

Inconvenient Human Rights:

Access to Water and Sanitation in Sweden's
Informal Roma Settlements

NuLawLab

A report of the Raoul Wallenberg Institute for Human Rights and Humanitarian Law, Södertörn University, and the NuLawLab of Northeastern University School of Law, April 2016.

Acknowledgements

The primary authors of this report are Martha Davis (Raoul Wallenberg Institute), and Natasha Ryan (Södertörn University). The accompanying [interactive map](#) was developed by Jules Sievert and Dan Jackson of NuLawLab of Northeastern University. The authors thank the many researchers who contributed to the completion of the report. In particular, Alexa Daniel provided critical assistance with the mapping, Ellen Dexter, Uchechi Durunna and Eileen Henderson contributed important research assistance, and Lina Wallenberg provided assistance with translations. We also thank readers who offered constructive comments on earlier drafts, including Morten Kjaerum, Johanna Westeson, Inga Winkler and Thomas Gammeltoft-Hansen. We benefited from opportunities to present and discuss this material with the HEM-Stockholm Think Tank, the Lund Faculty of Law Vulnerabilities Seminar, and the Swedish Foundation for Human Rights. Dozens of individuals made time for formal interviews and informal conversations that contributed to this report; we thank them all for their generosity. Any errors in the final report are the responsibility of the authors.

Introduction

On Tuesday, November 3, 2015, residents of one of the largest informal settlements in Sweden were evicted by the police. The camp, nicknamed “Sorgenfri” after a nearby city street, was located in the southeast quadrant of Sweden’s third largest city, Malmö. Situated just over the *Öresund* Bridge from Denmark, Malmö is one of Sweden’s most diverse and vibrant cities, easily accessed by newcomers via commuter trains from Copenhagen.

The Sorgenfri camp was located on a privately owned empty lot. Over the years, the plot had been used by many homeless individuals and groups looking for a place to stay, and the owner did not challenge these settlements. But none of the prior camps lasted as long or grew as large. While the numbers fluctuated, at times more than two hundred people resided in the camp. When the eviction occurred, Sorgenfri had been in existence about 18 months, maybe more. By then, the owner wanted to clear the property and worked with the city and the police to complete the eviction. The eviction was anticipated for months before it finally occurred. By November 2015, most of the residents had left voluntarily; only a few dozen remained to the end.

Conditions in the camp were rough. Residents lived in make-shift shanties, beat-up campers or cars. To keep warm, and to cook, Sorgenfri residents constructed homemade stoves or used open fires. Trash littered the area. Still, according to social service providers and law students working with the residents, many were able to find work in the informal sector – construction, gardening and manual labor, house cleaning, child care, and jobs requiring mechanical skills.

Especially because so many of the residents were working or seeking work outside the camp, access to water and sanitation was a particular challenge for them. Without a water source on the property, residents obtained water for cooking and washing from a cemetery and several gas stations within a few blocks of the camp. Sanitation was an even greater challenge. The property had no bathrooms and the city provided none. Some charitable groups combined resources to position accessible portable sanitation facilities nearby, but they were not able to maintain the facilities at the level needed for so many people and they were soon unusable. Residents who wanted to shower or wash their clothes could sign up for a weekly slot at the office of Crossroads, a non-governmental social service agency located about two kilometers away from the camp. According to Crossroads staff, when the lists opened up each Monday morning, all slots for the week were claimed by 10:00.

Who lives like this in Sweden? Sorgenfri residents were young and old, women and men, singles and families. Most, if not all, of the camp residents were Roma people, hailing from Romania and Bulgaria, e.g., “vulnerable EU citizens.” As nationals of another country within the EU who relocate to Sweden, these EU citizens are legal entrants to the country; they are not refugees or irregular immigrants. Vulnerable EU citizens are permitted to stay in their host EU country for three months. To stay beyond that initial period they must be: working; or actively seeking work with a genuine chance of being hired; or able to show they have enough money not to be a burden on public services. Yet enforcement is not rigorous. EU citizens entering Sweden receive no entry stamp, and there is no formal monitoring of the three-month grace period.

Still, simply labelling the Sorgenfri residents as EU citizens who overstayed their welcome does not do justice to their situation, nor to the position of the city of Malmö as it proceeded against the camp. A look at the larger context reveals that there is more to the story. This

report lays out a previously under-analyzed part of that context, looking at the Sorgenfri eviction and other similar actions by Swedish municipalities through the lenses of (1) the history and scope of water and sanitation access in Sweden for Roma people; (2) relevant international human right norms concerning water and sanitation; and (3) opportunities for municipalities to act as leaders in honoring those human rights norms.

First, designating Roma residing in informal settlements as “EU migrants,” as the media often does, tends to obscure their particular history.¹ Lack of access to water and sanitation is not a new predicament for Roma in Sweden or elsewhere. Rather, it is a central theme running through the Roma experience, regardless of their immigration status.² In recent years, as shown on the [map](#) accompanying this report, municipalities throughout Sweden have initiated scores of evictions of Roma on grounds of “sanitation,” even though most municipalities have provided little assistance to the Roma residents in dealing with water and sanitation needs. In fact, municipalities often express concern that such steps would encourage more permanent settlements or longer-term stays. Yet especially in the Swedish context, where water and sanitation access is the expected national standard, the absence of these basic human rights undermines the human dignity of vulnerable EU citizens and virtually assures their ultimate eviction and social marginalization.

Second, even as they have carried out these actions, municipalities have been given little guidance from the national government concerning how to deal with informal settlements consistent with human rights norms. Sweden is a party to a number of regional and international human rights treaties which clearly establish the human rights to water and sanitation. International bodies and human rights experts have repeatedly clarified that these rights extend to informal residents as well as formal settlements. National government policy should reflect these binding norms.

Finally, whether or not national guidance from a human rights perspective is forthcoming, municipalities themselves have opportunities for leadership in assuring access to these basic human rights. Water and sanitation access are regulated at the local level. Even if the national government does not step up to meet its human rights obligations, municipalities can still respect, protect and fulfill the basic human rights to water and sanitation of those residing in informal settlements.

The remainder of this report examines these issues in greater detail. In Section I, we address the domestic legal and historical context in which this issue arises. We review the laws and policies relating to water and sanitation access in Sweden, as well as the many first-hand accounts of the ways in which lack of access affects the lives of Roma in Sweden. Accompanied by an interactive [on-line map](#), we also set out the records of sanitation-related eviction proceedings initiated against informal settlements in Sweden, primarily Roma, from 2013 through January 2016.³ We sought records for earlier years, starting with 2007,

1 We adopt the term “vulnerable EU citizens,” which has also been used by many non-governmental organizations and in official statements of the Swedish Government. As this report underscores, however, a more accurate term might be “marginalized EU citizens.”

2 See, e.g., Mark Szilvasi and Radols Zaharieva, *Denied the Right to Water: the Miserable Fate of Roma in France*, ERRRC Blog (22 March 2016), <http://www.errc.org/blog/denied-the-right-to-water-the-miserable-fate-of-roma-in-france/101>; Mark Szilvasi, *No Water in the Land of Plenty*, Food & Water Europe Blog (18 Nov. 2015); UNDP, *The Housing Situation of Roma Communities: Regional Roma Survey 2011 (2013)* (large proportion of Romani households are not connected to public water supply).

3 Because ethnic identity cannot be registered by public authorities in Sweden, the data is based on evictions (completed or initiated) in which respondents had Romanian or Bulgarian ID-cards. Press reports consistently indicate

but none were forthcoming and it appears that the practice of municipally-initiated formal evictions began in 2013.

In Section II, after setting out this domestic context, we turn to the applicable European and international human rights norms relating to water and sanitation access and affordability, with particular emphasis on informal settlements and homeless individuals.

In Section III, taking into account that water and sanitation access is regulated on the local level, we examine the opportunities for Swedish municipalities to exercise human rights leadership in implementing these norms and extending basic human dignity to all.

I. The Swedish Context

A. Overview of Water and Sanitation Access in Sweden

The provision of water and sewage services in Sweden is regulated by the Public Water and Wastewater Plant Act of 2006.⁴ Under this Act, responsibility for providing water and sewage services rests with the municipalities, which must provide access to services within their jurisdiction without discrimination. The water and sewage sector in Sweden is also subject to EU Directives regarding, for example, drinking water quality and environmental protection of water.⁵ Almost 90 percent of the Swedish population receives water and sewage service through a municipal or public regional entity that delivers these services for a fee.⁶ The remainder of the population, largely in rural areas, relies on individual water sources which must comply with regulatory standards.⁷

The initial connection fee to a municipal water system can be costly. Each local authority sets the connection costs, which can reach more than 126,000 SEK.⁸ However, once a property is connected to the water source, ongoing charges for water and sanitation are relatively inexpensive. Fees are set at the municipal level, and vary between municipalities, depending on geography and infrastructure investment.⁹ Swedish law mandates that the fees be based on actual costs; supplying water to consumers cannot generate a profit for a municipality.¹⁰ Ultimately, the water rate is set by local politicians, based on information provided by the local service provider and subject to public vetting through the political process. A 2009 survey conducted by the International Water Association indicates that the water rates in Swedish cities are at a low- to mid-level range compared to their Euro-

that the majority of these individuals identify as Roma. See, e.g., Stephen Castle, *Poor EU Migrants Test the Limits of Sweden's Tolerance*, NY Times, 8 Aug. 2015, available at <http://www.nytimes.com/2015/08/09/world/poor-eu-migrants-test-limits-of-swedish-tolerance.html> (noting that Roma poverty is a trigger for relocation within the EU).

4 SFS 2006:412; Ola Mattison & Anna Thomasson, *The Water Sector in Sweden* 6 (CIRIEC, Working Paper No. 2010/12). For more information on the governance structure for water in Sweden, see www.vattenmyndigheten.se.

5 *Id.*; See also Council Directive 98/83/EC, 1998 O.J. (L 338) 32-54 (EU); Council Directive 2000/60/EC, 2000 O.J. (L 327) 1-73 (EU).

6 See Mattison, *supra* note 4, at 8-9.

7 In a survey conducted by the World Bank and the WHO/UNICEF Joint Monitoring Programme (JMP) for Water Supply and Sanitation, Sweden claims a population with one hundred percent access to an improved drinking water source. The World Bank, available at <http://data.worldbank.org/indicator/SH.H2O.SAFE.ZS> (last visited 13 March 2016).

8 Swedish Water and Wastewater Association, *Facts on Water Supply and Sanitation in Sweden*, 17 (2000).

9 Mattison, *supra* note 4.

10 *Id.*; see also *Facts on Water Supply*, *supra* note 8, at 19.

pean peers.¹¹ Reported in US Dollars for ease of international comparison, the prices in Stockholm (the least expensive of Swedish cities surveyed) were \$2.08 per cubic metre, compared to a Europe-wide low of .73 cents in Milan, Italy, and a high of \$9.18 in Copenhagen, Denmark. The highest water price among Swedish cities surveyed was \$3.64 per cubic metre in Linköping.

For most residents of Sweden, the cost of residential water and sanitation services is not a concern. Water is inexpensive relative to other household costs and is often hidden from consumers since it is included in rental payments. For most low income families, Sweden's social insurance scheme will offer support to maintain water services if the household is struggling financially. "Reasonable" housing costs are statutorily covered under the scheme, and social workers are very unlikely to find that the cost of household water and sanitation are unreasonable.¹² Termination of household water for non-payment is extremely rare.

Further, even when termination for nonpayment is warranted, the municipality must conform to specific procedural requirements prior to final termination – requirements that may complicate and even defeat its efforts to terminate.¹³ Nevertheless, Va Syd, which distributes water to several municipalities in Sweden's Skåne region, reports that water termination is not merely theoretical. In 2011, in Malmö, Lund and Burlöv combined – a population of over 400,000 -- service was terminated for 109 residences for at least one day during the course of the full year.¹⁴ Understanding the importance of water to household health and wellbeing, Va Syd is prepared to turn the water back on the same day provided the customer pays his or her bill, or negotiates a payment plan.¹⁵

Urban water consumers are not only residents and private businesses. Public entities also consume water and sanitation services. Major cities like Stockholm, Gothenburg and Malmö draw on significant amounts of water for ornamental uses – not surprising, given a Swedish culture that views water as a readily available and renewable resource. But because ornamental water also costs money for treatment and transport, someone has to pay. In the case of Malmö, the city pays the municipal water authority, Va Syd, for the water that flows through the many fountains around the city.¹⁶ Further, at Malmö's direction, Va Syd supplies portable water facilities for attendees at festivals and events, with the costs of the water charged back to the city. Portable toilets for such events are provided by private entrepreneurs who contract with Malmö, and who then, as business consumers, utilize Va Syd's sewage treatment systems to process the collected waste.¹⁷

In short, drinking water and sanitation facilities are readily available to most Swedish residents. There are, however, a few individuals who fall through the cracks – not because they are ineligible for water and sanitation in Sweden, but because water and sanitation are so often delivered as a component of a social welfare package that includes shelter.

11 OECD (2013), "Water Pricing for Public Supply," in *Environment at a Glance 2013: OECD Indicators* (OECD Publishing).

12 Ann Angelin, et al., *Work Package 5, The National Arena for Combatting Poverty: National Report: Sweden*, at 39, available at http://cope-research.eu/wp-content/uploads/2013/05/National_Report_Sweden.pdf.

13 Phone Conversation with Lars Olssen, Ordförande och chef, Statens va-nämnd, Stockholm, Sweden, 15 Oct. 2015. See, e.g., Statens va-nämnd decision of 2013-08-09, BVa 52, case nr Va 565/12 (reversing termination decision based on municipal failure to follow procedures).

14 Jana Pepaj, *Vattenavstängning: Analy av kostnader och konsekvenser* (2012) (memorandum on file with the authors).

15 Interview with Helena Strom, Kundservicechef, Va Syd, Malmö Sweden, 2 Feb. 2016.

16 *Id.*

17 *Id.*

For example, a very small number of homeless people nationwide, often those with drug addictions, are not eligible for shelter assistance that would provide them with ready access to residential water and sanitation.¹⁸ These individuals rely on the patchwork of charitable assistance provided by Sweden's non-profit sector, public water and sanitation facilities such as those in train stations, and perhaps private facilities that permit such usage.¹⁹ Likewise, as described in greater detail below, vulnerable EU citizens residing in Sweden, principally Roma, are often unable to access household water and sanitation in ways that meet Sweden's international human rights obligations.

