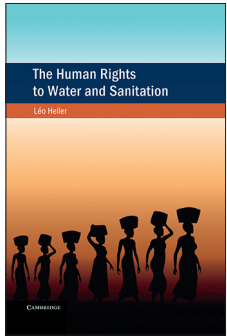




## Book

# The moral and political case for water and sanitation rights



**The Human Rights to Water and Sanitation**  
Léo Heller  
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In 2010, resolution 64/292 of the UN General Assembly formally recognised the human right to water and sanitation, proclaiming that the right to clean drinking water and sanitation is essential to the realisation of all other human rights. The recognition that a service sector delivers a human right takes the justification for universal access to clean water and sanitation beyond public health concerns or economic cost-benefit calculations; it calls out water and sanitation as a universal entitlement by virtue of being human. This recognition is the foundation of Léo Heller's book *The Human Rights to Water and Sanitation*.

Heller served as the UN's Special Rapporteur on the human right to safe water and sanitation from 2014 to 2020. His book takes the reader through a comprehensive, and often personal, account of how the UN came to recognise this right and the normative content of the right (accessibility, availability, affordability, and quality). Heller also explores controversial questions about human rights (eg, is the concept of universal rights a colonial imposition from the Global North?) and the difficulties of regulation in the Global South where many providers are small-scale operators. The prospects for realising human rights to water and sanitation under privatisation are examined in some depth. Heller's analyses highlight the challenges of meeting a universal right under highly diverse circumstances and make visible the constant work needed to maintain a water and sanitation system that is compatible with human rights principles.

Two claims run through Heller's book. The first is that the state is the primary player ("duty-bearer") in either delivering or enforcing human rights to water and sanitation; non-state actors, such as the private

sector, international lenders, and civil society, play their parts but always as the supporting cast. The second claim is that the principle of non-

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discrimination is the "cornerstone" of human rights to water and sanitation. Heller calls for a focus on deprived and marginalised groups, such as the unhoused, low-income women, displaced populations, and incarcerated persons. It is not enough, he argues, to attain progressive realisation overall; human rights to water and sanitation must prioritise those who are often invisible in mainstream policies. The insistence on serving the most vulnerable first is one of the strongest moral pillars of this work and reflects the views that Heller espoused throughout his tenure as Special Rapporteur.

The premise that the state is the primary duty-bearer for human rights has generated active debates. Critics contend that many states are too poor or unstable to prioritise meeting human rights to water and sanitation for their citizens. Although this is partly true, even low-income states have managed to extend access to clean water and sanitation; more than 87% of households globally had access to at least basic drinking water services in 2020. Households (through tariffs) followed by governments (through local and national budgets) are the most important sources of finance for water and sanitation. Piped water into every household seems a distant prospect in many low-income settings, but interim steps, such as shared taps close to homes or urban toilet blocks

that are kept usable, can put countries on the pathway to progressive realisation.

The more serious critique is that the state itself often violates human rights instead of protecting them. States can be captured by powerful private interests or dominant families, they can be predatory towards their less-powerful citizens, or they can selectively protect these rights for some people and deny them to others. Heller acknowledges these critiques but does not commit himself to a particular model of the human-rights-enabling state, which implies that potentially any state could work incrementally towards the realisation of these human rights. He suggests that the state should be supported when it works towards human rights to water and sanitation, opposed when it opposes them, and augmented with local alternatives when necessary. He does not explicitly say, however, that only some models of the state allow for this range of options.

Historically, no country has achieved near-universal access to drinking water and sanitation without significant state-driven provision and regulatory oversight. To this end, it is necessary (albeit not sufficient) to have a state that accepts this responsibility as part of its social contract with its citizens. That means that predatory, kleptocratic or captured states are as unlikely to progressively realise human rights to water and sanitation as the "fragile" states whose existence the UN (and Heller) are willing to acknowledge. The contractual state need not be modelled on the so-called western-liberal paradigm; in China, for instance, about 95% of households had access to basic drinking water services by 2020 and about 92% had access to basic sanitation. China's achievement goes unmentioned in Heller's book, but China exemplifies a contractual state that is well on its way to meeting much

of the normative content of the human rights to water and sanitation without a human rights justification.

