access to water and sanitation and achieve a more just and socially inclusive Europe.

## DATA AVAILABILITY STATEMENT

All relevant data are included in the paper.

## CONFLICT OF INTEREST

The authors declare there is no conflict.

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<sup>12</sup> <https://sdgs.un.org/partnerships/eu-commitments-water-human-right-and-water-health>, accessed 27 May 2024.

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<sup>14</sup> <https://www.berlin.de/sen/uvk/umwelt/wasser-und-geologie/blue-community>, accessed 27 May 2024.

<sup>15</sup> <https://www.solidarites.org/en/take-action/my-questions>, accessed 30 May 2024.

<sup>16</sup> <https://www.solidarites.org/en/missions/france/>, accessed 30 May 2024.

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