B. Legal Status of vulnerable EU citizens

Citizens of the EU are permitted to travel to and stay in other member states of the EU for up to three months, provided they are in possession of a valid identity card. The freedom of movement of EU citizens within the EU is a fundamental principle of EU law and is provided for in both founding EU treaties.²⁰ This is codified in the Free Movement Directive,²¹ which provides that EU citizens have a prolonged right of residence in a member state following the initial three months if they are: working (employed or self-employed), actively seeking work with a genuine chance of being hired, studying (with sufficient resources and health insurance), in possession of sufficient funds (and health insurance), or a family member of anyone meeting the aforementioned requirements.²²

An additional fundamental principle of EU law relevant in this context is the principle of equal treatment between persons, essential to the freedom of movement within the Union. This principle stipulates that member states must treat citizens and EU citizens with a prolonged right of residence on equal terms, with no discrimination on grounds of nationality.²³ The principle should also be applied during the first three months of an EU-citizen's stay in a member state, but there are exceptions where the principle does not need to be applied. Specifically, a member state is not obliged to make social welfare or student aid available to an EU-citizen within the first three months of their stay.²⁴ These exceptions and the requirements for prolonged right of residence were included to prevent EU citizens from abusing other member states' social welfare systems.²⁵

The prolonged right of residence is not granted through any form of registration, application or decision by a public authority.²⁶ EU citizens in Sweden have an immediate right of resi-

18 Phone Interview with Ulrika Rudnert, Adjunct Professor, Lund University School of Social Work, 12 Oct. 2015. A 2011 survey, undertaken before the increased influx of EU citizens from Bulgarian and Romania, reported 270 people nationwide "sleeping rough," while some 4500 others were housed in "acute" and unstable housing situations. The National Board of Health and Welfare, Homelessness in Sweden (2012), available at <http://www.socialstyrelsen.se/publikationer2012/homelessnessinsweden2011>.

19 See Lars-Erik Olsson & Mari Nordfeldt, *Homelessness and the Tertiary Welfare System in Sweden – The Role of the Welfare States and Non-profit Sector*, 2 *European J. of Homelessness* 157 (2008).

20 Art. 3.2, Treaty of the European Union, (TEU); Art. 20-21, Treaty on the Functioning of the European Union (TFEU).

21 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (Movement Directive).

22 Art. 7.1, Movement Directive.

23 Art. 18, TFEU; Art. 24 of the Movement Directive; Art. 4-5 of the Regulation (EC) No 883/2004 - on the coordination of social security systems.

24 Art. 24.2, Movement Directive.

25 Art. 10, Movement Directive.

26 Statens Offentliga Utredningar [SOU] 2016:6 Framtid Sökes [Future Wanted] [Report of the National Coordinator for Vulnerable EU Citizens] (Swed.), p.42.

dence when they meet one of the above criteria. If an EU-citizen is proven to be abusing the Swedish welfare system according to the Social Services Act, the Swedish Migration Board has the right to expel them from Sweden.²⁷ However, the monitoring of the right of residence is limited. Although it is within the powers of the Swedish Migration Board to expel those without the right of residence from Sweden, it is rare that EU citizens are expelled on that basis.²⁸

Standing alone, European-level law on the status of EU citizens in a member state seems clear. However, there are wide variations in the interpretation and application of these provisions by municipalities and courts of member states trying to reconcile and coordinate these provisions with national law regarding social assistance. In Sweden, these varying interpretations lead to unpredictability in terms of what social assistance is available to EU citizens.

For example, according to the Swedish Local Government Act, municipalities have a certain competence from which they cannot depart, meaning that a municipality cannot do more than is stipulated in national legislation. Thus, while the Social Services Act provides that a municipality is responsible for meeting any need for social welfare,²⁹ such support can only be granted as far as there is basis in national legislation.³⁰ Applying this principle, a guiding judgment from the Supreme Administrative Court in 1995 provided that assistance to individuals not belonging to the municipality (for example a vulnerable EU-citizen) is limited to aid for an acute emergency situation which cannot be solved in any other way. It was determined that the individual can be given aid only in exceptional cases with regard to food, accommodation (up to five nights in a shelter) or repatriation to their domicile (a bus ticket home).³¹ The Social Services Act has however been updated since the judgment from 1995, and it is an open question whether the revision changes this analysis.³²

Interpretations differ. For example, in 2014, the Administrative Court of Linköping determined that the Social Services Act should be applied to anyone within a municipality, effectively including EU citizens. Linköping municipality had liaised with the Stockholm City Mission to provide seasonal shelter for a group of vulnerable EU citizens when the action was challenged as violating national legislation. Not only was the city's decision to provide shelter upheld, but the Court also stated that the municipality of Linköping was – in this specific case – *obliged* to provide emergency assistance (regardless of the citizens' right of residence).³³ In contrast, in 2015, the Administrative Court ruled that the Lund municipality overstepped its authority when it provided a city-owned camping site for vulnerable EU citizens.³⁴

27 Chapter 8 §9 Swedish Aliens Act (Utlänningslagen).

28 SOU 2016:6, *Framtid sökes – slutredovisning från den nationella samordnaren för utsatta EU-medborgare*, 2016, p 44.

29 Chapter 2 §1 Swedish Social Welfare Act (Socialtjänstlagen).

30 Swedish Association of Local Authorities, *Några juridiska frågor gällande utsatta medborgare*, memo, 9 Dec. 2014, p. 2.

31 RÅ 1995 ref 70, Supreme Administrative Court of Sweden.

32 Civil Rights Defenders, *Utsatta Unionsmedborgare i Sverige: Statens skyldigheter enligt internationella människorättsnormer, EU-rätt och svensk rätt 37-38 (2015)* (comprehensive analysis of domestic, European and international law relating to social assistance for vulnerable EU citizens).

33 Administrative Court of Linköping [Förvaltningsrätten i Linköping], case number 611-14, 9 June 2014 (Swed.). Decisions by the Administrative Courts are not legally binding for other authorities, meaning that this cannot be interpreted as an absolute right to emergency assistance for EU citizens all over Sweden.

34 The decision is on appeal. Administrative Court of Malmö [Förvaltningsrätten i Malmö], case number 10917-15, 8 Dec. 2015.

Although the legal status of EU citizens is the same in each of these cases, the two Administrative Courts differed greatly in their legal assessment of municipal measures taken to socially assist vulnerable EU citizens. This inevitably leads to a lack of clarity as municipalities try to deal with the everyday social challenges presented by these vulnerable individuals. However, regardless of the legal complications of providing social assistance consistent with the national framework, access to water and sanitation is squarely within the competence of municipalities, and municipalities can, and should, be guided by human rights norms in providing access to these human rights.

C. Water, Sanitation and Roma Settlements in Sweden

Water and sanitation access for vulnerable EU citizens in Sweden cannot be accurately understood without the backdrop of historic discrimination against Roma populations. The Swedish Government's recent report on rights abuses against Roma in the twentieth century – titled “The Dark Unknown History” (hereafter, the “White Paper”) -- reviews this record in great detail.³⁵ While we only briefly summarize that three-hundred page document here, the abuses that it describes provide an important context for examining water and sanitation access of vulnerable EU citizens in Sweden, most of whom are Roma.

A remarkably frank report, the White Paper describes in detail the common types of discrimination that Roma people have historically suffered in Sweden, including invasive and degrading registration processes, forced sterilization, separation of families, limited and difficult access to housing, education and work, and bans on entering the country. Key players in this discrimination have been the Swedish government, the Church of Sweden, the National Board of Health and Welfare and the police. Over many decades, a major political justification for the control of Roma life was the need to rehabilitate the Roma. The White Paper reports that Roma were characterized as needing to be “rescued from their inferior way of life and be brought within the framework of social care.”³⁶ Another major justification for discriminatory practices was the widespread belief that Roma's situation is “self-inflicted” or “self-chosen.” Roma's “nomadic way of life” provided an additional rationale for the refusal to include Roma in the national census, while their “poor circumstances, meagre housing conditions” and children being taken into care, justified sterilization. Registration of Roma people reinforced these stereotypical perceptions. The schooling of Roma children was often substandard or totally nonexistent, and the housing given to Roma during the latter part of the 20th century was difficult to get, highly regulated and overcrowded. The White Paper concludes that Roma in Sweden in the 20th century and still currently, remain “subjected to anti-Gypsyism.”³⁷

1. Decades of Roma settlements seeking access to water and sanitation

The White Paper does not dwell on the issues of access to water and sanitation, and no other comprehensive report has yet focused directly on these challenges for vulnerable EU citizens in Sweden. Yet it is clear that water and sanitation access are central components of discrimination against Roma over the decades. As travelers in the early decades of the twentieth century seeking work, Roma communities necessarily looked for camping places where water and sanitation would be available. And when Swedish municipalities sought

35 Statens Offentliga Utredningar [SOU] 2014:8 The Dark Unknown History: White Paper on Abuses and Rights Violations Against Roma in the 20th Century [Ministry of Culture] (Swed.).

36 *Id.* at 13, 287.

37 *Id.* at 288.

to deter Roma groups from settling, controlling their access to water and sanitation was often a means to that end. This approach not only frustrated Roma efforts to drink, cook and maintain hygiene for their own health, but also further marginalized these individuals in a society where frequent bathing and cleanliness is the norm.

Reviewing the existing historic and ethnographic literature through the lens of water and sanitation access reveals this undercurrent, demonstrating the ways in which Roma experiences in Sweden have been shaped by their, often unsuccessful, efforts to gain access to these basic human rights. Indeed, the White Paper notes that for over a century, municipalities have identified Roma settlements with “sanitary or ‘hygienic’ issues,” and used these labels to remove encampments deemed unsanitary – a practice that continues today.³⁸

Individual accounts and historic documents tell the story vividly over the decades. For example, a Roma woman interviewed for one ethnographic study recalled that in the 1920s, when the family was able to stay for long enough in one place, her mechanically-minded father had the know-how to build devices for daily hygiene and washing of clothes. At one point, her father built a square wash basin and toilet. He covered the floor with fir twigs, then cartons and finally rugs so the family would not get cold feet. “It was so exciting, you never forget,” the woman remembered.³⁹

In the same study, Roma informants described the efforts they made to ensure that they did not disturb Swedish residents so that they could continue to access water. One interviewee recalled that her mother bound the dogs’ muzzles to keep them from barking and jeopardizing their permission to obtain water from a local farm.⁴⁰

According to the White Paper, on several occasions, the city of Stockholm used access to water as a means to discourage Roma settlements. In the 1940s, after initially helping the first Roma arrivals, “when further Roma families and individuals came to Stockholm, the public authorities kept a low profile, which they justified with the argument that there was no point in arranging for electricity and water as the Roma would soon be moving on again anyway.”⁴¹ A decade later, the city initiated an experimental program to provide housing to Roma. However, the flats offered were of such poor standard that the experiment was deemed a failure. An evaluation of the program revealed that out of sixty or so Roma families participating, “twenty-two lived without hot water and central heating.”⁴² While these flats at least provided access to sanitation facilities, other Roma had to continue to fulfill their needs for water and sanitation in the rough. As Sonya Taikon recalled in an ethnographic interview of her experiences in the 1960s, “we lived in a park by the central station here in Gothenburg for two, three years. There was no toilet, no water, no electricity. We collected water from a stream in the middle of Gothenburg.”⁴³

Recent accounts confirm that Roma in Sweden continue to face these challenges. A number of Roma people have come to Sweden as farmworkers to pick berries in the northern parts

38 *Id.* at 167.

39 Charlotte Hylten-Cavallius, *Från läger till lägenhet – svensk-romska levnadsberättelser om livets villkor i ett antiziganistiskt Sverige*, Stockholmia Publishing House (forthcoming 2016) (manuscript at 7-8, on file with authors).

40 *Id.* at 8.

41 Statens Offentliga Utredningar [SOU] 2014:8 The Dark Unknown History: White Paper on Abuses and Rights Violations Against Roma in the 20th Century, 193 [Ministry of Culture] (Swed.).

42 *Id.* at 195.

43 *Id.* at 192.

of the country. One ethnographic study describes in detail the challenges that these workers, and the municipality where they settled, faced in addressing their water and sanitation needs:

A common strategy was to fill water cans at petrol stations for later use in the camp. For some who were unfamiliar with the area, the search for water and other basic necessities meant a 60 km round-trip that entailed further expenses. For yet others, solving the problem of water supply meant digging their own water well in the camp. As the number of people steadily increased in the camp, so also the water facilities at local petrol stations became more frequently visited. Ultimately – after complaints from the petrol station-owners and local inhabitants who jammed the telephone lines of the local authorities which were well aware of the unsanitary conditions in the camp – the situation eased when the municipality acquired and installed water-cisterns in the immediate camp vicinity.⁴⁴

The cisterns were sufficient to provide the water need for the camp, but the issue of sanitation was more challenging. According to the study,

Make-shift toilets were constructed by digging holes in the ground and encircling them with curtains – a solution approved by the municipality. Still, the migrants continued visiting local public toilet facilities.

One of the informants articulated clearly the stigma and prejudice that he faced – and the pressure that he felt -- as he sought to maintain basic hygiene:

I don't want to go every day so that they will force me away. I am cultivated. I go when I wash myself, (. . .) I leave it pleasantly in there. A Swede when he sees that, he will say OK this is a good man. And not as some, they go in there, my brother, throw paper around, throw everything. And, Swedes what will they say? "All of them are like that!"