Should advocates of human rights to water and sanitation argue that China cannot realise these rights because participatory action and political expression are limited? Is it not possible for certain economic and social rights to be fully realised in the absence of civil and political rights because all rights are interdependent? Is the concept of universal human rights undermined because a particular model of the state—a state in a social contract with its citizens—is necessary for the realisation of human rights to water and sanitation? These questions are deeper than those related to state resources and “fragility”: they go to the conceptual heart of the human rights framework. They cannot be addressed through pragmatic suggestions of step-by-step progress in challenging circumstances.

The non-discrimination principle in the human rights to water and sanitation has led to a sizeable literature on the treatment of gender. It is well known, as discussed in Heller’s book, that inadequate access to safe water and sanitation places a disproportionate burden on those who identify as women; seeking sanitation in the dark is unpleasant and risky, and seeking water from distant sources is stressful to mind and body. As Heller also points out, water and sanitation needs vary by gender, age, ability, and other factors so policies that treat populations as homogeneous inevitably produce inequalities. Gender-specific needs and challenges are mentioned lightly throughout the book, but there is also a chapter dedicated to “The Gender Dimension”. Most of this chapter deals with women and girls, although trans and non-binary persons are also acknowledged.

Gender considerations in the human rights to water and sanitation are frequently called out as requiring “special attention”. This terminology is embedded in Sustainable Development

Goal 6 target 2 that calls for an end to open defecation while paying special attention to the needs of women and girls. Similar expressions occur throughout the book, particularly with respect to sanitation: women may have to take off some of their clothes to relieve themselves, social expectations and gender norms mean that women are forced to preserve their modesty at all times, and taboos mean that menstrual hygiene considerations fall through the cracks in sanitation design. These observations are important to note. Nonetheless, constantly referring to women’s needs as “special” implies that the prototype human body is, in effect, imagined as a cisgender male one. Only if the baseline user is assumed to be male do female-specific needs become “special”. More cubicles are needed for school sanitation because girls take longer in the toilet; female-friendly toilets need extra water because of menstrual hygiene; a door is necessary because women need more privacy. But why should the needs of half the population be treated as special? That very language is a way of norming the male and relegating the female to a deviation from that norm. This line of argument is ubiquitous within human rights to water and sanitation, but it undermines the normalisation of women’s bodies and needs.

How can the different needs of different genders be mainstreamed into the discourse of human rights to water and sanitation? I would argue that the content of Heller’s chapter on “The Gender Dimension” could have been absorbed into the preceding discussions on health (musculoskeletal damage from hauling water); safety (falling in the dark); affordability (payer-use toilets that force women to spend more because they need to use them more often); privatisation (higher water tariffs that encourage low-income families to save water by substituting unpaid female labour); public spaces (the lack of clean facilities that make it difficult for women to



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go to work); and regulation (policies that make clean water available in health-care facilities where many workers are female). No aspect of water and sanitation policy is gender-neutral—as Heller himself says—so mainstreaming the gender dimension in all domains of human rights to water and sanitation is crucial. It is, of course, true that gender-specific needs are often overlooked in water and sanitation policy and practice, but normalising the needs of all genders is a more coherent path to equality than continuing to regard some needs as “special”.

Overall, Heller makes a compelling moral and political case for the human rights to water and sanitation. “Where, after all, do universal human rights begin?” asked Eleanor Roosevelt. “In small places, close to home—so close and so small that they cannot be seen on any maps of the world.” Heller’s account of human rights to water and sanitation remains close to this philosophy, urging the reader to look at small places within the household, behind prison walls, inside school lavatories, and around marketplaces. His book reflects insights from a lifetime of dedication to this most human of human rights.

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