And in fact, he accurately anticipated the reaction of local villagers when these vulnerable EU citizens sought to wash in a local bathing place. As one local resident complained:

They wash clothes, their cars, and take care of their hygiene and all of this there. . . . It is wrong in a way. 'Small-Town' locals, it is their bathing place; therefore (we) have not wanted to go down there. . . . No, nobody dared to cycle there with (their) children.⁴⁵

A 2015 study of voluntarism in Gotland provided a detailed account of successful volunteer efforts to provide housing, including water and sanitation access, to some vulnerable EU citizens on the island. During the interviews, one of the Roma informants described her earlier stay in Stockholm, particularly noting the challenges of maintaining personal hygiene and comparing it to her new situation: "At the Central train station, we paid 30 SEK and we could take a bath. . . . Here . . . I take a bath every night, like a normal human being, like at home."⁴⁶

44 Nedžad Mes'ic & Charles Woolfson, *Roma Berry Pickers in Sweden: Economic Crisis And New Contingents of The Austeriat*, Transfer, 2015, at 37, 44.

45 *Id.*

46 Charles Follet & Irina Eva Ianko, Understanding social value creation: A process study of Romanian beggars and Swedish volunteers, 32 (Spring 2015) (unpublished Master's Thesis, Uppsala University Campus Gotland) (on file with authors), available at <http://www.diva-portal.org/smash/get/diva2:838955/FULLTEXT01.pdf> (last visited 4 Apr. 2016).

When the report's authors visited the new shelter on Gotland, they recorded the following conversation among the Roma living there – a conversation that once again underscored the centrality of access to water and sanitation to these individuals' human dignity:

Miruna: We are really grateful we do not have to live in cars anymore, without the minimum hygiene, without clean clothes and so on... We had no way to cook some food, we had to eat whatever we bought from COOP shop...

Camelia: Our living standards... our living conditions are much better.

Miruna: Yes look, we are living better, we feel better. People look at us differently. We have what to eat. Especially now: we have where to sleep, we have where to shower.

Mariana: Here we can bathe, we have warm water, we have a kitchen, a bathroom. You can arrange, you can wash yourself, while when you are in a tent what do you do? Nothing. You do not have a lamp, you do not have light, you have noth-ing!

Ilie: You just sit there and stink...

Mariana: You just enter the tent, look for a place to change... you eat in the center, wherever you find some room... then you go back to the tent and go to sleep.

Viorel: You wash around the toilets.

Camelia: At common baths...

Mariana: You take water with the bottle and you pour... You wash yourself whole, completely . . . ⁴⁷

A 2016 report records the gratitude of a Roma woman in Stockholm when staff at a shopping center looked the other way and allowed her to make use the handicapped toilet one evening:

. . . there is a handicapped toilet and you can wash your hair. You can't stay disgusting. The day before yesterday I washed my clothes and washed my hair. I hate being dirty! I can't stay dirty! It's a shame, people are running away from your smell otherwise. I brought a brush. You can lock the door and it's free. It's quite far downstairs, it's alright.⁴⁸

But private businesses cannot be depended upon to accommodate Roma individuals seeking access to water and sanitation. For example, one interviewee in the same study recalled a water tap at the petrol station, supposedly free and open to the public. Upon trying to access the water, the interviewee was told "you don't get that because you don't pay for it."⁴⁹ And as these firsthand accounts indicate, even when businesses approach the issue with good will in an effort to help, they often find it unsustainable to provide these services on an ongoing

47 *Id.* at 30.

48 Josh Levy, A Right to a 'World-Class City'? A Case Study on the spatial exclusions of Romanian Roma migrants in Stockholm, 43 (2016) (unpublished Master's Thesis, Stockholm University) (on file with authors).

49 *Id.* at 43.

basis.⁵⁰ As Professor Harvey Molotch has noted, “Business that do provide restrooms, out of respect for either the law or human need, . . . end up doing more than their share.”⁵¹ Further, as a practical matter, the low income neighborhoods where individuals are most likely to need access to public restrooms are those most likely to lack such facilities.⁵²

In sum, like all humans, vulnerable EU citizens need access to water and sanitation. Yet even today, these needs are sometimes exploited to force EU citizens to move on, just as communities exploited these needs in earlier decades. For example, the city of Gothenburg stipulated in 2014 that it has no plans to provide portable toilets or washing facilities for use by vulnerable EU citizens camping within the city’s jurisdiction, arguing that to do so will simply encourage more permanent settlement.⁵³ A Swedish government representative recently endorsed this approach.⁵⁴ And, as described in detail in the section that follows, in recent years, Swedish municipalities have evicted vulnerable European citizens from scores of informal settlements based on sanitation grounds, often without offering alternative options and without providing these vulnerable citizens with access to water or sanitation consistent with the human rights obligations.

2. Evictions of vulnerable EU citizens on sanitation grounds, 2013- January 2016

Since 2013, Swedish municipalities have initiated at least 83 evictions of groups of vulnerable EU citizens holding a right of residence in Romania or Bulgaria. Of these, 73 were granted in the interim by the Swedish Enforcement Authority and one was decided by the Environmental Board of Malmö municipality.⁵⁵ Most of the evictions were carried out in and around the cities of Stockholm and Gothenburg and the vast majority of the applications cite sanitation hazards and littering as grounds for eviction.⁵⁶ With Swedish law lacking uniform legislation on eviction of illegal occupants and with municipalities differing in their application of relevant law, giving an exhaustive and precise overview of evictions of Roma camps in Sweden is not possible, nor is it not the aim of this report. Rather, the data presented should be seen as the tip of the iceberg: an indication of the intractability of the problem and the inadequacies of the current approach from a human rights perspective.⁵⁷

The evictions included in the interactive [map](#) accompanying this report generally fulfill the following criteria: (a) they concern EU citizens who were identified as Romanian or Bulgarian not entered in the Swedish population register, (b) the land occupied belonged to a municipality, and (c) the municipality had applied for assistance at the Swedish Enforcement Agency. In addition to these evictions, we also include available data on the highly publicized

50 Mes'ic & Woolfson, *supra* note 44, at 37,44.

51 Harvey Molotch, *Introduction: Learning from the Loo 3*, in Harvey Molotch and Laura Noren, eds., *Toilet: Public Restrooms and the Politics of Sharing* (2010).

52 *Id.*

53 *Illegala bosättningar i Göteborg: En samordnad bild av förvaltningar i Göteborgs stad som arbetar för att förhindra illegala bosättningar*, Göteborgs Stad Social Resursförvaltning, (2014) (Swed.).

54 Statens Offentliga Utredningar [SOU] 2016:6 *Framtid Sökes [Future Wanted]* [Report of the National Coordinator for Vulnerable EU Citizens] (Swed.).

55 The remaining 9 were either incomplete, retracted (because respondents had left the site), or rejected.

56 See Appendix, list of eviction cases.

57 The Swedish Police estimated that there had been 260 total settlements just in 2015. The Swedish Police, *Nationell lägesbild, brottslighet med koppling till tiggeri i Sverige*, Nationella operativa avdelningen, 2015. See also Karin Zelano, et al., *Urban Implications of CEE Migration to Gothenburg and Stockholm: Country Report Sweden 21* (Imagination Working Paper No. 8, March 2015) (noting that Stockholm “systematically uses evictions as a way to counter the continued emergence of settlements”).

Sorgenfri eviction from private property in Malmö, an eviction initiated by the Environmental Administration of Malmö City. The aggregate data is limited in that not all municipalities responded to our query and several responded that one or more evictions had not been completed as the respondents had left on their own accord after an official visited the site. Additionally, the Swedish Police have been increasingly encouraged to use their authority to evict occupiers since 2015, without the involvement of the Swedish Enforcement Authority.⁵⁸ These evictions are not included in this report. Thus, the evictions that we document here represent just a telling fraction of the true number.

The Swedish Police can remove an individual from a certain area in if it is necessary in order to deter an illegal act,⁵⁹ such as intervening with another person's right to their land.⁶⁰ When a municipality is notified of a settlement being erected, the status of the land has to be determined before an intervention can take place. If it is determined to be a public place, the Police will intervene in accordance with Swedish Public Order Act.⁶¹ In these cases, the Swedish Police will typically intervene rapidly after respondents have arrived at the site. When the status of the land cannot be determined or if it is not a public place (a forest, for example), the Police are unable to apply the Public Order Act. Although those on Swedish soil do enjoy a right of public access to non-private land, this right is limited to up to 24 hours.⁶² When the Public Order Act cannot be applied, the municipality will need to apply for 'particular assistance' at the Swedish Enforcement Authority to remove the individuals from the site. An eviction decision is issued solely on the basis of the application by the municipality if there is no objection from the respondents.⁶³

For an application for 'particular assistance' to be successful, it must include the following: (a) the relevant parties, (b) the sought measure and (c) grounds for the claim. If a decision is to be made in the interim (as is the case in all the granted applications), the municipality must show that its right to the property is indisputable and that the decision cannot be postponed. An application must also include relevant evidence that the municipality wishes to invoke: map, pictures and identification of the respondents as obtained by the Swedish Police. A decision to evict can only be served to previously identified individuals, and only concerns those individuals.⁶⁴

Some municipalities with substantial experience of applying for evictions have developed procedures for dispersing settlements. The procedures for the City of Stockholm, for example, provide that initially, the status of the land must be determined. Thereafter a police report is filed and the Social Services and EU-team are informed. If it is not a public place, an application is sent to the Enforcement Agency. The Social Services and an interpreter must be present at the eviction and attention must be paid to particularly vulnerable individuals. Although respondents are to be informed about alternative accommodation, there is no obligation to actually provide such an alternative.⁶⁵

58 SOU 2016:6, *Framtid sökes – slutredovisning från den nationella samordnaren för utsatta EU-medborgare*, 2016 p. 68-69, 73.

59 §13 Swedish Police Act (Polislagen).

60 Chapter 8§8-9, Swedish Penal Code (Brottsbalken).

61 Chapter 3§1 Swedish Public Order Act (Ordningslagen).

62 The right of public access is established in Chapter 7§1 of the Swedish Environmental Code (Miljöbalken). Although it is not provided by law, the general rule of thumb is that the right is limited to up to 24 hours. Fastighetsägarna, *Allemansrätten skyddar inte olagliga boplatser*, 2015-05-25, available at http://www.fastighetsagarna.se/stockholm/aktuellt_opinion/nyheter_1/2015/allemansratten-skyddar-inte-olovliga-boplatser.

63 §39 Swedish Act on Pay and Assistance (lagen om betalningsföreläggande och handräckning).

64 Swedish Enforcement Authority, *Särskild handräckning*, memo, 2014-04-10, p. 8.

65 Stockholm stad, *Stadsövergripande rutiner för avhysning av illegala boplatser där det bort fattiga EU-medborgare*, memo, ref number 429-281/2015.

Of the 82 applications for eviction examined here, an overwhelming number cite the prevalence of, or risk for, sanitation hazards and littering as grounds for eviction. Interestingly, sanitation hazards are viewed as equally severe regardless of the number of identified respondents to whom the eviction decision is directed, whether it be two or several dozen. For example, between the issuing and implementation of an eviction decision concerning forty-nine respondents in Högdalen in April 2015, the Stockholm Land and Premises Maintenance Office discovered that two new respondents had moved to the site. In applying for assistance for the eviction of these two respondents in addition to the first forty-nine, the municipality did not alter its argument of the significant adverse effects on the environment incurred by the respondents. Though the newcomers numbered only two, and had arrived only days before, the city argued that “the areas around the settlements are exposed to great environmental effects [...] the settlements generate waste and latrine in the nature which will risk affecting the property both short-term and long-term.”⁶⁶ The Office continued: “those living in the vicinity, normally using the green area as an area for recreation, are prevented from using the area as they have done previously.”⁶⁷ The risk of sanitation costs amounting to that of previous settlements was also cited, up to 560 000 SEK, even though this application only concerned two respondents.

Twenty-five of the eviction decisions were directed at six respondents or fewer and had existed anywhere from ten days up to three months. Despite these settlements being significantly smaller than many of the others and not having existed very long, “extensive inconveniences” in terms of sanitation costs were still cited in each decision.⁶⁸ This was the case in a 2013 decision in Stockholm, where the municipality held that “the area around the settlement is subjected to great environmental impacts. Large amounts of waste and latrine have been dumped on the ground around the settlement. [...] Furthermore, this littering will lead to sanitation inconveniences for the surroundings and an increased risk for spreading diseases etc.”⁶⁹ The decision only concerned two respondents. Similar language was used in an application to evict two respondents in Gothenburg in 2014, where the two respondents had occupied the land for less than two weeks.⁷⁰

In applying for ‘particular assistance’ at the Enforcement Authority, municipalities often cite their responsibility in terms of sanitation of the area. In several applications initiated by Uppsala, the municipality asserted that it “has a responsibility towards the community, surrounding residents and towards those who wish to use the area for its intended purpose, for the adversities the occupation leads to.”⁷¹ At the same time, Uppsala did not acknowledge its special role in ensuring that the people in this informal settlement have access to water and sanitation. On the contrary, the respondents were characterized as nuisance, with the municipality stating that “every day the settlement stays it risks being perpetuated and legitimized.”⁷²

66 The Swedish Enforcement Authority, Applicant Stockholm Stad Exploateringskontoret, Case number 21-75620-15.

67 The Swedish Enforcement Authority, Applicant Stockholm Stad Exploateringskontoret, Case number 21-80420-15.

68 It should be recognized that the number of respondents likely does not mirror the actual size of the settlement, as it only includes whoever happened to be at the site at the time of inspection by the Swedish Police. Regardless, from a formal point of view, it is worth questioning accusing as few as two respondents of incurring “extensive inconveniences” on the municipality, while simultaneously denying them access to sanitation.

69 The Swedish Enforcement Authority, Applicant Stockholm Stad Exploateringskontoret, Case number 01-155744-13.

70 The Swedish Enforcement Authority, Applicant Göteborg Fastighetskontoret, Case number 22-1848990-14.

71 The Swedish Enforcement Authority, Applicant Uppsala kommun, Case number 21-142309-14.

72 *Id.*

In some instances, municipalities do show a concern for the sanitary situation from the respondents' perspective. In Uppsala, in November 2015, for example, the city filed for an eviction stating that

the area does not offer an opportunity to obey nature's call in a hygienic way, which is a sanitary inconvenience for these people, neighboring residents and for municipal coworkers keeping the area clean. Clothes are being washed in the fountain in the area and that can also be seen as unhygienic. There is also a significant problem with littering close to the cars, with leftover food possibly leading to a great risk of contagion.⁷³

However, eviction of the informal settlement was the only solution that the city offered. Likewise, in Stockholm Skarpnäck in June and September 2014, the municipality's eviction papers acknowledged concerns for the health of people and animals "when large amounts of litter and latrine are dumped in the woods without any further management."⁷⁴ But although the municipality recognized that the respondents were subjected to a greater risk of contracting diseases and developing health problems, eviction was the response.

Some eviction applications simply cite the assumption that the settlement is leading to sanitation hazards. Such was the case in an eviction in Tensta in 2016, where the municipality asserted that "(...) it can be assumed that latrine is also being dumped".⁷⁵ The municipality claimed that the eviction could not be postponed because of the great inconvenience of the settlement and because the municipality would suffer all the greater damage the longer it was allowed to exist. A similar municipal claim was challenged in Sollentuna, where the city sought to evict forty-five individuals on grounds of sanitation. Respondents countered that the alleged hazards towards the environment cited in the decision were improbable, as volunteers had helped set up garbage disposals and portable toilets.⁷⁶ But the appeal of the eviction was dismissed by the Court, and the city proceeded to evict based on the mere assumption of environmental impacts.

Of the twelve applications that were not granted particular assistance by the Enforcement Authority, four were rejected⁷⁷ and two were found incomplete and subsequently retracted,⁷⁸ probably because the respondents had left the site. In the remaining six cases, the decision was not provided.⁷⁹ Intriguingly, the Enforcement Authority rejected two applications on grounds that the municipalities had not sufficiently proven that the decision could not be delayed. In the case of Sjöbergen in Gothenburg, the municipality had only cited complaints from neighboring residents as grounds for eviction, which the Authority held were not satisfactory grounds.⁸⁰ In Uppsala, the Enforcement Authority held that granting

73 The Swedish Enforcement Authority, Applicant Uppsala Skolfastigheter, Case number 21-93657-15.

74 The Swedish Enforcement Authority, Applicant Stockholm Skarpnäck Stadsdelsförvaltning, Case numbers 01-120154-14 and 01-185819-14.

75 The Swedish Enforcement Authority, Applicant Stockholm Spånga-Tensta Stadsdelsförvaltning, Case number 01-14083-16.

76 The Swedish Enforcement Authority, Applicant Sollentuna kommun, Case number 22-42474-14.

77 The Swedish Enforcement Authority, Applicant Uppsala kommun, Case number 21-169381-15, Applicant Göteborgs Fastighetskontor, 14-199475-14, 14-216576-14 and 21-106834-15.

78 The Swedish Enforcement Authority, Applicant Sollentuna kommun, Case numbers 22-47637-14 and 22-90213-14.

79 Stockholm Tensta-Spånga Stadsdelsförvaltning, reference number 649-2428/2015, Huddinge kommun, reference number KS-2015/2118.103, Botkyrka kommun, reference number Riskpro 5463, Göteborg Fastighetskontor, reference numbers 0937/14, 0240/15 and application for Polstjärnegatan (no ref number provided by municipality).

80 The Swedish Enforcement Authority, Applicant Göteborgs Fastighetskontor, 21-106834-15.

a decision in the interim is a deviation from the principle that individuals must be given the opportunity to enjoy their rights before an authority interferes with said right. There was no reason to grant the application without the respondents first being heard, the authority concluded.⁸¹ The grounds for the eviction asserted by the municipality were no different than from previous applications: disturbing for the neighboring residents, sanitation hazards and the responsibility of the municipality towards the community. However, the settlement had been up for less than two days, a possible explanation for this departure from the usual routine processing of eviction requests. The final two applications in this group, at Röda Sten in Gothenburg in November 2014 and January 2015, were rejected as the municipality had failed to provide identification of the respondents in advance of the sought eviction.

Lastly, there is one example of a municipality explicitly showing consideration for the situation of the respondents despite applying for eviction on grounds of sanitation. In Skara in 2015, the municipality specifically asked that the eviction of eight identified individuals be implemented at a time when Social Services representatives could be present to offer support to the respondents.⁸² This suggests that there was a possible alternative offered to the respondents, or at least a recognition that they would have nowhere to go once evicted.

In conclusion, a vast majority of the decisions to evict vulnerable EU citizens from informal settlements were based on grounds of sanitation, often without an alternative for those evicted. The grounds generally did not differ regardless of number of respondents and how long the settlement had existed; consideration for the health of the evicted was shown, however with no recognition of their rights to water and sanitation as basic human rights. Where municipal responsibility was identified, the discussion focused on the municipality's responsibility towards the community rather than any obligation to the people living in the informal settlements.

II. European and International Human Rights Law Protects Water and Sanitation Access for Informal Urban Settlements

Both water and sanitation are now firmly established as independent human rights protected by both European and international human rights law.⁸³ These rights apply to people living in informal settlements and homeless people as well as people residing in formal housing, and they are not conditioned on an individual's legal status.⁸⁴

A. The Fundamental Nature of the Rights to Water and Sanitation

In the European Union, the fundamental nature of the human rights to water and sanitation have been repeatedly recognized as embedded within broader protections. Provisions of

81 The Swedish Enforcement Authority, Applicant Uppsala kommun, Case number 21-169381-15.

82 The Swedish Enforcement Authority, Applicant Skara kommun, Case number 14-32010-15.

83 U.N. Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15, The Right to Water, U.N. DOC. E/C.12/2002/11 (20 Jan. 2003); UN HCR Rep. of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, A/HRC/12/24 at ¶ 63 (1 July 2009). See generally Inga Winkler, *The Human Right to Sanitation*, 37 U. Pa. J. Int'l L. 4 (2016); Mads Holst Jensen et al., *The AAAQ Framework and the Right to Water: International Indicators for Availability, Accessibility, Acceptability and Quality* (Danish Institute for Human Rights, 2014).

84 See U.N. Human Rights Council [HRC], Council Rep. of the Special Rapporteur on the human right to safe drinking water and sanitation; stigma and the realization of the human rights to water and sanitation A/HRC/21/42 at ¶ 35 (2 July 2012) (*hereinafter* "HRC Report on Stigma").

the EU's Charter of Fundamental Rights protect the right to dignity (Article 1) and the right to life (Article 2), implicitly encompassing the rights to water and sanitation.⁸⁵ The relationship between water and Roma integration was explicitly identified by the Council of the European Union in 2013, when it recommended that member states "take effective measures to ensure equal treatment of Roma in access to housing," including providing halting sites as needed and ensuring "access to public utilities (such as water electricity and gas)."⁸⁶ The first successful European Citizens' Initiative, obtaining almost 1.9 million signatures, addressed these rights even more specifically and urged that "EU institutions and Member States be obliged to ensure that all inhabitants enjoy the right to water and sanitation."⁸⁷ In answering this petition, the European Commission issued a formal Communication encapsulating the EU's unequivocal endorsement of these basic rights:

Access to safe drinking water and sanitation is inextricably linked to the right to life and human dignity and to the need for an adequate standard of living. . . . At the European level, the Parliamentary Assembly of the Council of Europe declared "that access to water must be recognised as a fundamental human right because it is essential to life on earth and is a resource that must be shared by humankind." The EU has also reaffirmed that "all States bear human rights obligations regarding access to safe drinking water, which must be available, physically accessible, affordable and acceptable."⁸⁸

The Communication further encouraged EU Member States, "to step up their own efforts to guarantee the provision of safe, clean and affordable drinking water and sanitation to *all*."⁸⁹ More recently, on September 8, 2015, the European Parliament adopted a follow up to the European Citizens' Initiative. The Parliament urged the Commission to take more aggressive steps to implement the initiative while also calling on Member States "to ensure non-discrimination in access to water services, ensuring their provision to *all, including marginalized user groups*."⁹⁰ These measures, the Parliament asserted, are necessary to ensure that "*all members of the public* are guaranteed access to high quality services irrespective of their income."⁹¹

The Council of Europe has also recognized the human rights to water and sanitation. Implicit protections are found in the European Convention on Human Rights and Fundamental Freedoms, which enshrines a "right to life," and in the European Social Charter's protections for the rights to health and housing.⁹² Indeed, under the European Charter, housing is deemed to meet an "adequate standard" only if it includes basic amenities such as clean

85 Charter of Fundamental Rights of the European Union, art. I, art.11, 1 Dec. 2009, *Official Journal of the European Union*.

86 *Council Recommendation on Effective Roma Integration*, European Union Council on Employment, Social Policy, Health and Consumer Affairs, ¶1.6 (Dec. 2013), available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/139979.pdf (last visited 5 Apr. 2016).

87 *Water and sanitation are a human right! Water is a public good, not a commodity!* (Oct. 2012), available at <http://ec.europa.eu/citizens-initiative/public/initiatives/successful/details/2012/000003> (last visited 1 Apr. 2016).

88 Communication from the Commission on the European Citizens' Initiative "Water and sanitation are a human right! Water is a public good, not a commodity!", at 3, COM (2014) 177 final (19 March 2014).

89 *Id.* at 13. (emphasis added).

90 European Parliament resolution of 8 September 2015 on the follow-up to the European Citizens' Initiative Right2Water, Eur. Parl. Doc. 2239 (INI) at ¶ 27 (2015). (emphasis added).

91 *Id.* at ¶ 29 (emphasis added).

92 Convention for the Protection of Human Rights and Fundamental Freedoms § II, 1 June 1950, C.E.T.S. No. 194 [hereinafter European Convention], Art. 2; European Social Charter Arts. 11, 13, 30, 31, *opened for signature* Oct. 18, 1961, C.E.T.S. No. 035 (entered into force 26 Feb. 1965).

water, sanitation facilities, and electricity.⁹³ The issue of water was addressed even more directly when, in 2001, the Council of Europe's Committee of Ministers adopted European Charter on Water Resources. Paragraph 5 of the Charter states that: "Everyone has the right to a sufficient quantity of water for his or her basic needs," including "a minimum quantity of water of satisfactory quality from the point of view of health and hygiene."⁹⁴ The Charter further reiterates that international law protections for the right to an adequate standard of living include the right to water and sanitation.⁹⁵

The rights to water and sanitation have also been repeatedly recognized on the international level. These rights are undeniably linked to the rights to life and inherent dignity protected by the International Covenant on Civil and Political Rights.⁹⁶ Some commentators also argue that International Covenant on Economic, Social and Cultural Rights (ICESCR) pre-supposes these basic human rights, which tacitly undergird all other rights.⁹⁷ Any lack of clarity regarding the source of these rights was eliminated in November 2002, when the Committee on Economic and Social Rights explicitly stated that the rights to water and sanitation are protected under the ICESCR. According to the Committee's General Comment 15, "The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights."⁹⁸ The Comment defined the right to water as "everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses."⁹⁹ Further, the Comment indicated that states have a related duty to "ensure that everyone has access to adequate sanitation, which is crucial to protecting the quality of the water supply."¹⁰⁰

On July 28, 2010, the United Nations General Assembly offered further confirmation of the fundamental nature of the human rights to water and sanitation in its Resolution 64/292, while also underscoring that these rights extend to all. In this Resolution, the General Assembly formally recognized water and sanitation as human rights and acknowledged that clean drinking water and sanitation are essential to the realization of all human rights.¹⁰¹ The Resolution further provided that "[E]ach state should implement the right to water at the domestic level," including facilitating "access to drinking water for the most vulnerable persons and those living in informal settlements."¹⁰² In December 2015, the UN General Assembly adopted, by consensus, a resolution explaining that the right to sanitation is itself an independent human right. According to this latest Resolution, "the human right to sanitation entitles everyone, without discrimination, to have physical 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."¹⁰³

93 *Handbook on European Law Relating to the Rights of the Child*, European Union Agency for Fundamental Rights and Council of Europe, 156 (2015). Citing; ECSR, *Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, 20 Oct. 2009, ¶¶ 43, 62.

94 Council of Europe Committee of Ministers Rec. (2001)14E of 17 Oct. 2001, art. 5, available at <https://wcd.coe.int/ViewDoc.jsp?id=231615> (emphasis added).

95 *Id.*

96 International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), A/RES/21/2200, Arts. 6, 10 (16 Dec. 1966).

97 Winkler, *supra* note 83.

98 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15, The Right to Water, U.N. Doc. E/C.12/2002/11, ¶ 1 (20 Jan. 2003).

99 *Id.* at ¶2 (emphasis added).

100 *Id.* at ¶29 (emphasis added).

101 Sweden was among the forty-one nations that abstained from the vote on this Resolution, which was adopted with a vote of one hundred twenty-two in favor, none against, and forty-one abstentions.

102 G.A. Res. 64/292, U.N. Doc. A/RES/64/292 (28 July 2010).

103 G.A. Res. 70/169, A/RES/70/169, 4 (17 Dec. 2015).

As with other economic, social and cultural rights, the State obligations regarding water and sanitation are to “respect, protect and fulfill” these rights by promoting their “progressive realization.”¹⁰⁴ Yet States must immediately meet the minimum core obligation of the rights in order to meet their basic commitments under the ICESCR. For water and sanitation, commentators have suggested that States must guarantee the minimum standard that is indispensable for human survival and dignity.¹⁰⁵ Moreover, the State may not take deliberately retrogressive measures, “which are actions that hinder the realization of an economic, social or cultural right.”¹⁰⁶ Any government action which impedes or reduces enjoyment of these rights must be fully justified.¹⁰⁷

States are further obliged to avoid discrimination in securing the rights to water and sanitation.¹⁰⁸ The Committee on Economic Social and Cultural Rights made clear in its General Comment No. 20 that this obligation goes beyond eliminating formal inequalities, but requires states to address substantive inequality as well.¹⁰⁹ In particular, General Comment 20 states that States parties must “immediately adopt measures to prevent, diminish or eliminate” de facto discrimination, including “ensuring that all individuals have equal access to adequate housing, water and sanitation,” with specific mention of those living in informal settlements.¹¹⁰ In Sweden, where the identity of those living in informal settlements aligns with a recognized minority group, the Roma, these anti-discrimination principles are particularly pertinent. As the European Center on Roma Rights has pointed out, the Covenant’s prohibition on discrimination is not purely negative, but “implies . . . a positive obligation to design systems for the distribution of water that avoid excluding particular segments of the population (notably those protected by non-discrimination principles).”¹¹¹

These European and international human rights norms have legal significance in Swedish domestic law. Sweden has signed and ratified both the ICESCR, the basis for the rights to water and sanitation, and the International Covenant on Civil and Political Rights (ICCPR), which articulates the rights to life and human dignity.¹¹² Because Sweden has a dualistic approach to international conventions, these ratified treaties do not automatically become part of Swedish national law unless they are formally incorporated.¹¹³ There is, for example, no direct recourse in the Swedish courts for a violation of the ICESCR because the treaty has not been incorporated into Swedish law. This does not mean however, that the ICESCR is insignificant. Courts and authorities are obliged to interpret national law in accordance with the binding commitments that Sweden has assumed by ratifying human rights conventions.¹¹⁴

104 General Comment 15, *supra* note 98, at ¶¶ 20-29.

105 Winkler, *supra* note 83, at 40.

106 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 3, UN Doc. E/1991/23 The Nature of States Parties Obligations, ¶ 9 (14 Dec. 1990).

107 General Comment No. 15, *supra* note 98, at ¶ 19.

108 U.N. Econ. & Soc. Council [ECOSOC], Comm. on Economic, Social and Cultural Rights, General Comment No. 20, ¶ 8, U.N. Doc. E/C.12/GC/20, (2 July 2009).

109 *Id.*

110 *Id.* at para. 8(b). See also General Comment 15, *supra* note 98, at ¶15.

111 *Hudorovic v. Slovenia*, App. No. 24816/14 & *Novak v. Slovenia*, App. No. 25140/14, Eur. Ct. H.R. 1 (2015).

112 International Covenant on Economic, Social and Cultural Rights, art. 6, 3 Jan. 1976, S. Exec. Doc. No. E, 95-2, 999 U.N.T.S. 171.

113 The Rome Statute and Domestic Legal Orders Volume II: Constitutional Issues, Cooperation and Enforcement, 381 (Klaus Krieb, Bruce Broomhall, Flavia Lattanzi, Valeria Santori eds., Nomos Verlagsgesellschaft 2005).

114 See SOU 2010:70, *Ny struktur för skydd av mänskliga rättigheter* [New structure for the protection of human rights], 2010, p. 20; Civil Rights Defenders, *supra* note 32, at 17.

Further, some international human rights norms are formally incorporated into Swedish law, making them directly applicable in domestic contexts. For example, the government has declared that the Convention on the Rights of the Child -- which addresses the rights to water and sanitation through its protections of the rights to life and health -- will be affirmatively incorporated into Swedish law.¹¹⁵

Even in the absence of incorporation, Sweden has embraced the task of integrating its human rights treaty obligations into Swedish law, principally through amending domestic law – a process called “transformation.”¹¹⁶ As the government recently stated in its submission for Sweden’s Universal Periodic Review by the UN Human Rights Council,

The Government prioritizes efforts to secure full respect for Sweden’s international commitment to human rights. Swedish legislation **must** conform to the international human rights conventions that Sweden has ratified. In several areas, the Government strives for stronger protection for human rights than the levels guaranteed by the conventions.¹¹⁷

In a number of respects, Sweden has been proactive in addressing the historic discrimination against Roma populations, in progressive fulfillment of its human rights obligations. For example, Swedish law recognizes Roma as a distinct national minority requiring protection by national non-discrimination laws.¹¹⁸ In addition to creating such affirmative legal protections, the Government has taken steps to stimulate debate and social awareness of the issues, including the 2014 White Paper described above. A national commission was established to combat anti-Roma discrimination and move toward greater inclusion of Roma in Swedish society, including development of an ambitious national plan.¹¹⁹ While these measures focus on Roma who are established in Sweden rather than recent arrivals, they demonstrate the general acknowledgment of persistent discrimination against members of the Roma ethnic group – a history of bias which cannot be fully disentangled from the current situation of more recent Roma arrivals under the EU Freedom of Movement law.¹²⁰ And, significant for this report, the ways in which the human rights to water and sanitation access have been, and still are, manipulated to control Roma is an under-recognized aspect of this discriminatory pattern. The standards set out below are touchstones for assessing the contours of this discrimination.

115 SF: 1994:1219. Swedish law provides that laws and other regulations may not be enacted in contravention of Sweden’s commitments under the European Convention. On Sweden’s passive approach, see Ylva Hartmann and Hanna Gerdes, *What Justice for Sweden’s Roma* (Swedish Foundation for Human Rights 2015) (recommending more active measures such as establishing a National Human Rights Institution). Pro-active incorporation of these norms is particularly important because most ESC rights do not have the same constitutional protection in Sweden as civil and political rights (*Rättighetskatalogen*).

116 See, e.g., Beatrice Ask, *Toward Stronger Implementation of ECHR at the National Level*, in Council of Europe, *Reforming the European Convention on Human Rights: A Work in Progress* 465, 466 (2009).

117 National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Sweden, UN Doc. A/HRC/WG.6/21.SWE.1 (14 Nov. 2014) (emphasis added). Presumably this statement does not apply only to legislation but also encompasses the government’s policies and practices.

118 Sweden Discrimination Act (2008:567); Council of Europe Directive 2000/43/EC (implementing the principle of equal treatment between persons irrespective of racial or ethnic origin).

119 *Sweden’s Strategy for Roma Inclusion: 2012-2032*, Swedish National Institute of Public Health (2013) (Swed.).

120 See Hanna Engblom & Miruna Troncota, *Romania and Sweden Need to keep Trying to Find a Solution for the Roma Beggars*, 4 Sept. 2015, available at <http://www.futurelabeurope.eu/blog/romania-and-sweden-need-to-keep-trying-to-find-a-solution-for-the-roma-beggars/> (surveying history of Roma discrimination Sweden and concluding that “the treatment of the Roma people has not substantially improved during the last decades”).

B. Meeting the Standards for Water and Sanitation

Beyond the more general statements of the UN General Assembly, UN bodies and international experts have set minimal standards necessary for ensuring the rights to water and sanitation, focusing on availability, acceptability, accessibility and quality.

• **The Human Right to Water**

Availability: Availability of water and sanitation requires sufficient water for daily needs. The World Health Organization (WHO), estimates that between 50 and 100 liters per person per day is needed to meet all individual water and sanitation needs.¹²¹ At the lowest extreme, the absolute minimum is fifteen liters – an amount sufficient to sustain life, but that nevertheless raises health concerns.¹²²

Affordability: Cost of water and sanitation should be no more than 3 percent of income, and should be available even to the poorest members of the community.¹²³ Water need not be free of charge; those who can pay should pay.¹²⁴ At the same time, the cost of water should not be so high as to limit people from acquiring other basic goods and services.¹²⁵

Acceptability: Water should be acceptable in terms of colour, odour, and taste for people drinking it. The means of accessing the water and sanitation should also reflect cultural sensitivity.¹²⁶

Accessibility: Water should not be located a long distance from people's homes, and the path to its source should be safe and convenient for all users.¹²⁷ The longer the distance required to retrieve the water, the less water people will carry and use for their basic needs, ultimately compromising their health and well-being. Human rights expert Inga Winkler suggests that distances of more than 1000 meters are unacceptable and will not allow access to the minimal amounts of water required.¹²⁸

Sufficient Quality: Water should be safe for drinking and free from contamination (from industrial and agricultural pollution, natural groundwater pollution, inadequate sanitation, and improper handling and household storage) and kept away from animals, including insects.¹²⁹

121 United Nations, *Global Issues: Water*, available at <http://www.un.org/en/globalissues/water/>. Nationwide, Swedish residents use an average of 200 liters a day. *Facts on Water Supply*, *supra* note 8, at 9.

122 Brian Reed and Bob Reed, *Technical Notes on Drinking Water, Sanitation and Hygiene in Emergencies: How Much Water is Needed in Emergencies 9.1* (World Health Organization 2011).

123 The United Nations Development Programme has adopted 3 percent as an appropriate benchmark. U.N. Dev. Programme, *Human Development Report 2006 – Beyond Scarcity: Power, Poverty and the Global Water Crisis 97* (2006), available at <http://www.undp.org/content/dam/undp/library/corporate/>.

124 *A Human Rights-Based Approach to Water in Informal Settlements 5* (Global Initiative for Economic, Social and Cultural Rights, Aug. 2015).

125 On the importance of affordability, see, e.g., Comm. on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, ¶¶ 12(c)(ii), 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (20 Jan. 2013) (“[t]he direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realization of other ... rights”).

126 *A Human Rights-Based Approach*, *supra* note 124, at 7.

127 *Id.* at 6.

128 Inga Winkler, *The Right to Water: Significance, Legal Status and Implications for Water Allocation* 135-36 (2012).

129 Holst Jenson, *supra* note 83, at 21.

These standards are met and exceeded for the great majority of Swedish residents. Water is inexpensive.¹³⁰ It is readily available. Most people can easily access all of the water that they require to meet their basic needs. And it is of very high quality compared to water worldwide. Sweden is “rich in water,” according to the Swedish Water and Sanitation Association, making residents of informal settlements in Sweden – primarily Roma – all the more socially isolated in their difficulties obtaining access to it.

- **The Human Right to Sanitation**

A right independent of the right to water, the human right to sanitation has its own set of standards. As set out by the UN Special Rapporteur on the Right to Safe Drinking Water and Sanitation, sanitation must be physically accessible and affordable, safe, hygienic, acceptable, and providing privacy and dignity.¹³¹ Each of these standards are addressed briefly below.

Physical accessibility: Sanitation facilities must be accessible to all – children, pregnant women, individuals with disabilities, older individuals, and so on. This may require designs that will accommodate these individuals. Further, sanitation facilities must be stable and safe to use. If group facilities are used, they should be located at convenient locations.

Affordable: Sanitation facilities should be affordable for all individuals. While individuals may be expected to contribute to realization of their own rights to sanitation – paying connection fees, digging a well, installing a toilet – individuals who cannot afford these payments should be assisted by the government. For example, many Swedish communities have pay toilets and showers in highly-frequented areas like train stations or tourist sites.¹³² While these are important amenities for visitors and residents who can pay for these facilities, they may not be truly accessible to low income or homeless individuals who cannot afford to pay for sanitation access several times a day.

Safe and Hygienic: Sanitation facilities should be clean and safe from disease. Further, if group facilities are used, the facilities should be well-lit and located in areas that are safely accessible at night as well as daytime.

Acceptable: Sanitation facilities should be culturally acceptable. Further, the facilities should be environmentally acceptable, disposing of waste in ways that do not harm the surrounding environment or community, and that minimize odors.

Providing Privacy and Dignity: Sanitation facilities should have doors and walls, and should include areas where individuals can have privacy as they address their hygienic needs.

130 While water is generally inexpensive, rates are rising. Survey Finds World Water Rates Rising (Water World 2002), available at <http://www.waterworld.com/articles/print/volume-19/issue-1/editorial-focus/survey-finds-world-water-rates-rising.html>. Further, initial payment for water connections are relatively significant. These costs, however, are incurred only by homeowners, not renters whose funds are presumably more limited.

131 UN Special Rapporteur on the Rights to Water and Sanitation, *Realizing the Human Rights to Water and Sanitation: A Handbook* (Booklet 2) 6 (2014).

132 See, e.g., Stockholms stad, *Offentliga toaletter*, available at <http://www.stockholm.se/TrafikStadsplanering/Gator-och-torg/Anvanda-offentlig-plats/Offentliga-toaletter/>.

As with water, these standards for sanitation are met or substantially exceeded for the great majority of those living in Sweden, where a daily shower and an indoor bathroom is considered the norm.¹³³

C. The Right to Water and Sanitation of Informal Settlements

The rights to water and sanitation extend to all, including those residing in informal settlements or otherwise without regular legal status. The UN Habitat Programme defines informal settlements as residential areas where “(1) inhabitants have no security of tenure vis-à-vis the land or dwellings they inhabit, with modalities ranging from squatting to informal rental housing, (2) the neighbourhoods usually lack, or are cut off from, basic services and city infrastructure and (3) the housing may not comply with current planning and building regulations, and is often situated in geographically and environmentally hazardous areas.”¹³⁴ The Roma settlements examined in this report typically fall within this definition: Camps pitched on public parkland or vehicles parked on private property are settlements where residents have little or no claim to legal residence. While most camps in Sweden support some structures, in some instances, the temporary Roma settlements may not even meet this Habitat definition. The residents may simply be homeless, seeking shelter day to day wherever they can find it.

Yet even in these situations, the international community recognizes the human right to water and sanitation, and the state obligation to ensure that right. For example, the Committee on Economic, Social and Cultural Rights indicates that “access to water services and protection from forced eviction should not be made conditional on a person’s land tenure status, such as living in an informal settlement.”¹³⁵ Further, the Committee has stated that “Deprived urban areas, including informal human settlements and homeless persons, should have access to properly maintained water facilities. No household should be denied the right to water on the grounds of their housing or land status.”¹³⁶ The Committee specifically calls on States to take the “necessary steps to ensure Roma nomadic groups or Travellers camping places for their caravans, with all necessary facilities.”¹³⁷

The UN Special Rapporteur on the Right to Water and Sanitation has demonstrated how these principles apply in the field. For example, in an official visit to the United States, the Rapporteur observed a group of homeless individuals who had been relegated to a property on the outskirts of a city, without access to sanitation facilities. The Rapporteur noted that

Because evacuation of the bowels and bladder is a necessary biological function and because denial of opportunities to do so in a lawful and dignified manner can both compromise human dignity and cause suffering, such denial could, in some cases (e.g., where it results from deliberate actions or clear neglect) amount to

133 See SCA, Hygiene Matters 49 (2008), available at http://www.sca.com/Documents/en/Publications/SCA%20Hygiene%20matters_ENG.pdf?epslanguage=en (about half of Swedish men and women shower at least once a day).

134 Habitat III Issue Papers 22: Informal Settlements 1 (May 2015), available at http://unhabitat.org/wp-content/uploads/2015/04/Habitat-III-Issue-Paper-22_Informal-Settlements-2.0.pdf.

135 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights, ¶ 25, U.N. DOC. E/C.12/GC/20 (2 July 2009).

136 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15, The Right to Water, ¶ 16(c), U.N. DOC. E/C.12/2002/11 (20 Jan. 2003).

137 European Union Agency for Fundamental Rights, *Housing Conditions of Roma and Travellers in the European Union Comparative Report*, 66 (2009).

cruel, inhumane or degrading treatment. Individuals are sometimes compelled to go to extraordinary lengths to prevent such suffering.¹³⁸

In another example, the Special Rapporteur reported on informal settlements in Sao Paulo, Brazil, called *favelas*.¹³⁹ According to the Rapporteur,

People living in *favelas* are often deprived of access to water and sanitation because public authorities and service providers avoid installing water and sanitation networks, fearing that using public resources for such works in these areas would be considered an illegal act. Indeed, in certain states the Public Prosecutor's Office is adopting this position, declaring that it is illegal to provide water and sanitation services to informal settlements, as it would constitute an improper use of public resources. . . . However, the right to water cannot be denied to anyone on the basis of the legal status of their housing or the land where it is situated. The same reasoning also applies to sanitation.

She noted with approval the initiatives in some parts of Brazil to provide low-cost, provisional solutions to extend water and sanitation to these areas.¹⁴⁰

The UN Special Rapporteur on the Right to Water has also analyzed the situation of informal settlements through the lens of "criminalization." Employing that frame, she condemned the "criminalization of activities linked to access to water or sanitation, such as the prohibition of public defecation or urination when no other options are available – partially as a result of increasing closures of public facilities."¹⁴¹ Similarly, in a 2010 report, the UN Special Rapporteur on Extreme Poverty criticized the resource allocations reflected in repeated evictions of homeless individuals:

Instead of using public funds to assist these families, States are instead carrying out costly operations to penalize them for their behaviour. Where there is insufficient public infrastructure and services to provide families with alternative places to perform such behaviours, persons living in poverty and homelessness are left with no viable place to sleep, sit, eat or drink.¹⁴²

In sum, the right to water and sanitation is well-established in both European and international human rights law. These rights unequivocally extend to informal settlements and homeless individuals, and require that States take affirmative steps to assure minimum standards of water and sanitation accessibility, affordability, acceptability and quality.

138 Report of the Special Rapporteur on the Right to Safe Drinking Water and Sanitation: Addendum, Mission to the United States of America, U.N. Doc. A/HRC/18/337Add. 4, ¶ 58 (2 Aug. 2011).

139 Report of the Special Rapporteur on the Right to Safe Drinking Water and Sanitation: Mission to Brazil, U.N. Doc. A/HRC/27/55/Add.1, ¶ 53 (30 June 2014).

140 *Id.* at ¶ 56.

141 U.N. Special Rapporteur on the Right to Safe Drinking Water and Sanitation, Common Violations of the Human Rights to Water and Sanitation, U.N. Doc. A/HRC/27/55, ¶¶ 22-23 (30 June 2014).

142 Report of the UN Special Rapporteur on Extreme Poverty, UN Doc. A/66/265, ¶36 (4 Aug. 2011).

III. The Municipal Role in Protecting Rights to Water and Sanitation

International human rights treaties generally bind national governments, which take the lead in signing and ratifying the treaties, and in implementing national obligations under them. However, in Sweden, like many other countries, policies regarding water and sanitation affordability and access are set at the local level. This section addresses the respective obligations of national and local governments in human rights implementation, then examines the opportunities for local governments to take a leadership role in implementing the human rights to water and sanitation in their jurisdictions, benefiting vulnerable EU migrants and local communities and serving as a model for national human rights implementation.

A. *Negotiating National versus Local Responsibilities for the Human Rights to Water and Sanitation*

There is no doubt that, as a matter of international and regional human rights law, Sweden's national government is responsible for ensuring that the nation's water and sanitation policies and practices conform to the requirements of international treaties such as the ICESCR, and regional treaties such as the revised European Social Charter, including the authoritative interpretations of these and other human rights documents.¹⁴³ International and regional treaty law is generally directed to national States, and the ICESCR and the European Social Charter, for example, are not exceptions to that general rule.

The national responsibility for human rights compliance and implementation persists even when, as is the case with water and sanitation, domestic laws and administrative structures locate significant policy and legal responsibility with subnational governments. Domestically, this vertical arrangement has the benefit of increasing democratic input concerning issues – like water or education -- that are central to local well-being and that may be supported by local taxes. However, the domestic delegation of authority to a local government does not erase or modify the obligations of the State to the international community. European and international human rights law makes clear that it is up to the State to ensure compliance, and that the State must secure cooperation of any local government that is intent on adopting policies that impinge on human rights. For example, presented with evidence of local evictions of Roma groups in many countries in the EU, the Council of Europe Commissioner for Human Rights sent formal letters of concern to a list of *national* governments, including Sweden, noting that human rights violations were the responsibility of the State even though the offending evictions were implemented locally.¹⁴⁴

Nevertheless, while the national government bears ultimate responsibility for human rights, it is not accurate to say that the Swedish government bears the sole burden of human rights implementation. As a formal matter, Sweden's local governments are required to conform to national law, which includes compliance with treaty obligations.

As cogently stated by Thomas Hammarberg, then Human Rights Commissioner of the Council of Europe,

143 See, e.g., Letter from Nils Muznieks, Council of Europe Commissioner for Human Rights, to Alice Bah Kunke, Minister for Culture and Democracy, Sweden concerning evictions of Roma, 26 Jan. 2016, available at <https://wcd.coe.int/ViewDoc.jsp?id=2411883&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864> (assuming national government responsibility for ensuring human rights compliance of local government evictions).

144 *Council of Europe Sends Letter to Bulgaria PM over Forced Evictions of Roma*, FOCUS News Agency, 16 Feb. 2016, <http://www.focus-fen.net/news/2016/02/16/398302/council-of-europe-sends-letter-to-bulgaria-pm-over-forced-evictions-of-roma.html>. See also Letter from Nils Muznieks, *supra* note 143.

While governments and national parliaments ratify international treaties on behalf of the state, the day-to-day work of implementing human rights standards often rests on the shoulders of local and regional authorities. They too are bound by these agreements. Local and regional authorities are often directly responsible for services related to health care, education, housing, water supply, environment, policing and also, in many cases, taxation. These matters affect people's human rights, not least their social rights.¹⁴⁵

There can be no serious dispute about this proposition. Article 29 of the Vienna Convention on the Law of Treaties makes clear that, absent special circumstances, a treaty "is binding upon each party in respect of its entire territory."¹⁴⁶ European case law also supports the assertion that local authorities share with national governments the obligation to conform to human rights norms. In *Assadnize v. Georgia*, for example, the European Court of Human Rights reiterated that "in international law the expression 'governmental organisation' cannot be held to refer only to the government or the central organs of the State."¹⁴⁷ Indeed, the European Council has encouraged municipalities to actively develop policy measures directed toward Roma inclusion, and has recommended that states strengthen the capacity of local authorities in this regard.¹⁴⁸

In the case of water and sanitation, then, municipalities have an obligation to support the national government in addressing these human needs from a human rights perspective. As set out above, human rights norms encompass water and sanitation rights for homeless individuals as well as for travelers and those residing without land tenure in informal settlements. In short, these basic rights apply to everyone, regardless of legal status. Municipal failure to progressively realize these rights can put the national government in default of its human rights obligations, with serious international repercussions. At the same time, the fact that Swedish municipalities exercise primary responsibility for water policy ensures that municipalities are in a position to take concrete steps to fulfill their role in achieving and implementing these human rights.

B. Local Governments' Opportunities to Implement Human Rights

Given the important and basic human rights at issue, it is surprising that to date, the Swedish national government's guidance to municipalities regarding treatment of vulnerable EU citizens has been devoid of reference to the nation's human rights obligations.¹⁴⁹ Indeed,

145 Thiks van Lindert & Doutje Lettinga, *Introduction*, in *The Future of Human Rights in an Urban World: Exploring Opportunities, Threats and Challenges*, Thiks van Lindert & Doutje Lettinga, eds., 7-8 (2014) (remarks made in a debate at the Congress of Local and Regional Authorities in 2011).

146 Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, reprinted in 81 I.L.M. 679 (entered into force 27 Jan. 1980).

147 ECHR (2004), *Assadnize v. Georgia*, Application no. 715/01, 8 April. See also Council of Europe (2010), Resolution 296, Congress of Local and Regional Authorities ("Protecting and promoting human rights is a responsibility shared by all the different tiers of authority within each Council of Europe member state"); Council of Europe (2015), Congress of Local and Regional Authorities, Graz Declaration on the Implementation of Human Rights (29 May 2015), available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2753389&SecMode=1&DocId=2273442&Usage=2>.

148 *Council Recommendation on Effective Roma Integration*, European Union Council on Employment, Social Policy, Health and Consumer Affairs, ¶¶3.1 to 3.3 (Dec. 2013), available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/139979.pdf (last visited 5 Apr. 2016).

149 Martin Valfridsson, *Framtid sökes – Slutredovisning från den nationella samodnaren för utsatta EU-medborgare* (Stockholm 2016), available at <http://www.regeringen.se/rattsdokument/statens-offentliga-utredningar/2016/02/sou-20166/>. For critical commentary, see Thomas Hammarberg, *Blog: Valfridssons "nolltolerans" hjälper inte utblottade EU-migranter*, <http://thomashammarberg.org/2016/02/22/valfridssons-nolltolerans-hjalper-inte-utblottade-eu-migranter/>.

this omission has already been noted at the European level by the Council of Europe Human Rights Commissioner, who has called on Sweden to enter into a dialogue to improve the conditions for these EU citizens in Sweden.¹⁵⁰ Yet the national government's failure to provide adequate human rights guidance does not preclude municipal governments from taking human rights seriously. In fact, around the world, Mayors and local governments are increasingly taking leadership roles in human rights implementation.¹⁵¹

Local governments have every reason to take the lead in implementing human rights. It is at the local level that the burden of human rights failures are most acutely felt. For example, as recent events in Sweden have shown, when a municipality fails to provide water and sanitation to vulnerable populations, these basic needs do not simply go away. Instead, local businesses, non-governmental organizations and private residents feel the burden. In the case of vulnerable EU citizens in Sweden, local gas stations, grocery stores, and churches have come forward to help on an ad hoc basis, providing a patchwork of these necessary services to marginalized citizens, often at their own expense. Yet without access to on-site or nearby sanitation, and without local governmental support in accessing these necessities, the informal camps where vulnerable EU citizens often reside can soon raise legitimate public health and environmental concerns, impinging on the rights of all in the community, creating a crisis for the municipality and incurring even greater city expenses in evictions and site clean-ups.

By the same token, local governments also benefit most, and most immediately, from policies that honor human rights. Though the issues facing vulnerable EU citizens are complex, and their needs may seem overwhelming, local communities can benefit even when they take up the task of realizing human rights on an incremental and progressive basis. For example, when local governments provide informal settlements with access to water and sanitation, the costs of these necessities is spread evenly, rather than unfairly imposed on a few community businesses and non-governmental organizations by virtue of their geography or goodwill. Accessible water and sanitation diminishes the stigma associated with homelessness and increases the time that vulnerable EU citizens, including children, can devote to productive activities such as education and work, fulfilling their obligations under the EU Freedom of Movement regulations. Accessible water and sanitation diminishes the discriminatory impacts on women, whose sanitation needs around menstruation result in increased vulnerabilities when basic sanitation is unavailable. And by managing waste, accessible sanitation diminishes the likelihood of public health and environmental concerns in areas occupied by informal settlements – resulting in an immediate benefit to the entire surrounding community. In short, human rights leadership is not just a “feel-good” policy, but an approach with tangible economic and social benefits for local communities.

Importantly, some Swedish municipalities have formally embraced human rights norms as legal standards and policy guides – a phenomenon that is increasingly widespread worldwide. For example, Gothenburg received international recognition as a municipal human rights leader for incorporating the provisions of the Universal Declaration of Human Rights into its city governance documents.¹⁵² In 2010, the Swedish Association of

150 Letter from Nils Muznieks, *supra* note 143.

151 See generally *The Future of Human Rights in an Urban World*, *supra* note 145.

152 Michael Spång, *Development: Systematic Work for Human Rights, Examples from Six Municipalities and West Götaland* (Swedish Association of Local Authorities and Regions, Stockholm 2011), at p. 10. Gothenburg is also a municipal signatory of the European Charter for Equality of Men and Women. See <http://www.charter-equality.eu/exemple-de-bonnes-pratiques/interview-city-of-gothenburg.html>.

Municipalities took initial steps to develop a framework and a set of indicators for human rights implementation at the municipal level that acknowledged the important role of local governments in meeting Sweden's human rights standards.¹⁵³ Internationally, United Cities and Local Governments serves as a forum for addressing cities' growing connections to international human rights frameworks, including the human rights cities movement.¹⁵⁴ In Europe, the Congress of Local and Regional Authorities of the Council of Europe has been outspoken concerning municipalities' role in implementing human rights.¹⁵⁵

To date, however, the evidence suggests that the important efforts in Sweden and internationally to recognize and incorporate human rights norms into municipal policy have had insufficient impact on the ground when it comes to informal settlements of vulnerable EU citizens in Sweden. As described above, municipal authorities have carried out scores of evictions based on sanitation grounds, all without addressing the municipalities' own obligations to address the human rights to water and sanitation of the residents of these informal settlements.¹⁵⁶ Indeed, activists report that in Stockholm, a portable toilet was removed and discarded during an eviction after it was placed there by non-governmental organizations seeking to assist the camp's residents in preserving their privacy and dignity around sanitation issues.¹⁵⁷

At the same time, it would be wrong to view this as simply a municipal failure, though municipalities have an opportunity to provide leadership. Municipalities have received little guidance from the national government concerning their human rights obligations to vulnerable EU citizens. The recent provisional guidance provided to municipalities urged local authorities to evict informal settlements as soon as they are detected, utilizing police authority and without providing vulnerable EU citizen residents with alternative, more suitable places to camp or reside.¹⁵⁸ This provisional document did not address the human rights issues involved, and nowhere indicated that basic human rights protections to water and sanitation extend to all individuals, whether they be homeless and transient individuals or long-term residents.

Because water and sanitation are principally within the control of municipalities, local governments retain the flexibility to implement human rights-based approaches in this area even if the national government fails in its obligation to encourage human rights compliance. As discussed below, some Swedish municipalities have taken affirmative steps to progressively realize the human rights to water and sanitation of the vulnerable EU citizens who have joined their communities. These, and other examples from around the world, can help guide all Swedish municipalities in moving forward on this issue from a human rights perspective.

153 Michael Spång, *Indicators for Human Rights: Model for Systemic Work at the Municipal level* (Swedish Association of Local Authorities and Regions, Stockholm 2010).

154 United Cities and Local Governments, *The Role of Local Governments is Crucial in Human Rights Enhancement* (28 May 2015) (describing 5th World Human Rights Cities forum), available at <http://www.uclg.org/en/media/news/role-local-governments-crucial-human-rights-enhancement>.

155 See, e.g., Lars Molin, Thematic Rapporteur on Human Rights of the Council of Europe, *Speech to the Congress of Local and Regional Authorities of the Council of Europe*, HDIM.IO/0379/13 (30 Sept. 2013) (the Congress must address human rights "because local and regional authorities have increasing responsibilities in dealing with human rights on a daily basis").

156 Karin Zelano, et al., *Urban Implications of CEE Migration to Gothenburg and Stockholm: Country Report Sweden*, Imagination Working Paper No. 8, 21 (March 2015) (noting of Stockholm that "the city systematically uses evictions as a way to counter the continued emergence of settlements").

157 Levy, *supra* note 47, at 36.

158 Martin Valfridssons, *Framtid sökes*, *supra* note 149, at 70.

C. Promising Practices of Municipal Human Rights Implementation

Swedish municipalities have pursued a number of promising approaches to addressing the water and sanitation needs of vulnerable EU citizens, often through public-private partnerships. Several of these are described below, and we note both the successes of these approaches and the challenges that municipalities continue to face. Because the issues of water and sanitation access are global, we also describe promising practices from other comparable nations where informal settlements lack basic infrastructure or where homeless individuals need access to these critical services.

1. Promising Practices of Swedish Municipalities

(a) Public-Private Partnerships

Across Sweden, public-private partnerships have often been successful in ensuring that vulnerable EU citizens have access to basic water and sanitation. Such partnerships have been established in Lund, Malmö, Linköping, and Gothenburg, among others.

Public-private partnerships typically involve the municipality, religious bodies, social service agencies and the affected individuals in developing solutions to the situations of vulnerable EU citizens living in unstable housing situations. In some communities, other institutions are involved; the active engagement of student groups in Lund is an example. Central to the success of these partnerships is the willingness of the municipality to recognize that long-term solutions are needed, and that repeated evictions – even when they are legally defensible under domestic law-- are simply ineffective and contribute to serious human rights violations in the long run. Once municipalities move beyond a reflexive policy of eviction and sit down with partners to address these issues, identifying means to address water and sanitation needs is often a key consideration.

- Housing-based Solutions

In Sweden, water and sanitation are almost always provided as part of housing. Given this, and in light of the high level of water and sanitation infrastructure in Sweden, housing-based approaches to addressing the water and sanitation needs of vulnerable EU citizens are particularly attractive and viable. In many instances, public-private partnerships have worked together to provide group shelters for vulnerable EU citizens that include water and sanitation access as a matter of course, as well as protection from the harsh elements of Swedish weather. An example of this approach is a seasonal shelter in Linköping, developed through a public-private partnership and upheld against an administrative challenge.¹⁵⁹ In some communities, group shelters are augmented by individual households that come forward to offer apartments or rooms for vulnerable citizens.¹⁶⁰

Certainly, extending group shelters or other stable housing options to vulnerable EU citizens has many positives, particularly if communities are able to move beyond seasonal assistance to offer year-round support. In addition to providing for water and sanitation, a stable home can serve as a setting for assessing other social service needs and working with individuals to move into more stable work situations. Indeed, the year-round sheltering system in Lund has had several success stories of this type: individuals who, once they had the stability provided by access to water, sanitation and housing, were able to secure jobs

¹⁵⁹ *Supra* note 33.

¹⁶⁰ Interview with Per Eriksson, Crossroads, in Lund, Sweden, 5 March 2016.

and move into more independent living situations.¹⁶¹ Such housing-based solutions also eliminate direct environmental stress, since water and sanitation are dealt with at very low cost through the existing infrastructure.¹⁶²

But while housing-based solutions are the most efficient and environmentally sound ways to provide water and sanitation access to vulnerable EU citizens in Sweden, the cost and availability of the housing itself may make such solutions prohibitive in some communities. As an alternative, some local communities have explored the less costly approach of providing identified campsites that include water and sanitation access.

- Access to Established Campsites

Municipalities often own property with accessible water and sanitation facilities, but without existing structures that would qualify as permanent housing. With water and sanitation infrastructure already in place, such settings can provide an alternative to more costly housing options described above.¹⁶³ Caravans or tents may be established at the sites without any significant modifications. These settings provide some of the same benefits as more formal housing. They serve as a place for social welfare interventions that can lead to more stable work situations, and at the same time, they protect against environmental impacts since the sites are designed for habitation.

Some municipalities have tried this approach. In April 2015, for example, the city of Helsingborg relocated vulnerable EU citizens from rough camps in downtown city parks to a municipal campsite in southern Helsingborg which provided showers, water access and communal kitchen space. Though the camp remained for almost a year – and met human rights standards as a temporary measure -- it was dismantled by the city in late March 2016. Residents who stayed to the end were offered bus rides to Romania, but not alternative accommodations in Sweden.¹⁶⁴ Similarly, in Lund, the municipality moved vulnerable EU citizens who had previously parked their caravans in illegal sites to a municipal campsite. The solution was successful for a time, but was then challenged by community members who argued that the decision should have been put to a vote of the full City Council.¹⁶⁵ The Administrative Court sided with the challengers, and the case is now on appeal. In the meantime, the vulnerable EU citizens were relocated to formal shelters operated by the city's public-private partnership.¹⁶⁶

(b) Focused Solutions to Provide Water and Sanitation Access

Because water and sanitation are traditionally within a municipality's sole control and outside of the national social welfare scheme, municipalities may have more flexibility in targeting the water and sanitation needs of vulnerable EU citizens as distinct from other needs relating to housing. While this focused approach does not address the full complex

161 *Id.*

162 See Report of the Special Rapporteur on the Right to Safe Drinking Water and Sanitation, UN Doc. A/70/203, ¶¶ 45-46 (27 July 2015).

163 See, e.g., Resolution CM/ResChS (2013= 8 Complaint No. 62/2010, International Federation of Human Rights (FIDH) v. Belgium) (finding that public mobile home sites that are properly fitted with the basic amenities necessary for a decent life, including water, waste disposal and sanitation, may meet human rights standards).

164 Peter Ferm, *EU Migrants Have Left Helsingborg*, Helsingborgs Dagblad, 29 March 2016, available at <http://www.hd.se/lokalt/helsingborg/2016/03/29/eu-migranterna-har-lamnat-helsingborg/>.

165 mål nr 10917-15 [Förvaltningsrätten i Malmö] 2015-12-08 (Swed.).

166 Interview with Per Eriksson, Crossroads, in Lund, Sweden, 5 March 2016.

of human rights issues presented by vulnerable EU citizens living in informal settlements, it does follow an incremental approach to addressing human rights needs and can alleviate the serious issues of sanitation and environmental degradation that have nearly always served as triggers for evictions.

More accessible and affordable public toilets are one approach. A number of Swedish cities have experimented with providing public toilets in tourist-heavy areas, often pursuing innovative strategies and new technologies. For example, Gothenburg installed fifteen free public toilets in critical areas around the city in 2012.¹⁶⁷ In 2013, Gothenburg was also the first city in Sweden to install two “pop-up” men’s-only public toilets that emerge only at night to provide urinals in areas of high usage.¹⁶⁸ Similar innovative approaches in areas near informal settlements could help alleviate the sanitation issues in these settings.

Water for household uses may also be provided in ways that target residents of informal settlements. In an urban setting with a significant existing water infrastructure, temporary connections or re-purposing of existing connections to serve an informal settlement may be easily accomplished.¹⁶⁹ Alternatively, just as local governments provide free portable water sources in certain areas of the city on an as-needed basis – for festivals, near beaches, when water quality is compromised, and so on -- portable water sources can be located near informal settlements on a temporary basis to ensure access to water for hygiene and sustenance until longer term solutions can be devised.

Affordability and access are key to making these targeted approaches consistent with threshold human rights standards. Turning to affordability: currently, many public toilets in Sweden require payment of a fee of 5 to 10 SEK. Taking into account that healthy individuals normally use the toilet between 4 and 10 times each day, this seemingly small fee can end up taking a sizable percentage of a vulnerable EU citizen’s daily earnings, far above the 3% figure recommended by the UNDP.¹⁷⁰ For low income people, these costs can serve as a serious deterrent to using the facilities.

Indeed, press reports indicate that Gothenburg’s decision to install free public toilets was motivated by the deterrent effects of charging for the facilities, which undermined the purpose of providing the toilets in the first place. The city found that free public toilets were more likely to be used, and therefore to achieve their goals of increased hygiene and decreased environmental stress.¹⁷¹ That is not to say that water and sanitation services must always be provided to informal settlements for free, but there must be a realistic assessment of affordability in conjunction with the significance of the human rights at stake. There is a risk that charging for water access or for public toilets would commodify or criminalize behavior that is essential to being human, with the result of punishing those who cannot afford to pay.

Access to such targeted water and sanitation solutions is also a critical issue. Public toilets or water sources located high-trafficked shopping or tourist areas are not likely to be acces-

167 Ben Kendall, *Free Public Toilets to Gothenburg*, Göteborg Daily, 27 June 2012, available at <http://www.goteborgdaily.se/free-public-toilets-to-gothenburg>.

168 *Toilets Are Popping Up On City Streets at Night*, CityMetric, 2 Dec. 2014, available at <http://www.citymetric.com/horizons/toilets-are-popping-city-streets-night-534>.

169 See, for example, Leeds City Council Guidance Sheet 4: Temporary Drinking Supplies, available at <http://www.leeds.gov.uk/docs/Temporary%20Water%20Supplies%20Guidance.pdf> (describing process for providing temporary water supplies for events).

170 UNDP, *supra* note 123.

171 Kendall, *supra* note 167.

sible to vulnerable EU citizens living in informal settlements in other parts of the city. Further, many of the public facilities currently offered in urban areas do not have evening hours, but are simply unavailable for many hours each night.¹⁷² At the same time, it is important to recognize that the placement of accessible water and sanitation facilities may factor into the location of informal settlements, as vulnerable EU citizens seek access to these basic necessities. Thus, a municipality may be able to consciously place accessible water and sanitation facilities in locations where informal settlements can be tolerated, thus further minimizing the pressures that might lead to eviction.

The guidelines by the UN High Commission on Refugees for water and sanitation facilities in refugee camps are a good touchstone for minimally acceptable levels of accessibility. These guidelines indicate that, in non-emergency situations, there should be no more than 100 people per water tap, and 20 people per latrine. The distance to a water point in the camp should be less than 200 meters, with a safe and secure route between a dwelling and the water source. The distance from a dwelling to a latrine should be less than 50 meters.¹⁷³ Significantly, other social and cultural factors may also affect a determination of accessibility. For example, a latrine must be accessible at night, a time when individuals – particularly women – may feel especially vulnerable. A latrine that is too far away will not be used in such conditions, undermining the purpose of providing this targeted support. Still, while longer-term solutions should be the ultimate goal, short-term placement of water and sanitation facilities may address acute human rights issues while also serving the municipal goals of minimizing disruption to the larger community. As the UN Special Rapporteur has observed, “shared or public toilets that are well maintained, safe and hygienic, may be accepted as short-term solutions in those conditions where the alternative is to provide no toilet at all.”¹⁷⁴

(c) Community Participation

With all of these approaches, participation of affected individuals is critical to a successful outcome.¹⁷⁵ Some of the public-private partnerships identified above have already utilized co-design principles to develop effective strategies for addressing the needs of vulnerable EU citizens in balance with local community needs. Given the individual and sometimes private nature of water and sanitation usage, only through engagement with the affected individuals will municipalities be able to develop effective approaches that will both address human rights needs and alleviate stresses on the environment and surrounding local communities. Of course, once a Swedish municipality ensures that realistic, human rights-based solutions to the dilemmas of water and sanitation access for informal settlements are in place, the city could then be justified in proceedings against individual residents should they abuse, or fail to use, the facilities provided. Shelters, for example, may enforce rules

172 See, e.g., PLAN FÖR OFFENTLIGA TOALETTER I VARBERGS KOMMUN (2013), available at <http://www.varberg.se/download/18.4a2ced49142b85dd4d41c81/1387274619441/Plan+f%C3%B6r+offentliga+toaletter+i+Varbergs+kommun.pdf> (public toilet hours from 7:00 to 23:00 in summer, and 8:00 to 19:00 in winter); Svar på Medborgarförslag om Offentlig Toalett vid Fiskartorget, Sala Kommunstyrelsens Förvaltning, 2015/482, Bilaga KS 2015/173/1 (16 Sept. 2015) available at <https://www.sala.se/Global/1%20SALA%20KOMMUN/11%20Protokoll-kallelser/01%20KF/2015/151026/KF-a4-2015-10-26.pdf>.

173 Brochure from the United Nations High Commissioner for Refugees [UNHCR], *Access to Water in Refugee Situations: Survival, Health and Dignity for Refugees*, available at http://www.un.org/arabic/waterforlifedecade/unhcr_water_brochure.pdf (last visited 5 Apr. 2016); Emergency Handbook from the United Nations High Commissioner for Refugees [UNHCR], *WASH in camps*, available at <https://emergency.unhcr.org/entry/39930/wash-in-camps> (last visited 5 Apr. 2016).

174 Catarina de Albuquerque & Virginia Roaf, On the Right Track: Good Practices in Realising the Rights to Water and Sanitation 136 (Jaime Baptista et al. eds., Office Of The High Commissioner For Human Rights) (2012), available at http://www.ohchr.org/Documents/Issues/Water/BookonGoodPractices_en.pdf (last visited 5 Apr. 2016).

175 See generally Annual Report of the UN Special Rapporteur on the Right to Safe Drinking Water and Sanitation, A/69/213 (31 July 2014).

against violence on the premises, and municipalities can enforce rules against open defecation when alternative facilities are provided but not used. Community participation in the development of these solutions is the best way to minimize failures of this kind.

2. Innovations From Other Settings

Water and sanitation for informal settlements pose a challenge to communities around the world. The UN Special Rapporteur on the Right to Water and Sanitation has identified innovative approaches in other settings that may be adapted to the Swedish context. Developing countries, of course, face significant difficulties in funding or providing the infrastructure necessary to ensure access to water and sanitation. In Sweden, in contrast, with a well-developed infrastructure in place, the failure to provide water and sanitation boils down to a matter of will and commitment to human rights. Nevertheless, even in developed nations such as Sweden, interim measures that provide adequate access to water and sanitation on short-term basis have been deemed sufficient to meet human rights standards in some instances.

- Brazil: When the UN Special Rapporteur on the Human Right to Water and Sanitation visited Brazil in 2012, she found that the nation had made significant progress in expanding access to water and sanitation. Still, she expressed concern about informal settlements in the country, stating definitively that “Regardless of the legal title and location of their dwelling, all persons, without exception, have a right to water and sanitation, which cannot be denied by the authorities nor by service providers.”¹⁷⁶ She endorsed “solutions that allow for sufficient, regular, quality and dignified, albeit provisional, access to water for needy populations living in informal settlements.”¹⁷⁷ For example, she observed that Porto Alegre had overseen the installation of “public water networks” in public areas occupied by informal settlements. According to the Special Rapporteur, “[t]he networks are of high-density polyethylene, and are provisional until the beneficiary areas are regularized or the communities removed.”¹⁷⁸
- Japan: On an official visit to Japan in 2013, the UN Special Rapporteur observed a high level of water and sanitation access among the general public, but also significant numbers of people residing in public parks and using public facilities for obtaining water and maintaining hygiene.¹⁷⁹ The Special Rapporteur expressed alarm at reports that municipalities deliberately failed to service these facilities in order to discourage homeless individuals from using them. At the same time, she recognized that access to clean, convenient and affordable public washing and water facilities in parks and other settings could, in theory, meet the human right standards for this vulnerable population in the short term.
- United States: Visiting the United States on an official mission in 2012, the UN Special Rapporteur observed a group of homeless individuals living on the outskirts of Sacramento, California, without access to sanitation facilities.

176 *Supra* note 139, at ¶55.

177 *Id.* at ¶ 57.

178 *Id.* at ¶ 56.

179 *Report of the Special Rapporteur on the Human Right to Water and Sanitation: Mission to Japan*, U.N. Doc. A/HRC/18/33.Add.3, ¶¶34-37 (4 July 2011).

Since the city did not provide any assistance to the group, one individual – a “human rights defender,” according to the Special Rapporteur – took individual responsibility for emptying and maintaining the pit latrine that served the informal residents. The Special Rapporteur noted that “The fact that private citizens are compelled to provide such services is an indication of failure by the State to meet its responsibilities to ensure the provision of the most fundamental of services.” In her final observations, she concluded that:

The United States, one of the wealthiest countries in the world, must ensure that everyone, without discrimination, has physical and economic access, in all spheres of life, to sanitation which is safe, hygienic, secure, socially and culturally acceptable, and which provides privacy and ensures dignity. An immediate, interim solution is to ensure access to restrooms facilities in public places, including during the night.¹⁸⁰

- Entrepreneurial Responses to Human Needs: The challenge of providing water and sanitation to vulnerable individuals has captured the attention of innovators and social entrepreneurs. For example, the Bill and Melinda Gates Foundation offered a substantial fund to those seeking to “reinvent the toilet” at an affordable price.¹⁸¹ Likewise, a number of educational institutions have taken on these issues as urban design challenges.¹⁸² Promising approaches include the creation of community-led and developed public sanitation blocks, with free access for those who are too poor to pay or for children.¹⁸³ A notable innovation from another developed country, the United States, is Lava Mae, a retired city bus converted into a mobile sanitation facility that moves around San Francisco. Its mission is “to deliver dignity and unlock opportunity for those experiencing homelessness — one mobile shower at a time.” Lava Mae is another example of a successful public-private partnership. While Lava Mae is a non-governmental initiative, it could not operate without cooperation from the municipal government, particularly in granting permitting for its operations.

As these examples indicate, the human rights to water and sanitation can be met through innovative approaches that have a positive impact on vulnerable individuals. The first step in achieving these goals is to acknowledge the governmental responsibility to ensure that these basic rights are available to everyone, regardless of their legal status. Within Sweden’s multi-level government structure, which designates water and sanitation as local issues, municipalities have the opportunity to take a leadership role in honoring these human rights and bringing the nation into compliance with its human rights obligations to vulnerable EU citizens.

180 *Supra* note 138, ¶ 60.

181 Bill and Melinda Gates Foundation, *Reinvent The Toilet Challenge*, <http://www.gatesfoundation.org/What-We-Do/Global-Development/Reinvent-the-Toilet-Challenge> (last visited 3 April 2016).

182 Marcus Woo, *Caltech Wins Toilet Challenge*, Now@Caltech, 15 Aug. 2012, available at <https://www.caltech.edu/news/caltech-wins-toilet-challenge-23635>; Søren Bech, *Sustainable Model for Toilets and Hygiene Promotion in Schools Located in Urban Slums*, IDEO.org, 18 Dec. 2015, available at <https://challenges.openideo.com/challenge/urban-resilience/improve/sustainable-model-for-toilets-and-hygiene-promotion-in-schools-located-in-urban-slums>.

183 Deepak Sanan and Soma Ghosh Moulik, *Community-Led Total Sanitation in Rural Areas An Approach That Works* (Anjali Sen Gupta ed., Water and Sanitation Program, 2007), available at http://esa.un.org/iys/docs/san_lib_docs/WSP-Community%20Led.pdf; UNICEF, *Community-Led Total Sanitation in East Asia and Pacific* (2013), available at http://www.unicef.org/eapro/Community_Led_Total_Sanitation.pdf; Stefanie Keller, *Community-Led Total Sanitation (CLTS)* (Sustainable Sanitation and Water Management ed.), available at <http://www.sswm.info/content/community-led-total-sanitation-clts>.

Conclusion

The UN Human Rights Committee recently reviewed Sweden's compliance with the ICESCR. A key passage in the Committee's Concluding Observations calls on Sweden to "ensure that all individuals within its jurisdiction, including vulnerable Roma citizens of other EU countries, enjoy equal rights without discrimination and identify ways to facilitate their access to support assistance services, including social benefits, taking into account both their de jure and de facto situation."¹⁸⁴

The de facto situation of vulnerable EU citizens in Sweden, mostly Roma, is that they face barriers to accessing water and sanitation access that are on a continuum with similar barriers faced by Roma for decades. But the UN Committee's statement makes clear that whether or not these vulnerable EU citizens have regular legal status, and whether or not they have claims to remain in Sweden, as long as they are in this jurisdiction, Sweden has an obligation to provide water and sanitation that meets basic human rights standards. Long-term plans to improve conditions in Romania, while laudable, will not discharge this obligation. The de facto situation is that individual sanitation and water needs require immediate action here in Sweden. While the issues raised by movement of EU citizens are complex in many respects, the rights to water and sanitation are straightforward, and they apply to everyone in this jurisdiction, regardless of ethnic origin or land tenure or immigration status.

In the absence of human rights guidance from the national government, too many Swedish municipalities have moved quickly to evict vulnerable EU citizens from informal settlements or to close local campsites without taking responsibility for addressing these human rights. The numbers of evictions and the millions of kronor expended to execute these proceedings again and again, with no end in sight, make clear that this is a failed policy that it is time to abandon. The frustration expressed concerning the recent Valfridsson report suggests that many municipalities already realize this, and are searching for alternative approaches.

In fact, Swedish municipalities are well-positioned to shift gears and to take a leadership role in ensuring that these basic human rights of vulnerable EU citizens are respected. For example, the basic rights to water and sanitation can be met through a range of responses, from housing and shelters to clean, safe, affordable and accessible public facilities. The experiences of other developed countries addressing informal settlements and homelessness can also provide guidance. And when these approaches are successful – perhaps fueled by public-private partnerships -- they can lead to positive outcomes for the environment and wider community as well as for the affected individuals.

184 U.N. Human Rights Comm. [HRC], Concluding Observations on the Seventh Periodic Report of Sweden, ¶ 15 (March 2016), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=C-CPR%2fC%2fSWE%2fCO%2f7&Lang=en (last visited 12 Apr. 2016).

Appendix:

The Swedish Enforcement Authority

Case Number	Applicant
22-143154-13	Botkyrka kommun
22-232699-13	Botkyrka kommun
24-27511-14	Danderyd kommun
14-167392-14	Göteborg - Fastighetskontoret
14-151830-14	Göteborg - Fastighetskontoret
14-217429-14	Göteborg - Fastighetskontoret
22-1848990-14	Göteborg - Fastighetskontoret
21-209272-15	Göteborg - Fastighetskontoret
21-212198-15	Göteborg - Fastighetskontoret
14-186559-15	Göteborg - Fastighetskontoret
21-109468-15	Göteborg - Fastighetskontoret
21-108753-15	Göteborg - Fastighetskontoret
14-199475-14	Göteborg - Fastighetskontoret
14-216576-14	Göteborg - Fastighetskontoret
14-131708-15	Göteborg - Fastighetskontoret
14-145251-15	Göteborg - Park och natur
14-168194-15	Göteborg - Park och natur
21-106834-15	Göteborg - Park och natur
01-73068-14	Haninge kommun
14-34378-14	Huddinge kommun
01-212862-15	Huddinge kommun
22-130713-15	Huddinge kommun
22-142839-14	Karlstad kommun
22-55134-14	Mölndal Stad
01-111420-15	Salems kommun
14-32010-15	Skara kommun
22-42474-14	Sollentuna kommun
22-47637-14	Sollentuna kommun
22-47637-14	Sollentuna kommun
22-116425-14	Sollentuna kommun
01-232730-15	Stockholm Spånga-Tensta stadsdelsförvaltning
01-14083-16	Stockholm Spånga-Tensta stadsdelsförvaltning
01-69098-14	Stockholm-Enskede-Årsta-Vantör stadsdelsförvaltning
01-86573-14	Stockholm-Farsta stadsdelsförvaltning
01-195743-14	Stockholm-Hägersten-Liljeholmen stadsdelsförvaltning
01-98679-14	Stockholm-Hägersten-Liljeholmen stadsdelsförvaltning
01-51898-14	Stockholm-Hägersten-Liljeholmen stadsdelsförvaltning
14-208488-15	Stockholm-Skarpnäck stadsdelsförvaltning
01-120154-14	Stockholm-Skarpnäck stadsdelsförvaltning

01-185819-14	Stockholm-Skarpnäck stadsdelsförvaltning
22-107797-14	Stockholm-Spånga-Tensta stadsdelsförvaltning
01-113790-13	Stockholm-Stad Exploateringskontoret
01-155744-13	Stockholm-Stad Exploateringskontoret
22-66639-14	Stockholm-Stad Exploateringskontoret
21-71027-14	Stockholm-Stad Exploateringskontoret
01-31028-12	Stockholm-Stad Exploateringskontoret
21-110103-13	Stockholm-Stad Exploateringskontoret
01-138674-13	Stockholm-Stad Exploateringskontoret
22-23642-14	Stockholm-Stad Exploateringskontoret
01-47441-14	Stockholm-Stad Exploateringskontoret
22-58607-14	Stockholm-Stad Exploateringskontoret
01-172205-14	Stockholm-Stad Exploateringskontoret
01-178932-14	Stockholm-Stad Exploateringskontoret
24-194232-14	Stockholm-Stad Exploateringskontoret
24-194231-14	Stockholm-Stad Exploateringskontoret
22-198078-14	Stockholm-Stad Exploateringskontoret
01-71722-15	Stockholm-Stad Exploateringskontoret
21-75620-15	Stockholm-Stad Exploateringskontoret
01-133794-15	Stockholm-Stad Exploateringskontoret
01-133837-15	Stockholm-Stad Exploateringskontoret
01-133810-15	Stockholm-Stad Exploateringskontoret
01-177431-15	Stockholm-Stad Exploateringskontoret
01-194341-15	Stockholm-Stad Exploateringskontoret
01-231241-15	Stockholm-Stad Exploateringskontoret
01-249700-15	Stockholm-Stad Exploateringskontoret
21-80420-15	Stockholm-Stad Exploateringskontoret
01-37328-16	Stockholm-Stad Exploateringskontoret
14-114916-15	Uddevalla kommun
14-143719-15	Uddevalla kommun
21-93657-15	Uppsala - Uppsala Skolfastigheter
21-173039-15	Uppsala - UppsalaHem
21-142309-14	Uppsala kommun
21-169381-15	Uppsala kommun
22-173382-15	Uppsala kommun

Municipalities

Municipality

Sthlm
Huddinge
Göteborg – Park och Natur
Göteborg – Park och Natur
Botkyrka

Reference number

Spånga-Tensta649-2428/2015
KS-2015/2118.103
0240/15
0937/14
Riskprio 5463